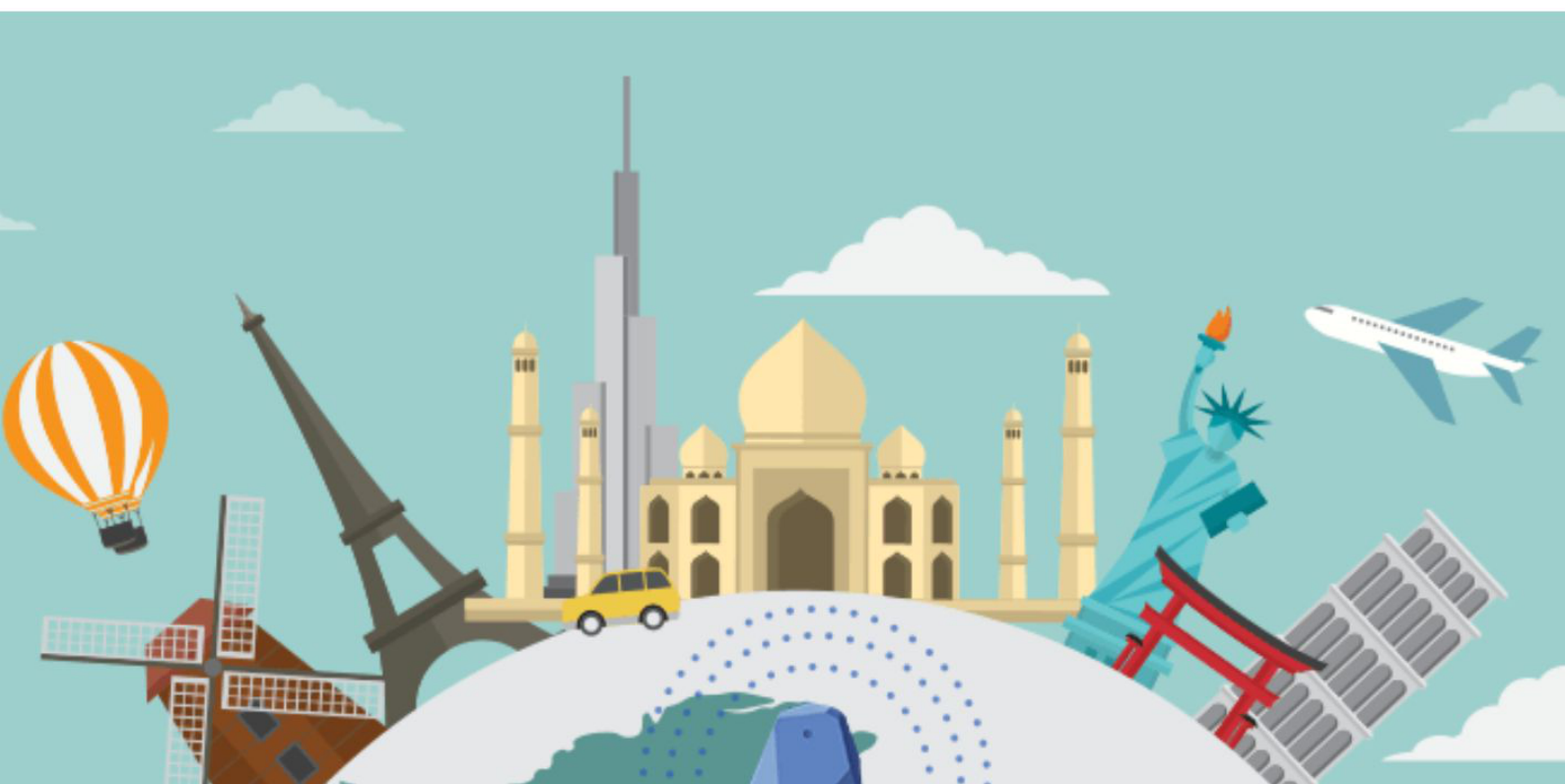


ENABLING REGULATORY FRAMEWORK FOR TRAVEL AND TOURISM TECH SECTOR IN INDIA

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How Can the Evolving Digital Economy Regulatory Regime in India Enable Travel and Tourism Tech Sector?

