

Some Reflections on SSDE Criteria under Digital Competition Bill 2024

August, 2024

This presentation first states the findings of the study together with its limitations and challenges faced, followed by a comparative analysis of the Business and End User Thresholds prescribed under the DCB, DMA, and DMCC, reflecting on the qualitative and quantitative thresholds of the SSDE.

FACTORS FOR CHOOSING THE SAMPLE OF 23 INDIAN COMPANIES

- India has a vibrant digital economy.
- Dynamic Start-up Sector growing rapidly.
- Digital Sector's major contribution to the Indian Economy.

Business

India's digital economy set to double by 2026, RBI report reveals

India's domestic digital economy, currently at 10% of GDP, is on track to reach 20% by 2026, driven by the world's lowest data costs and rapid growth in internet users.

Source- www.newindianexpress.com

10 years and 31,000 startups later, Indian startup ecosystem bets on deep tech, Gen AI for next phase of growth

Updated - July 29, 2024 at 06:53 PM. | Hyderabad

The rise of Indian tech startups has not only disrupted traditional industries but has also inspired a wave of innovation and entrepreneurship

Source- www.thehindubusinessline.com

FINDINGS OF THE STUDY

S No.	Company Name	Core Digital Service
1	Hotstar	Video Sharing Platform Services
2	Zomato	Online Intermediation Services
3	Swiggy	Online Intermediation Services
4	MakeMyTrip	Online Intermediation Services

Out of the sample of 23 Indian company engaged in digital economy, **13 of them are likely to be designated as SSDEs as per DCB, 2024**

S No.	Company Name	Core Digital Service
5	Flipkart	Online Intermediation Services
6	Meesho	Online Intermediation Services
7	Myntra	Online Intermediation Services
8	Ajio	Online Intermediation Services
9	Pharmeasy	Online Intermediation Services
10	Paytm	Online Intermediation Services
11	Nykaa	Online Intermediation Services
12	IRCTC	Online Intermediation Services
13	JioSaavn	Online Intermediation Services

CHALLENGES

Definition of an Enterprise

Section 4 (7) of DCB, 2024 states that **where the enterprise is a part of group, then financial and user threshold values shall be computed with reference to entire group**, where definition of group is defined under Explanation (b) of Section 5 of the Competition Act as follows:

“group” means two or more enterprises which, directly or indirectly, are in a position to-

- i. Exercise 26 percent or more of the voting rights in the other enterprise; or
- ii. Appoint more than 50 percent of the members of the board of directors in the other enterprise; or
- iii. Control the management or affairs of the other enterprise.

By evaluating the threshold criteria with respect to group of enterprises, it is likely that more digital enterprises will be designated as SSDE even when their individual financial and user thresholds may be far less than the threshold criteria.

CHALLENGES

Definition of End Users

- The bill is silent about the manner of identification and calculation of “End users” and “Business users.”
- Setting up the appropriate criteria of identifying end and business users is critical in terms of activity (monthly, annually, regular, one-time etc.)

For example, if the criteria for selection of end users is set as the number of downloads/user sign ups, it may lead to a higher number of users, even if the monthly active users of that enterprise may be well below the threshold criteria.

- On the other hand, EU’s DMA uses “monthly active end users” and “yearly active business users” to evaluate the user criteria.

CHALLENGES

Definition of Business Users

As per Section 2(3) of the DCB, “Business user” means any natural or legal person supplying or providing goods or services, including through Core Digital Services;

As per Article 2(21) of the DMA, ‘business user’ means any natural or legal person acting in a commercial or professional capacity using core platform services for the purpose of or in the course of providing goods or services to end users

- The definition of ‘business user’ does not mention the capacity of the seller (implying that, even a one-time service provider or seller of goods will also contribute to the threshold) whereas DMA limits the scope to ‘commercial or professional capacity’ .
- “Including through core digital service” implies person supplying goods or providing service beyond core digital service, or even without any digital service, also becomes part of 'business user' criteria.

CHALLENGES

Availability of Data/ Limitations of the Study

- While collecting financial and user data for the sample of 23 companies, availability of data publicly was one of the major challenge as data for 2023-24 was not available at the time of study.
- Further, where an enterprise was a part of the group, it was difficult to assess the financial and user thresholds.
- For the end user data, some news articles and other secondary sources were used as annual reports of the enterprises did not present end user and business user data.
- Business user data were not available through any of the secondary sources.

COMPARISON OF FINANCIAL AND USER THRESHONDS ACROSS DCB, DMA AND DMCC

S No.	Criteria	DCB	DMA	DMCC
Financial Thresholds				
1	Domestic Turnover	✓	✓	✓
2	Global Turnover	✓		✓
3	Gross Merchandise Value	✓		
4	Global Market Capitalization or Equivalent Fair Market Value	✓	✓	
User Thresholds				
1	End Users	✓	✓	
2	Business Users	✓	✓	

COMPARISON OF FINANCIAL AND USER THRESHONDS ACROSS DCB, DMA AND DMCC

S No.	Criteria	DCB	DMA	DMCC
Financial Thresholds (Thresholds have been converted into USD using the exchange rate as on 1 Aug, 2024)				
1	Domestic Turnover	0.48 Billion USD	8.06 Billion USD	1.28 Billion USD
2	Global Turnover	30 Billion USD		32.05 Billion USD
3	Gross Merchandise Value	1.91 Billion USD		
4	Global Market Capitalization or Equivalent Fair Market Value	75 Billion USD	80.64 Billion USD	
User Thresholds				
1	End Users	1 Crore/ 10 Million	45 Million	
2	Business Users	10,000	10,000	

WHAT SHOULD BE SSDE THRESHOLD UNDER DCB?

Country	End User Threshold	Estimated Population in 2024	Number of end users as fraction of population (%)
India	10 million	1.45 billion	0.68%
European Union	45 million	449.2 million	10.02%

Country	End User Threshold	Number of Internet/ Smartphone Users	Number of End Users as fraction of Smartphone/Internet users
India	10 million	600 million	1.67%
European Union	45 million	408.77 million	11%

If India were to follow a similar threshold as adopted by EU, by fixing criteria at about 10% of its population, the end user criteria would increase substantially from 1 crore to 14.5 crore end users.

Number of smartphone user in India: <https://pib.gov.in/PressReleaselframePage.aspx?PRID=1876553#:~:text=Secretary%20Shri%20Aparna%20Chandra%20addresses%20first%20World%20Media%20Congress&text=Secretary%2C%20Ministry%20of%20Information%20Broadcasting,600%20million%20smart%20phone%20users.>

Number of internet users in EU: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Digital_economy_and_society_statistics_-_households_and_individuals

WHAT SHOULD BE SSDE THRESHOLD UNDER DCB?

Country	Business User Threshold	Estimated No. of Total Enterprises (2021-22)	Number of business users as fraction of total no. of enterprise (%)
India	10,000	633.8 Lac	0.0157%
European Union	10,000	31.5 million	0.0317%

Threshold Number of business users as fraction of total number of enterprises is about 2 times in EU as compared to India, implying that criteria set by EU is much higher than the criteria set by India.

Estimated no. of total enterprises/MSMEs in India: Ministry of MSME Annual report 2021-22.
 Estimated no. of total enterprises in EU: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Business_demography_statistics#:~:text=In%202021%2C%20the%20EU's,and%20Germany%20\(3.1%20million\).](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Business_demography_statistics#:~:text=In%202021%2C%20the%20EU's,and%20Germany%20(3.1%20million).)