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ARTIFICIAL INTELLIGENCE AND SELF-PREFERENCING: CHALLENGES FOR CONSUMER PROTECTION AND COMPETITION LAW

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Abstract

Artificial Intelligence (AI) has fundamentally transformed digital markets by enabling online platforms to personalize services, optimize search results, predict consumer preferences, and automate commercial decision-making. While these developments have enhanced innovation and consumer convenience, they have also intensified concerns regarding algorithmic self-preferencing, a practice whereby dominant digital platforms employ AI-driven systems to prioritize their own products or services over those of competing businesses. Such conduct has significant implications for market competition, consumer autonomy, transparency, and fairness. Unlike traditional forms of self-preferencing, AI-powered self-preferencing operates through opaque algorithms, personalized recommendations, dynamic rankings, and predictive analytics, making anti-competitive conduct increasingly difficult to detect and regulate.

This paper critically examines the legal and regulatory challenges posed by AI-enabled self-preferencing from the dual perspectives of consumer protection law and competition law. It analyses the emerging international regulatory approaches adopted in jurisdictions such as the European Union, the United States, and India, with particular emphasis on digital market regulation, algorithmic accountability,

consumer welfare, and abuse of market dominance. The paper further evaluates whether existing legal frameworks are sufficiently equipped to address AI-driven anti-competitive practices and deceptive digital market behaviour. Finally, it proposes policy recommendations aimed at promoting transparency, accountability, fair competition, and effective consumer protection in AI-governed digital ecosystems.

Keywords: Artificial Intelligence, Self-Preferencing, Competition Law, Consumer Protection, Digital Markets

1. Introduction

Artificial Intelligence (AI) has emerged as one of the most transformative technologies of the twenty-first century, fundamentally reshaping digital commerce, online markets, and consumer interactions.¹ The increasing adoption of AI by digital platforms has enabled businesses to analyse vast quantities of consumer data, personalize recommendations, automate commercial decisions, and improve operational efficiency.² While these technological developments have significantly enhanced innovation and consumer convenience, they have also introduced complex legal and regulatory challenges, particularly where AI systems are deployed by dominant digital platforms to influence market outcomes.³

Among the most significant concerns is the practice of AI-driven self-preferencing, whereby a digital platform utilizes algorithmic systems to favour its own products, services, or affiliated businesses over those of independent competitors.⁴ Unlike traditional forms of preferential treatment, AI-powered self-preferencing is often embedded within sophisticated machine learning algorithms that determine search rankings, product recommendations, app store

¹ OECD, *Artificial Intelligence in Society* 21–34 (2019).

² Stuart Russell & Peter Norvig, *Artificial Intelligence: A Modern Approach* 1–28 (4th ed. 2021).

³ Jacques Crémer, Yves-Alexandre de Montjoye & Heike Schweitzer, *Competition Policy for the Digital Era* 51–68 (Eur. Comm'n 2019).

⁴ Council Regulation (EU) 2022/1925 of Sept. 14, 2022, on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), 2022 O.J. (L 265) 1.



visibility, voice assistant responses, and personalized advertising. Consequently, consumers may unknowingly receive recommendations that primarily advance the commercial interests of the platform rather than reflecting objective relevance or quality.⁵

The emergence of AI-enabled self-preferencing has substantially altered the relationship between consumer protection law and competition law. From the perspective of consumer protection, opaque algorithmic decision-making may impair informed consumer choice, reduce market transparency, and facilitate misleading commercial practices.⁶ Consumers frequently presume that digital rankings and recommendations are neutral and objective, whereas these outputs may instead be influenced by proprietary algorithms designed to maximize the platform's commercial advantage. Such practices challenge fundamental principles of fairness, transparency, and consumer autonomy.