This briefing paper takes stock of the strategic significance of the tourism sector in India's march to become a USD 30 trillion economy by 2047 when the country will celebrate the 100th anniversary of its independence. In this context, it seeks to review key developments related to the regulation of the digital economy in India, including the proposed ex-ante regulation of digital competition. The paper flags key issues and recommendations pertaining to regulatory design, competition, and consumer choice in the tourism and travel tech sector.

Introduction

In the words of the Commerce Minister, India is pursuing a “30-30-30 matrix.” “We have a population which is below 30 years of age, and we will continue to have a young population for the next 30 years, and in these next 30 years, given the strong foundation that Prime Minister Modi has laid, I believe we will add about USD 30 trillion to our economy,” the Minister recently said.

Recognizing technology’s transformative role, the Government of India is in the process of providing an enabling regulatory framework to the digital economy in general and the travel and tourism tech sector, in particular. Likewise, stakeholders within the travel and tourism sector are currently addressing the substantial impact of new digital regulations.

These regulatory developments, coupled with the broader challenges posed by dominant industry players, referred to as Systemically Important Digital Intermediaries or SIDIs¹ (in the Report of the Parliamentary Committee on Finance)¹ who wield positions of influence, have become a pivotal concern within the industry. This concern is further accentuated by a situation where these gatekeepers leverage their dominant positions to enter this vertical, thereby giving preference to their own competing services.

Consequently, this necessitates a careful examination of the regulatory landscape and its implications for the entire travel and tourism ecosystem, to ensure fair competition and sustainable growth within the industry.

In this context, two important proposals are currently in the process of being deliberated:

1. The Digital Competition Bill, which seeks to regulate competition in the digital economy, particularly the dominance of digital platforms.
2. The Digital India Bill, which is being piloted by the Ministry of Electronics and IT.

¹ Different jurisdictions have used various terms to denote the significant market power in digital markets. These terms include ‘gatekeeper’ in the European Union, ‘strategic market status’ or SMS in the UK, etc

In addition to these two proposals, two recent and notable developments in this context are:

1. The National Digital Tourism Mission (NDTM) 2022, to provide digital infrastructure as a utility.
2. The Digital Personal Data Protection Act (DPDP) 2023, will regulate how digital firms in the travel and tourism sector harvest and use personal data.

In this context, this briefing paper seeks to answer the following questions:

- A. What is the macro-economic importance of the travel and tourism sector in achieving the twin objectives of GDP growth and job creation?
- B. What role do global travel and tourism tech companies play in the growth of India's travel and tourism sector?
- C. What are the policy and regulatory issues that the travel and tourism tech industry is facing?
- D. What policies and regulations are recommended to enable the travel and tourism tech industry's growth and support the industry in delivering the government's macro-economic goals for the country?

Section – A: Travel and Tourism Sector in India's Economy

1. Travel and tourism are important sources of growth and employment for the Indian economy

1.1 The travel and tourism sector is a crucial engine for India's economic future. It has immense potential to generate economic growth. 2023 could witness the travel and tourism sector adding INR 16.5 trillion to the economy. Its contribution to GDP growth in the past few years has been substantial. According to the Ministry of Tourism's Annual Report (2022-2023), the travel and tourism sector's contribution increased from 5.02% of GDP in 2017 to 5.19% in 2020.

1.2 In addition to contributing to economic growth, the sector also has immense potential to create jobs—more than many other sectors—in the Indian economy. From 2017-18 to 2018-19, the sector's share of jobs increased from 14.78% to 14.87%, before witnessing a slight decline of 1.37% in 2020 as a consequence of the COVID-19 pandemic. The World Travel and Tourism Council's (WTTC) 2023 Economic Impact Research report notes that the sector could create around 1.6 million jobs in 2023 (despite the economic ill-effects of COVID). The total number of jobs in the sector are predicted to increase by up to 39 million, meaning that 1 in 13 Indians would be employed in the sector. According to WTCC's forecasts, the travel and tourism sector could contribute up to INR 36.8 trillion to India's GDP i.e., 7% of the country's economy. While domestic travellers are expected to spend more than INR 12.6 trillion, international travellers could spend close to INR 2 trillion. As India's economy and population grow, facilitating the creation of decent jobs will be one of the top-most policymaking priorities.

