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**GOOGLE'S ANTITRUST JOURNEY IN THE DIGITAL ECONOMY**- Sukhmeen Kaur<sup>1</sup>**ABSTRACT**

Google is omnipresent in today's digital economy. Many of the most significant online products and services are built on it. It has developed and remained at the top of search engines; thus, "Googling" something is now synonymous with conducting an online search.

In addition, the business is the largest provider of digital advertising, a leading online browser, the most widely used mobile operating system, and a significant service provider for digital mapping, email, cloud computing, voice assistants, and many other things. *Android, Chrome, Gmail, Google Search, Google Drive, Google Maps, Google Photos, Google Play Store, and YouTube* (Google's Proprietary Apps) are products with over a billion users. Google can gather many user data through each of these services. Additionally, this aids Google in retaining market leadership and generating more revenue from online advertisements.

The American multinational Google is one of the most significant companies in the new economy. Thanks to its many innovative concepts, it has emerged as a global leader in the Internet space. One of its most well-known products, Google Search, has come under fire for breaking competition laws in several countries, *including the USA, France, Italy, Germany, India, the UK, and many others*. This article gives a brief overview of the antitrust lawsuits against Google and analyses the impact of those cases on the digital economy.

*Keywords: Antitrust; Competition law; digital economy; digital platforms; digital markets; national competition authorities.*

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## 1. INTRODUCTION

Due to increased internet penetration globally, there have been significant shifts in the ideation, production, distribution, marketing, and consumption of products and services. Digital platforms<sup>2</sup> have played a substantial role in the expansion of the digital economy. Consumers in the digital economy have learned to expect "free" services in exchange for some combination of data and attention.<sup>3</sup>Data adaptability is also playing an increasingly important role in the digital economy.

Competition law, like many other aspects of the law about markets, has been profoundly affected by the arrival of companies like Google, Facebook, Apple and Amazon, also known as Tech Giants or Big Tech in antitrust parlance.<sup>4</sup>Today, the Tech Giants predominantly occupy majority of the consumer side of the digital economy. Before diving further, let's look at the meaning of the digital economy.

Don Tapscott was the first author who used the phrase "Digital Economy" in his best-selling book "The Digital Economy: Promise and Peril in the Age of Networked Intelligence" (1995). The term "digital economy" is used to broadly refer to commercial sectors that are driven by information and communication technology.<sup>5</sup>

Trading information, services, or products online is a typical example of electronic commerce or e-commerce.<sup>6</sup>

Increased global economic activity in recent years may be directly attributed to the development of e-commerce companies or digital platforms, and the impact of technical change on the marketplace extends well beyond digitalization<sup>7</sup>.In addition, the proliferation of smartphones has made the internet more widely available. This sector's explosive expansion may be directly attributed to the expanding demographics of the digital economy.

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<sup>2</sup>Doris Karina OROPEZA MENDOZA, *Antitrust in the New Economy Case Google Inc. Against Economic Competition on Web.*, 8 MEXICAN LAW REVIEW 1-29 (2015).

<sup>3</sup> Yogesh K Dwivedi & Elvira Ismagilova, *Setting the Future of Digital and Social Media Marketing Research: Perspectives and Research Propositions*, 59 International Journal of Information Management (2021).

<sup>4</sup> Arvind Rangaswamy & Nicole Moch, *The Role of Marketing in Digital Business Platforms*, 51 Journal of Interactive Marketing 72-90 (2020).

<sup>5</sup> Don Tapscott, *Blockchain revolution* (1st ed. 2010).

<sup>6</sup> Mary K Pratt, *Digital Economy*, Definition from TechTarget (Sept. 6, 2017), <https://www.techtarget.com/searchcio/definition/digital-economy>.

<sup>7</sup> McKinsey Global Institute, *Digital Globalization: The New Era of Global Flows*, Journal of Interactive Marketing 23-55 (2016).