From the standpoint of competition law, AI-driven self-preferencing presents equally significant concerns. Dominant digital platforms possessing extensive access to consumer data and algorithmic capabilities may leverage their market position to disadvantage rival businesses through preferential rankings or exclusionary digital practices. Traditional competition law doctrines concerning abuse of dominance, market foreclosure, and discriminatory conduct were developed for conventional markets and may not adequately capture the complexity of AI-driven algorithmic behaviour. Consequently, competition authorities across several jurisdictions have begun reassessing existing legal frameworks to address emerging digital market realities.

Recognizing these challenges, regulators worldwide have initiated significant reforms. The European Union has enacted the Digital Markets Act, which expressly restricts self-preferencing by designated digital gatekeepers.⁸ In the United States, the Federal Trade Commission and the Department of Justice have intensified antitrust scrutiny of dominant technology companies employing algorithmic systems.⁹ India has likewise strengthened its regulatory framework through the Competition Commission of India, the Consumer Protection Act, 2019, and the proposed Digital Competition legislation aimed at addressing anti-competitive conduct within digital markets.¹⁰

This paper critically examines AI-enabled self-preferencing through the complementary lenses of consumer protection and competition law. It analyses the technological foundations of algorithmic self-preferencing, evaluates its implications for consumers and market competition, studies comparative international regulatory approaches, and proposes legal and policy recommendations for ensuring transparency, accountability, and fairness in AI-governed digital markets.

2. Understanding Artificial Intelligence and Self-Preferencing

Artificial Intelligence (AI) has become a foundational technology of the digital economy, enabling businesses to process enormous volumes of data, recognize behavioural patterns, automate decision-making, and continuously improve commercial operations through machine learning.¹¹ AI systems differ from conventional software because they can learn from data, adapt to changing circumstances, and

⁵ OECD, *Algorithms and Collusion: Competition Policy in the Digital Age* (2017).

⁶ Organisation for Economic Co-operation and Development, *Recommendation of the Council on Artificial Intelligence* (May 22, 2019).

⁷ Organisation for Economic Co-operation and Development, *Ex Ante Regulation and Competition in Digital Markets* (2021).

⁸ Council Regulation (EU) 2022/1925, *supra* note 4.

⁹ Fed. Trade Comm'n, *Aiming for Truth, Fairness, and Equity in Your Company's Use of AI* (Apr. 19, 2021).

¹⁰ Competition Commission of India, *Market Study on the Telecom Sector in India* (2021).

¹¹ Stuart Russell & Peter Norvig, *Artificial Intelligence: A Modern Approach* 2–35 (4th ed. 2021).



make predictions with minimal human intervention.¹² These capabilities have transformed digital platforms into highly sophisticated ecosystems where algorithms influence virtually every stage of consumer interaction, including product discovery, search rankings, advertising, pricing, and purchasing decisions.

The widespread deployment of AI has fundamentally altered the competitive landscape of digital markets. Large online platforms such as search engines, e-commerce marketplaces, app stores, and social media networks increasingly rely on AI-powered recommendation systems to determine which products or services consumers are most likely to view or purchase.¹³ Recommendation algorithms analyse consumer preferences, browsing history, purchase patterns, geographical location, and numerous other behavioural indicators to personalize search results and commercial recommendations. Although such personalization enhances user convenience, it simultaneously grants digital platforms significant control over market visibility and consumer choice.

Within this technological environment, self-preferencing refers to the practice whereby a digital platform gives preferential treatment to its own products, services, or affiliated businesses over those of competing enterprises.¹⁴ AI significantly amplifies this practice because algorithmic systems can automatically prioritize the platform's own offerings without requiring explicit human intervention. For example, an online marketplace may rank its private-label products ahead of identical products offered by independent sellers, while a search engine may display its own travel, shopping, or mapping services more prominently than competing alternatives.

Similarly, mobile operating systems and application stores may recommend or pre-install their own applications while reducing the visibility of rival applications.

Unlike traditional forms of discrimination, AI-driven self-preferencing often operates through opaque and dynamic algorithms whose functioning remains inaccessible to consumers, competitors, and regulators.¹⁵ Modern machine learning models continuously modify rankings based on evolving datasets, making it difficult to determine whether preferential treatment results from legitimate relevance criteria or anti-competitive commercial strategies. The absence of algorithmic transparency complicates regulatory investigations because authorities may struggle to distinguish between efficiency-enhancing optimization and unlawful market manipulation.