1.3 In light of the two specific challenges namely, “economic growth leading to job creation” and “improving investment – GDP ratio,” India needs to urgently focus on improving the “quality of its economic growth.” Policymakers would want to achieve the following macro-economic policy objectives:

- i. Promote investment, including foreign direct investment (FDI), and growth to create more jobs. “An investment of Rs. 10 lakh creates 78 jobs in the tourism sector as compared to 18

jobs in manufacturing and 45 in agriculture sector.”² Given the inherent employment potential, the sector needs a conducive policy and regulatory framework to ensure it reaches its full potential.

- ii. Promote new start-ups in travel and tourism tech sector as they can play a significant role in generating employment.
- iii. Against that backdrop, the importance of the tourism sector to India’s economic prospects cannot be overemphasized. By its very nature, the travel and tourism sector creates employment avenues not just directly but indirectly. For example, when an online travel agency (OTA) matches hotels with potential customers, the OTA may expand in scale and create jobs directly. At the same time, hotels that use the platform see an immediate rise in bookings. Over time, the hotel may expand its operations and, in doing so, hire more waiters, security guards, etc. As it happens, the Ministry of Tourism maintains data for both direct and indirect employment generation. And so, a focus on the travel and tourism sector, especially on facilitating the growth of start-ups, can be very beneficial.
- iv. Encouraging foreign travel also helps with earning foreign exchange—a vital macro-economic tool. Globally, increased foreign exchange reserves have been associated with reduction in the costs of liquidity risk, enhance investment and economic growth.
- v. A rising influx of foreign visitors also helps with generating soft power, which can help attract foreign investment and foreign talent. Global experiences reveal that receiving tourists helps build soft power in destination countries, and therefore, policymakers should focus on developing and promoting what their country uniquely has to offer to attract foreign talent and investment.

² Approach Paper to 12th Plan and subsequently reiterated by the Minister of Tourism, Shri G Kishan Reddy, as quoted in https://www.business-standard.com/article/economy-policy/tourism-has-highest-job-creating-potential-across-sectors-g-kishan-reddy-121080700121_1.html

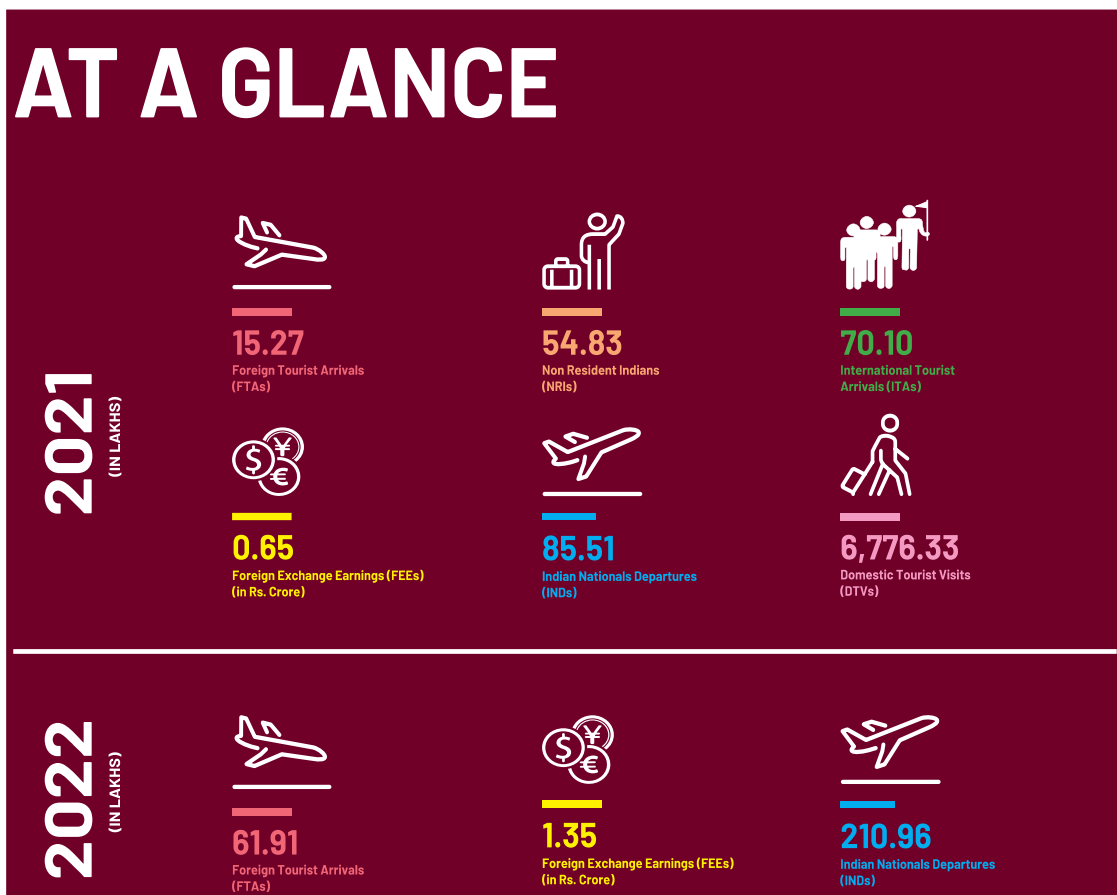
1.4 The contribution and growth of the travel and tourism space, online and offline, to the Indian economy over the last few years can be seen from the figures below.