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The widespread use of digital technologies across traditional economic sectors has had far-reaching implications for the operations of conventional enterprises and the markets they serve. The analog and online marketplaces differ in several key respects. For instance, the personal data of users and the transfer of this data from one platform to another form the backbone of the digital platforms.<sup>8</sup>

Anyway, the main distinctions between a traditional economy and a digital economy are as follows: -

- Paper vs. Paperless
- Long processes vs. technology and automation,
- Physical Products vs. Digital Products and Services,
- Brick-and-mortar Stores vs. E-commerce, and
- Cash vs. cashless payments.

The traditional economy was based on shops, goods, and cash payments. Over time, parts of the digital economy have entered the traditional economy. For example, traditional businesses now accept UPI payment through *Paytm*, *google pay*, and *phone*.<sup>9</sup> As the digital economy grew, some companies didn't even need a physical store. Instead, they sold their products online and sent them to customers' homes. There are no physical goods for some digital services anymore. Netflix and Spotify, for example, don't need to use physical goods because everything is streamed over the internet.

Additionally, the existing methods of calculating the market size of a company in the digital economy take work. The experts need help to measure the value of a company's data, which gives a company a strategic advantage over others. For instance, a company's sales volume is a good proxy for its market size.

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<sup>8</sup> Joshua G Hazan, *Stop Being Evil: A Proposal for Unbiased Google Search*, 111 Michigan Law Review 789-820 (2013).

<sup>9</sup> Sara Atske, *Experts Say the 'New Normal' in 2025 Will Be Far More Tech-Driven, Presenting More Big Challenges*, Pew Research Center (Feb. 18, 2021), <https://www.pewresearch.org/internet/2021/02/18/experts-say-the-new-normal-in-2025-will-be-far-more-tech-driven-presenting-more-big-challenges/>.

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The digital economy offers a wide range of diversity among the market's driving factors, and pricing structures do not solely determine demand. Accordingly, market concentration is determined and encouraged by the interaction of multiple network effects.

Also, with the proliferation of channels for delivering digital services to customers, even the newest and tiniest company may pose a severe threat to the dominance of tech giants.

Anyways, comparatively, the digital economy is far more adaptable than the old one. The effects of the emerging digital economy are far-reaching and permeate nearly every aspect of daily life. Its impact on our culture and economy have been substantial.

## 2. EMERGENCE OF DIGITAL PLATFORMS IN THE DIGITAL ECONOMY

Let's begin with a simple understanding of what we mean by Digital Platforms.

Digital Platforms are nothing but the smartphone mobile applications ('Apps') that we use every day to *order food online, buy clothes, pay our bills, and open bank accounts*, among other things. We all remember going to a restaurant or calling a restaurant to buy food and beverages<sup>10</sup>. But thanks to digital platforms such as Zomato, Swiggy, and individual restaurant apps, we can easily place a food order right from the comfort of our homes through a smartphone.

So, of course, digital platforms are influencing consumer behavior when buying and selling goods and services online. Why would it not? It's hardly unexpected that we're more accustomed to reading brief bits or accepting a Wikipedia summary than reading an entire book. We may have learned something by not reading ten books on the same subject<sup>11</sup>, but we may have gained more by quickly integrating concepts from ten distinct subjects. This has happened because digital platforms have become mainstream.

Digital Platforms have revolutionized how consumers communicate with each other. SMS has been replaced with personal messaging Apps such as WhatsApp, WeChat, Facebook Messenger,

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<sup>10</sup> E.I Dmitrieva, *Digital Platforms as a Base for Forming a Digital Economy*, Digital Economy (2020).

<sup>11</sup> Ulugbek Narmanov, *The Role and Importance of the Digital Economy in the Development of Innovative*, 6 Linguistics and Culture Review, 121-133 (2022).

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Instagram, and Snapchat, among others. Remember the Covid 19 has made Video Calling a standard way to connect.

Similarly, digital platforms have changed how we consume information from the internet. The level of competition between digital media in mobile browser market is nearly non-existent<sup>12</sup>. It is easy to say that the Indian market is dominated by *Google Chrome* regarding options available to consumers for using a mobile browser on their smartphones.<sup>13</sup> Every Android smartphone in India comes with preinstalled Google's Proprietary Apps that cannot be deleted, such as *Google Chrome, Gmail, Google Search, Google Drive, Google Maps, Google Photos, Google Play Store, and YouTube*.

The antitrust cases against Google explain why every Android smartphone in India came with preinstalled Google's Proprietary Apps.

It is time to start analyzing Google's antitrust lawsuits in different jurisdictions.

### 3. A Look at Google's Antitrust History

In 1998, two Stanford University students named Larry Page and Sergey Brin developed the "Google" search engine, which controls the global market for general internet searches.<sup>14</sup>

Since the early 2000s, Google has been a significant factor in the digital economy. The first "search engine" was Google<sup>15</sup>, widely used because of its innovative features like an intuitive user interface, quick search results, and a precise page ranking algorithm.

As time went on, Google introduced a variety of products and services, including the email service *Gmail*, the cloud storage service *Google Drive*, the mobile operating system *Android*, the web browser *Chrome*, the navigation service *Google Maps*, an app store called *Play Store* where

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<sup>12</sup>How COVID-19 triggered the digital and e-commerce turning point, UNCTAD (Mar. 15, 2021), <https://unctad.org/news/how-covid-19-triggered-digital-and-e-commerce-turning-point>.

<sup>13</sup> Xiaolan Fu, *Digital Platforms and Development: A Survey of the Literature*, 11 *Innovation and Development* 303-321 (2021).

<sup>14</sup> Andreas Kvalsvik Remøy, *Techno-Economic Analysis of the Google Antitrust Case*, Master's thesis in Kommunikasjonsteknologi Supervisor: Harald Øverby 1-15 (2021).

<sup>15</sup> Fiona M. Scott Morton & David C Dinielli, *Roadmap for a Monopolization Case Against Google Regarding the Search Market*, Omidyar Network 16-24 (2020).

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users could download and install games and apps, the video streaming service *YouTube*, and many more. Thanks to these apps, Google gathered a significant amount of consumer data.<sup>16</sup>

Between 2012 and 2017, Google's search engine reached its peak.

2015 saw the publication of a press release from the European Commission informing the public that Google was under investigation for favoring its own services on search engines.

#### *Search Bias or Google Shopping Case*

*European Commission* has been at the forefront of efforts to prevent digital firms' misuse of dominance. *The European Commission*<sup>17</sup> (EC) initiated the first landmark case that uncovered Google's anti-competitive behavior in 2015. The European Commission (EC) issued a press release informing the public that Google was being investigated for abusing its dominant position in the European Economic Area (EEA) markets for 'General Internet Search Services' by favoring its own comparison-shopping product in its general search results pages.

According to the study, Google created a tool called "*Google Shopping*" that allowed people to compare products and prices online. It also enabled customers to find the most significant discounts from online shops like *Amazon, Mynta, Flipkart, and eBay*. The investigation also revealed that Google made specific changes in the search engine algorithm so that users could only see Google Shopping service on the first page of the search result page. With an intention to eliminate competition, Google pushed rivals or competing companies on the second or third page of the search results. This conduct was held as anti-competitive. Consequently, Google was penalized with a fine of €2.42 billion by the *EC* for abusing its dominant position in the year 2017.<sup>18</sup>

In 2018, the Competition Commission of India (CCI) also imposed a fine of ₹1.35 billion fine on Google for altering the search algorithm and systematically giving prominent placement to its comparison services and demoting rival comparison services in its search results.

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<sup>16</sup> Geoffrey A Manne & Joshua D Wright, *Google and the Limits of Antitrust: The Case Against the Case Against Google*, 34 Harvard Journal of Law & Public Policy 172-234 (2022).

<sup>17</sup> Andreas Kvalsvik Remøy, *Techno-Economic Analysis of the Google Antitrust Case*, Master's thesis in Kommunikasjonsteknologi Supervisor: Harald Øverby 1-30 (2021).

<sup>18</sup> *Press corner*, European Commission [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_17\\_1784](https://ec.europa.eu/commission/presscorner/detail/en/ip_17_1784).

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### *Android Case*

While the EC was investigating Google for general search services, another investigation was launched BY EC against Google for imposing unfair conditions on smartphone mobile manufacturers.