1.5 The impact of COVID-19 is evident in the job creation figures belonging to the year 2019-2020. However, the inherent potential of the travel and tourism sector as a driver of job creation remains intact.

Indicator (below)	2017-2018	2018-2019	2019-2020
Share in GDP (in percentage)	5.02	5.02	5.19
Direct Contribution (in percentage)	2.61	2.61	2.70
Indirect Contribution (in percentage)	2.41	2.41	2.49
Share in Jobs (in percentage)	14.78	14.87	13.50
Direct jobs (in percentage)	6.44	6.48	5.89
Indirect jobs (in percentage)	8.34	8.39	7.61
Direct Jobs + Indirect Jobs Due to Tourism (in million)	72.69	75.85	69.44

(Source: *Annual Report (2023) of the Ministry of Tourism, Government of India*)

* (Estimates based on figures from National Accounts Statistics (NAS) with base year 2011-12 of the Central Statistics Office (CSO))



(Source: *Annual Report (2023) of the Ministry of Tourism, Government of India*)

1.6 The travel and tourism tech space has begun to play an important role to promote sustainable travel in India. There is growing sensitivity about what can be described as climate and environment-conscious travel. The Ministry of Tourism has created an autonomous nodal body to promote sustainable tourism: Indian Institute of Tourism and Travel Management. One important function of the nodal body is to facilitate the growth and use of digital technologies, as digital technologies can help mitigate the adverse environmental impact of the travel and tourism sector substantially. The Ministry has devised a slew of national strategies and policies that encourage and promote sustainable tourism: National Strategy for Sustainable Tourism, National Strategy for Ecotourism, Draft National Tourism Policy 2022, Travel for LiFE Campaign, and Sustainable Tourism for India Criteria and Indicators (STCI).

1.7 Additionally, a number of noteworthy initiatives have been conceptualized and implemented at the state level. For instance, various states have set up their tourism portals and mobile apps for showcasing tourist attractions, tourist guides, hotels, adventure activities etc.

1.8 The private sector in India is also playing its part in encouraging travellers to embrace environment-friendly travel. An example of the commitment to sustainable tourism is “Travalyst” which is coalition of leading travel and tourism industry players seeks to mainstream sustainability information for the first time. While sustainable travel is an important public policy imperative in its own right, given the very serious and imminent consequences of climate change, it is also important from the standpoint of encouraging sustainable economic growth.

Section – B: Role of Tourism and Travel Tech Companies

2. Role of Tech Companies in the Travel and Tourism Sector’s Growth

2.1 India has a thriving domestic space for online travel companies, with both Indian and international companies alike operating in the Indian market. For example, online travel agencies (OTAs), metasearch platforms and other intermediary platforms are used by travellers from around the world, including those with the highest spending capacity. Today, the nature of travel is truly global.

2.2 An emerging economy like India stands to benefit immensely from encouraging partnerships between global travel companies and local travel and tourism services providers. For one thing, online travel companies can serve as gateways for Indian businesses to expand their reach to travellers from all around the world. For another, they help increase awareness about the potential of India’s tourism sector amongst the global traveller’s community.

2.3 For India to fully take advantage of its tourism potential, domestic businesses need to be able to expand beyond the country's borders. Domestic travellers also benefit from the presence of international online travel companies on account of increased consumer-choice, including for travelling abroad. Enhanced competition in Indian markets yields greater innovation and lower prices.