The investigation revealed that Google made it compulsory for smartphone manufacturers to pre-install Google's Proprietary Apps, namely *Chrome, Play Store, YouTube, Google Maps*, and other, if smartphone manufacturers wanted a license from Google to run an android operating system in their smartphones. Such conduct of Google qualified as tying, wherein Google tied the android operating system with its Proprietary Apps.

The effect of such conduct was that the competing apps could not enter into an agreement with smartphone manufacturers for the preinstallation of their Apps. This reduced the ability of competing companies to compete effectively with Google. Resultantly, a total of €4.34 billion was imposed on Google as acceptable by EC for abusing its dominant position in the Android market. This case is popularly known as the 'android case' in European Union.<sup>19</sup>

The Competition Commission of India in 2022 also found similar anti-competitive conduct of tying by Google. In India, smartphone manufacturers were also mandated to pre-install Google's Proprietary Apps if they wanted to run an android operating system on their smartphones. In India, CCI imposed a penalty of ₹13.37 billion on Google. The Android case explains why every Android smartphone in India comes with preinstalled Google's Proprietary Apps.

### *Online Search advertising intermediation*

Google's principal source of revenue is the search advertisement business. Google's Ad business is successful because of its anti-competitive behavior in the general search and Android markets.

Google required smartphone manufacturers to preinstall Google's apps so that Google could collect data from those apps and target users with personalized advertisements.

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<sup>19</sup> Press release, *Antitrust: Commission fines Google €4.34 billion for abuse of dominance regarding Android devices*, European Commission (July 18, 2018), [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_18\\_4581](https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4581).

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From 2006 to 2016, Google's Ad business accounted for more than 70% of the total online ad business in the digital economy. Google adopted many anti-competitive practices to make it difficult for competitors to enter the online advertising sector.

The competitor company attempted to penetrate the online advertising market through third-party websites. However, Google placed exclusive restrictions in its contracts with publishers and advertisers, limiting competitors' ability to grow and flourish in the online Ad business industry.

Following that, Google gradually replaced the exclusivity terms with "Premium Placement" clauses, which obliged publishers to reserve the most profitable space on their web page for Google.

The European Commission determined that Google's actions hurt competition and consumers, as well as impeded innovation because Google's competitors could not grow and provide consumers with alternative online Ad services. Google could not show the EC that exclusive conditions placed on publishers and advertisers resulted in any efficiencies sufficient to justify its practices. As a result, the European Commission penalized Google €1.49 billion for violating EU antitrust regulations by enforcing exclusive provisions in contracts with third-party websites that banned Google's competitors from placing their searches on those websites.<sup>20</sup>

Similarly, France judged Google guilty of abusing its dominating position in the online advertising market and fined it €150 million<sup>21</sup>. France has asked Google to clarify the wording of the Google Ads operating regulations and the account suspension procedure.

The United States Department of Justice recently filed a civil antitrust case seeking the divestment of Google's Ad tech division. According to the complaint, Google misused its dominating position in the Ad market, which could only be remedied by the divestment of Google's Ad tech division.

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<sup>20</sup>*Press corner*, European Commission [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_19\\_1770](https://ec.europa.eu/commission/presscorner/detail/en/ip_19_1770).

<sup>21</sup>*Italy fines Google €102 million for abuse of dominant position*, Euronews (May 13, 2021), <https://www.euronews.com/my-europe/2021/05/13/italy-fines-google-102-million-for-abuse-of-dominant-position>.

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#### 4. THE EFFECT OF GOOGLE'S ANTI-COMPETITIVE CONDUCT ON THE DIGITAL ECONOMY

The effect of: -

- Google Shopping Case

In 2017, the European Union fined Google for violating antitrust laws, specifically for using its dominant search engine market to favor its shopping comparison service over its competitors. The case is commonly referred to as the Google Shopping case and has had significant effects on the digital economy.

One of the main effects of the case has been increased competition in the digital advertising market<sup>22</sup>. The case has brought attention to the power that large tech companies like Google have in the digital economy and has led to greater scrutiny of their business practices. This has resulted in more regulatory action, which has helped to level the playing field for smaller competitors.