2.4 For example, international online travel companies can leverage their sizeable experience in other jurisdictions to provide travel solutions uniquely tailored for the Indian traveller. They employ the world’s best

practices, which can add significant value to the Indian market by enhancing customer experience and by introducing these practices to domestic companies. Moreover, by forging relationships with a diverse range of stakeholders in the travel and tourism space, international online travel companies can help create new livelihoods as well as increase incomes.

2.5 In addition, international online travel companies help to improve existing value chains and build new ones. What's more, international travel and tourism companies can become a significant source of foreign-direct investment. International companies can also help improve policymaking by sharing their insights and perspectives (built from their local experiences) on how to facilitate the future growth of India's travel and tourism space.

Section – C: Key Regulatory Developments Impacting the Market Design and Growth of Tourism and Travel Tech Sector in India

3. Regulatory Developments and Issues in Travel and Tourism Tech Sector

3.1 The Need for Ex-Ante Regulation in the Digital Economy

3.1.1 In a report titled “*Anticompetitive Practices by Big Tech Companies*,” the Parliamentary Standing Committee on Finance recently

recommended legislating an ex-ante regulatory regime for digital markets—along the lines of the European Union's Digital Markets Act (DMA). The report states that digital markets are characterized by “massively powerful increasing return to size economies.” Those increasing returns, the report goes on to state, “result not just from traditional scale and scope effects, but also dramatically powerful learning and network effects.” As a consequence, digital markets lack the kind of fairness and contestability one can find in traditional markets.

A fit-for-purpose design of ex-ante regulation in India can balance innovation, greater consumer choice and lower prices.

3.1.2 The Parliamentary Committee identified a few specific practices from these peculiar market dynamics:

- i. Anti-Steering Provisions
- ii. Self-Preferencing
- iii. Bundling and Tying
- iv. Pricing /Deep Discounting
- v. Exclusive Tie-ups
- vi. Search and Ranking Preferencing
- vii. Data Usage
- viii. Killer acquisitions
- ix. Third-party Applications
- x. Advertising Policies

3.1.3 As digital markets have the tendency to move toward monopolization quickly, ex-post interventions prove far too slow to remedy antitrust concerns. So, from a law and policy perspective, an ex-ante regulatory regime has the potential to play a significant role in levelling the playing field and, in doing so, promote fairness and contestability. If such a regime is implemented in India, the online travel segment of the digital economy is likely to see increased fairness and contestability, while consumers will have more choice.

3.1.4 On the recommendations of the Parliamentary Committee, the Committee on Digital Competition Law (CDCL) under the Ministry of Corporate Affairs was constituted and the same is deliberating these issues and bringing out its report.

A. The Need to Study Other Legislative Initiatives

3.1.5 Even though the Standing Committee has recommended the adoption of a law based on the DMA, policymakers would want to take note of similar legislative initiatives in other countries. For instance, the United Kingdom's Digital Markets, Competition and Consumers Bill (DMCC Bill).

3.1.6 The DMA regulates “gatekeeper” firms if they meet certain quantitative and qualitative thresholds. By contrast, the DMCC Bill regulates firms with “strategic market status (SMS)” in a specific digital activity only after launching an investigation in this regard, known as an SMS investigation. British regulators have more discretion than their European Union (EU)

counterparts to designate regulated entities because it sets a de-minimis threshold rather than prescribing strict quantitative criteria. While Indian policymakers must make independent assessments about which approach best serves the Indian economy's interests—after a thorough assessment of markets—they would certainly want to avoid the dangers of overregulation. Overregulation can often stifle innovation, limit consumer choice, and hinder the growth of industry. To be sure, under enforcement can be equally (if not more) harmful. However, only those firms that truly pose antitrust challenges, because they control the key services all consumers use to access the internet (online search engines, app stores, etc.) should be regulated. The consideration of whether a firm serves as an important gateway to reach end users, as contemplated in both the DMA and DMCC Bill, should be given greater importance in the designation process than metrics such as number of users and revenue. This would avoid the risk of overregulation, by ensuring only a tiny handful of truly strategic firms are regulated. Vertical and horizontal relationship dynamics must also be paid due regard.

3.1.7 As for obligations and requirements liable to be imposed on regulated entities, the DMA prescribes a static set of strict dos and don'ts. The DMCC Bill, however, opts for a more open-ended principles-based approach, giving the Competition and Markets Authority (CMA) greater flexibility in applying the law. Arguably, that approach will allow the CMA to adapt to the rapidly changing realities of digital markets faster, making the UK's approach more future-proof. Compared to the DMA, regulated entities under the DMCC Bill could find it tougher to come up with workarounds. While it's true that more discretion under the DMCC Bill comes with increased risk of legal uncertainty for businesses, prudent regulation and enforcement can mitigate those risks considerably.

3.1.8 Debates about the desirability of ex-ante regulation in the digital economy are happening in jurisdictions around the world, not just Europe. For instance, the Australian Competition and Consumer Commission (ACCC) has recommended designing service-specific codes of conduct for

“designated” digital platforms, in an approach that closely resembles the UK’s proposals.

3.1.9 Likewise, a high-level inter-ministerial group in Japan is considering an ex-ante regulation regime for the digital economy—modelled on the DMA. At present, though, Japan regulates the digital economy through the Act on Improving Transparency and Fairness of Digital Platforms (TFDPA) (this is modelled on the EU’s Platform to Business Regulation). Based on the self-regulation model, that legislation seeks to promote free and fair competition by protecting the interests of platform users and (at the same time) respecting the autonomy and independence of platform service providers. Unlike the DMA, it doesn’t impose any do’s and don’ts on digital platforms. Instead, regulated entities are expected to take self-designed measures to alleviate antitrust concerns about their market conduct. In a sign that this self-regulatory approach has proved insufficient (as elsewhere in the world), Japan’s Headquarters for Digital Market Competition has proposed a new ex-ante type regulation for mobile markets that would, among other things, ban self-preferencing by gatekeepers. A draft bill is expected to be presented to the Diet early next year.

Interaction between Privacy Law and Ex-ante Competition Law

3.1.10 While such provisions afford important protections to end users, they are not a substitute for privacy obligations in legislations like the DMA. For instance, the DMA’s Article 5(2) prohibits gatekeepers from using personal data of multiple classes of end users to gain a competitive advantage against their rivals, including in digital advertising markets. Regardless of whether traditional antitrust enforcement should factor in concerns about privacy, the existence of privacy-enhancing provisions demonstrates that European policymakers have concluded that privacy-protection measures can have a direct bearing on market competition.

3.2 Digital India Bill 2023

3.2.1 Digital India Bill 2023 is being piloted by the Ministry of Electronics and IT and seeks to replace the IT Act 2000 which

is 22 years old and does not adequately cover the modern challenges.

3.2.2 The new Bill seeks to enable the achievement of Digital India Goals 2026 set by the Prime Minister. These goals include:

- USD 1 trillion digital economy by 2025-26 Atmanirbhar Bharat
- Global innovation and entrepreneurship system
- India to be Shaping the Future of Technologies
- India to be a Significant Trusted Player in the Global Value Chains for Digital Products, Devices, Platforms and Solutions.

3.2.3 The proposed law seeks to provide a framework for the following:

- Open Internet
- Online Safety and Trust
- Accountability and Quality of Service
- Adjudicatory mechanism
- New Technologies

3.2.4 A notable feature of the proposed Bill is that in order to rapidly create, modify, and enforce regulations, it will adopt a “principles & rule-based approach” to regulation, which provides a legislative framework under governing principles and effective measures for securing compliance with the ever-evolving rule of law.

3.2.5 Insofar as the impact of the proposed Digital India Bill on market design and conduct of players in the digital economy, including travel and tourism tech companies, is concerned, attention needs to be placed on the objective of providing an “Open Internet,” which will draw from tenets such as:

- a) Choice
- b) Competition
- c) Online diversity
- d) Fair market access
- e) Ease of Doing Business and Ease of Compliance for Startups

- 3.2.6 The proposed Bill seeks to provide Fair trade practices, prevent of concentration of market power and gatekeeping, distortions through regulation of dominant ad-tech platforms, app stores etc., promote start-up India via non-discriminatory access to digital services and interoperable platforms.
- “Increasing choice”, “competition” and “fair market access” are important objectives of the proposed Digital India Bill. It is critical to assess that different statutory proposals bring regulatory coherence and promote the growth of the travel and tourism sector.***
- 3.2.7 The proposed Bill by interfacing with innovation will impact the market design in digital markets. The Bill seeks to safeguard innovation to enable emerging technologies like AI/ML, Web 3.0, Autonomous systems/ Robotics, IoT/ Distributed Ledger/ Blockchain, Quantum Computing, Virtual Reality/Augmented Reality, Real-time language translators, Natural-language processing, etc.
- 3.2.8 Similarly, the proposed Bill seeks to ensure access by promotion of Digital Governance, ease access to government & other public utility services, and delivery of public services through online and mobile platforms in a simple, accessible, interoperable and citizen-friendly manner.