Another effect of the Google Shopping case has been to increase transparency in the digital advertising market. The case has forced Google to be more transparent about its business practices, including how it ranks search results and uses customer data. This has helped build consumer trust and encouraged more companies to enter the market.

The case has also had a significant impact on the way that businesses approach their online advertising strategies. Many companies have had to rethink their approach to digital advertising and adapt to new regulations and changing market conditions. This has resulted in a more diverse and competitive digital advertising market, which is beneficial for consumers and businesses alike.

The Google Shopping case has had negative impacts<sup>23</sup> on some aspects of the digital economy as well because it has led to increased regulatory burdens and costs for companies operating in the digital advertising market. This is because the case has resulted in greater scrutiny of business

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<sup>22</sup> *Competition issues in the digital economy*, (May 1, 2019), [https://unctad.org/system/files/official-document/ciclpd54\\_en.pdf](https://unctad.org/system/files/official-document/ciclpd54_en.pdf).

<sup>23</sup> Fiona M. Scott Morton & David C Dinielli, *Roadmap for a Monopolization Case Against Google Regarding the Search Market*, Omidyar Network 24-35 (2020).

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practices, and companies may need to invest more resources into compliance and regulatory reporting.

There is a concern that the case may stifle innovation in the market by discouraging companies from developing new technologies and services for fear of being accused of antitrust violations. This could limit the growth and evolution of the digital advertising market and ultimately harm consumers.

- Android case

The European Union's antitrust case against Google's Android<sup>24</sup> operating system resulted in a significant fine and required Google to change its business practices. The case has had both positive and negative impacts on the digital economy.

#### Positive Impact:

1. **Increased Competition:** One of the key objectives of the Android case was to promote competition in the mobile operating system market. By requiring Google to stop bundling its search and browser apps with Android, the case has opened up opportunities for rival search engines and browsers, creating a more level playing field.
2. **Consumer Choice:** Another positive impact of the case is that it has increased consumer choice. With Google no longer pre-installing its search and browser apps on Android devices, users can choose from a broader range of alternatives, creating more competition and innovation in the market.
3. **Innovation:** The case has also encouraged mobile operating system market innovation. With Google's dominance in the market reduced, smaller players and new entrants have a more significant opportunity to develop and introduce new and innovative products and services.

#### Negative Impact:

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<sup>24</sup> Megan Case, *Google, Big Data, & Antitrust*, 46 DELAWARE JOURNAL OF CORPORATE LAW 203-213 (2022).

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1. **Increased Fragmentation:** One potential negative impact of the case may lead to increased fragmentation of the mobile operating system market. With more options for search engines and browsers, there is a risk that users will use a broader range of apps and services, leading to a more fragmented and less standardized market.
2. **Reduced Integration:** Another potential negative impact of the case is that it may reduce the level of integration between different apps and services. With Google no longer able to pre-install its search and browser apps, it may be more difficult for users to seamlessly navigate between other services, leading to a less integrated and less user-friendly experience.
3. **Reduced Revenue:** The Android case has also resulted in a significant fine for Google, which has reduced the company's revenue and profitability. This may hurt Google's ability to invest in new products and services, potentially slowing down innovation in the digital economy.

Overall, the Android case has positively and negatively impacted the digital economy. While it has created more competition, choice, and innovation in the mobile operating system market, it may also lead to increased fragmentation, reduced integration, and reduced revenue for companies like Google.

- Adtech case

The antitrust case against Google's ad tech<sup>25</sup> business by the European Union has resulted in a significant fine and required Google to change its business practices. The case has had both positive and negative impacts on the digital economy.

Positive Impact:

1. **Increased Competition:** One of the critical objectives of the ad tech case was to promote competition in the digital advertising market. The case has opened opportunities for rival adtech companies by requiring Google to change its business practices, creating a more level playing field.

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<sup>25</sup>*Id. at 6*

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2. **Consumer Privacy:** Another positive impact of the case is that it has increased privacy protections for consumers. With Google required to obtain explicit consent from users for personalized advertising, users have greater control over their data and privacy, creating a more transparent and trustworthy market.
3. **Innovation:** The case has also encouraged innovation in the digital advertising market. With Google's dominance in the market reduced, smaller players and new entrants have a more significant opportunity to develop and introduce new and innovative products and services.