3.3 National Digital Tourism Mission

- 3.3.1 In March 2022, the National Digital Tourism Taskforce submitted the “*Report on National Digital Tourism Mission*,” which recommended creating a Unified Tourism Interface to facilitate the movement and exchange of data amongst the stakeholders in India’s digital travel and tourism space. Those stakeholders include tourists, travel agents, accommodation services providers, transport services providers, among others.

3.3.2 The idea behind the United Tourism Interface is to replicate the success of initiatives like the United Payment Interface (UPI) in the travel and tourism ecosystem. Like the India Stack associated with the UPI, the stack associated with the National Digital Tourism Taskforce has multiple layers. Those layers are as follows: Cross-domain generic building blocks, Tourism domain data (consisting of directories, registries, and records), Unified Tourism Interface (consisting of tourism services discovery Application Programming Interface (API), tourism services booking API and other APIs), and User systems (consisting of a single-window compliance system and data analytics system, common applications, and reference applications). The National Digital Tourism Mission could see the creation of an autonomous body analogous to the National Payments Corporation of India in the recurring payments space. That body will be tasked with developing relevant standards, specifications, and policies as well as taking steps to encourage innovation in the sector.

3.4 Data Privacy and Competition: The Digital Personal Data Protection Act, 2023

3.4.1 After prolonged deliberations, India recently enacted the Digital Personal Data Protection Act, 2023 (DPDPA, 2023). Applicable to the entirety of the digital economy, this legislation creates a comprehensive personal data protection regime.

3.4.2 Naturally, the DPDPA, 2023 will also apply to digital companies in the travel and tourism sector. That legislation regards those companies as service-centric intermediaries that enable service providers to offer digital services to end-users. The obligations imposed by the DPDPA, 2023 on online travel companies are related to maintaining transparency regarding algorithmic processes and taking down illegal content. Under some conditions, platforms enjoy the protection of safe-harbor provisions.

3.4.3 Some illustrations of privacy protections offered to end users are as follows. Section 6(1) requires obtaining “free, specific, informed, unconditional and unambiguous” consent of end-

users before their data can be processed. Section 6(3) requires that such consent be obtained in “clear and plain language.” And Section 6(4) empowers end users to withdraw consent for the processing of their personal data at any time.

Section – D: Recommendations to Enable Tourism and Travel Tech Sector in India

4. Policy and Regulatory Recommendations

Recommendation 1: Studying the Cumulative Impact of Various Regulatory Proposals

4.1 Carry out a regulatory impact assessment (RIA) to understand the cumulative impact of DPDP 2023 and the proposed Bills namely, Digital Competition Bill and Digital India Bill.

A regulatory impact assessment (RIA) to understand the cumulative impact of DPDP 2023 and the proposed Bills namely, Digital Competition Bill and Digital India Bill can help achieve the regulatory objectives without sacrificing innovation and other macro-economic benefits such as growth of MSME, job creation etc

Recommendation 2: Consider the most suitable design for an Indian ex-ante competition law to balance the interest of MSMEs and innovation in digital economy

4.2 These recommendations are based on an assessment of existing proposals for ex-ante regulation regimes in the world.

4.3 In contrast to the DMA's rules-based approach, the DMCC Bill's principles-based approach will afford greater flexibility to regulators to design appropriate, context-specific interventions. The DMCC Bill allows the CMA to impose all obligations, requirements, and interventions that the DMA does, but in a potentially more effective way. The CMA may very well end up imposing the very same prescriptions that the DMA incorporates—in very similar circumstances. But the DMCC Bill confers additional discretion—of the kind that the DMA does not. Used judiciously and prudently, such discretion can prove to be a boon.

4.4 A flexible, principles-based approach will arguably allow the regulator to design tailored remedies. By contrast, the DMA provides for fixed obligations and requirements that kick in as soon as an entity is designated as a gatekeeper. The additional flexibility of the principles-based approach should also mean that the UK's regime is more future-proof than the EU's, allowing the CMA to more quickly adapt its interventions to fast-moving digital markets.

4.5 Ex-ante interventions in the online travel segment of the digital economy must pay due regard to the unique characteristics and dynamics of the industry. This recommendation can be implemented in a way that avoids both underenforcement and overenforcement.

A principles-based approach to ex-ante regulation of digital firms will afford greater flexibility to regulators to design appropriate, context-specific interventions.

4.6 The regime, however, must enable Indian regulators to prevent abuse of dominance by the biggest firms. This means that, among other things, the regulator should be empowered to prevent designated undertakings from self-preferencing their own products and services over those of competitors.

4.7 To an extent, a principles-based approach may offer significant benefits over a rules-based approach, but it is likely to be more difficult to enforce and require more resources to do so effectively. The Government should opt for an approach which it believes will be the most effective in India, given resources available and market structure or characteristics.

4.8 Interim Measures: In addition to ex-ante regulation, policymakers should also look into how interim measures can improve competition in Indian digital markets.

4.9 Commitments and Settlements: The Competition Act has recently been amended to bring in the “commitment and settlement” provisions in the Indian law. The Competition Commission of India has recently published draft regulations and sought comments. These regulations are in the process of being finalized and notified. The “new” powers to accept commitments from companies and also agree to settle matters, in accordance with the applicable regulations, offer fresh hope that the abuse of dominance cases in digital sector stand a fair chance of getting early closure, but this should be complemented with a strong ex-ante digital competition regime. The threat of substantial and effective enforcement action is conducive to persuading dominant firms to offer meaningful commitments early on.

A combination of penalties, interim measures, and accepting settlements and commitments can remedy “sticky market power problem” effectively

4.10 Penalty Provisions:

Penalties and fines should be suitably high to deter harmful market conduct or its continuation.

4.10.1 For instance, the DMCC Bill of the UK provides substantial financial penalties when breaching consumer protection laws, fining traders up to £300,000 or 10% of global turnover, whichever is higher. In the event of non-compliance without a valid justification, an instruction provided by or to the CMA may result in a fixed penalty of a maximum of £150,000 or 5% of global turnover, whichever is higher.

4.10.2 For each day that non-compliance persists, an additional daily penalty of up to £15,000 or 5% of the trader's daily global turnover, whichever is higher, may be imposed. If a trader fails to adhere to an information notice issued by the CMA or knowingly provides materially inaccurate or deceptive information relating to a direct enforcement function of the CMA, penalties may be imposed, amounting to a maximum of £30,000 or 1% of the trader's global turnover, whichever is greater.

4.10.3 In cases of persistent non-compliance with information notices, an additional daily penalty of up to £15,000 per day or 5% of the trader's daily global turnover, whichever is higher, will be enforced.

4.11 Pro-Competition Interventions on a Trial Basis: In particular, policymakers should take note of the DMCC Bill's section 49(3) that enables the CMA to impose pro-competition interventions on a trial basis. Given that ex-ante regulation is a hitherto untested legal regime, policymakers could reduce the risk of grave errors by incorporating a similar provision in the Indian ex-ante regime.

4.12 A quick and efficient appeals process is essential: "In light of the paramount importance of expeditious enforcement for

the overall effectiveness of an ex-ante digital competition regime, we recommend adopting a judicial review (JR) appeals standard or an equivalent mechanism. India should prioritize speed of enforcement, as it is integral to the success of such a regulatory framework. Germany's 10th Amendment to the Act Against Restraints on Competition, the UK's DMCC Bill, and the EU's DMA, all provide for expedited appeals. The German law cuts short the number of appeals from two—in ordinary circumstances—to one. That single appeal may be a comprehensive "on the merits appeal." The British Bill allows the CMA's decision to be appealed to the Competition Appellate Tribunal on judicial review grounds alone. Regulated entities are stopped from seeking an "on the merits review." The rationale behind that legislative prescription is that an absence of speedy enforcement would render the entire ex-ante regime ineffectual. As for the DMA, the parties have the right to be heard before any regulatory obligation or requirement is imposed or enforced. However, where fines or penalties are imposed, parties retain the right to approach the Court of Justice of the European Union seeking an "on the merits" review.

The provision of judicial review is a necessary safeguard without necessarily compromising the objective of timely closure of cases



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