Negative Impact:

1. **Reduced Efficiency:** One potential negative impact of the case may lead to reduced efficiency in the digital advertising market. With Google required to change its business practices, the market may become more fragmented and less standardized, leading to a less efficient and less effective advertising ecosystem.
2. **Reduced Revenue:** The ad tech case has also resulted in a significant fine for Google, which has reduced the company's revenue and profitability. This may have a negative impact on Google's ability to invest in new products and services, potentially slowing down innovation in the digital economy.
3. **Increased Costs:** Another potential negative impact of the case is that it may increase costs for companies operating in the digital advertising market. With more significant regulatory burdens and compliance requirements, companies may need to invest more resources into compliance and reporting, leading to higher costs and reduced competitiveness.
4. **Chilling Effect:** The ad tech case may also have a chilling effect on innovation and competition in the digital economy. Other companies may be deterred from innovating or competing with Google out of fear of being targeted by antitrust regulators, potentially reducing the pace of innovation and competition in the market.

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Overall, the Adtech case has positively and negatively impacted the digital economy. While it has created more competition, privacy protections, and innovation in the digital advertising market<sup>26</sup>, it may also lead to reduced efficiency, revenue, and increased costs for companies like Google.<sup>27</sup>

## 5. CONCLUSION

The antitrust enforcement actions<sup>28</sup> taken by various competition authorities against tech giants have caught the attention of multiple regulators. A need for the protection of consumers and the promotion of competition in the digital economy has been felt by various countries. As a result, in the past couple of years, it has been seen that countries have either amended their existing competition laws or have enacted a new law to limit the power of tech giants.

The USA has proposed a couple of Acts to regulate the digital markets, namely: -

- *The Platform Competition and Opportunity Act of 2021 declares certain acquisitions by powerful online platforms to be illegal to promote competition and economic opportunity in digital markets.*
- *The Ending Platform Monopolies Act of 2021 aims to encourage economic opportunity and competition in digital marketplaces by removing the conflicts of interest that result from dominating online platforms' concurrent ownership or control of an online forum and certain other enterprises.*
- *The American Innovation and Choice Online Act of 2022 provides that certain discriminatory conduct by covered platforms shall be unlawful and for other purposes.*
- *The Open App Markets Act of 2022 encourages competition, lessens the influence of gatekeepers in the app industry, broadens customer choice, raises quality, and lowers costs.*

On the other hand, European Union has enacted two legislations, i.e., Digital Markets Act & Digital Services Act, to ensure that digital platforms designated as 'gatekeepers' behave pretty in the EU member states.

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<sup>26</sup> Carl Shapiro, *Competition Policy in the Information Economy*, University of California at Berkeley 1-13 (1999).

<sup>27</sup> Diane Coyle, *Practical Competition Policy Implications of Digital Platforms*, 1 Bennett Institute for Public Policy (2018).

<sup>28</sup> *Google and Antitrust*, 25 Berkeley Technology Law Journal 709-710 (2010).

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Germany has amended the German Competition Act to introduce Section 19A at the beginning of the year 2021 to take preventive measures against digital companies of paramount significance for competition across markets, such as Google, Facebook, Amazon, and Apple. The Openness and Fairness of Digital Platforms Act of 2021, passed in Japan, identifies certain providers of digital platforms as "specified digital platform providers" whose honesty and fairness must be significantly enhanced. Such digital platforms are now subject to particular rules thanks to the Act.

India is also legislating the Digital Competition Act to promote competition in the Indian digital economy. Google's antitrust journey in the digital economy has resulted in fines and required changes to its business practices. The cases against Google have aimed to promote competition, increase consumer choice, and protect privacy. They have had mixed effects on the digital economy, including increased competition and innovation, as well as potential drawbacks such as fragmentation and higher compliance costs. Countries have responded with new laws and regulations to address competition concerns in the digital marketplace. These actions will shape the industry's future and have significant implications for businesses and consumers.