AI-enabled self-preferencing also produces significant economic consequences. Dominant platforms possessing extensive datasets, advanced computing infrastructure, and proprietary algorithms may reinforce their existing market power by directing consumer attention toward their own products and services. This practice can reduce market contestability, raise barriers to entry for smaller firms, discourage innovation, and ultimately limit consumer choice.¹⁶ As competing businesses become increasingly dependent upon digital platforms for market access, algorithmic self-preferencing may create structural disadvantages that cannot easily be overcome through ordinary competitive efforts.

From a legal perspective, AI-driven self-preferencing occupies the intersection of competition law and

¹² OECD, *Artificial Intelligence in Society* 37–56 (2019).

¹³ Organisation for Economic Co-operation and Development, *Data-Driven Innovation: Big Data for Growth and Well-Being* 187–210 (2015).

¹⁴ Jacques Crémer, Yves-Alexandre de Montjoye & Heike Schweitzer, *Competition Policy for the Digital Era* 54–61 (Eur. Comm'n 2019).

¹⁵ OECD, *Algorithms and Collusion: Competition Policy in the Digital Age* 23–41 (2017).

¹⁶ Organisation for Economic Co-operation and Development, *Ex Ante Regulation and Competition in Digital Markets* 18–39 (2021).



consumer protection law. Competition authorities primarily examine whether preferential algorithmic treatment constitutes an abuse of market dominance or exclusionary conduct, whereas consumer protection authorities focus on issues of transparency, fairness, deceptive commercial practices, and informed consumer choice.¹⁷ The overlap between these legal regimes demonstrates that algorithmic self-preferencing is not merely a question of market efficiency but also one of consumer rights, digital fairness, and public trust in AI-enabled markets. Consequently, understanding the technological operation of AI and the legal implications of self-preferencing is essential for developing an effective regulatory framework capable of balancing innovation with competitive fairness and consumer welfare.

3. Self-Preferencing as a Competition Law Concern

The emergence of digital platforms has transformed the application of competition law from traditional product and service markets to data-driven digital ecosystems. In conventional markets, anti-competitive conduct generally involved practices such as price fixing, exclusive dealing, predatory pricing, or refusal to deal.¹⁸ In contrast, digital platforms increasingly exercise market power through control over data, algorithms, network effects, and platform infrastructure. These characteristics have enabled dominant firms to engage in self-preferencing practices that may substantially distort competition without directly increasing prices or excluding competitors through conventional means.

Self-preferencing becomes a competition law concern when a dominant undertaking uses its control over a

digital platform to provide favourable treatment to its own products or services while disadvantaging rival businesses that depend upon the same platform for market access.¹⁹ Such preferential treatment may occur through higher search rankings, priority recommendations, default settings, exclusive visibility, preferential access to consumer data, or discriminatory algorithmic decision-making. Since digital platforms often function as indispensable gateways between businesses and consumers, algorithmic self-preferencing may significantly influence market outcomes by redirecting consumer traffic toward the platform's own commercial offerings.

One of the principal concerns under competition law is that AI enables self-preferencing to occur continuously, automatically, and at an unprecedented scale. Machine-learning algorithms constantly analyse user behaviour and modify rankings based on commercial objectives determined by the platform.²⁰ Consequently, discriminatory treatment may become embedded within algorithmic systems without any explicit instruction favouring the platform's own products at a particular moment. This dynamic nature of AI-driven decision-making creates substantial evidentiary challenges for competition authorities, as discriminatory outcomes may evolve over time through algorithmic learning processes rather than through clearly identifiable business policies.

AI-driven self-preferencing also strengthens existing barriers to entry in digital markets. Dominant platforms possess access to extensive consumer data, advanced computational resources, and sophisticated artificial intelligence systems that are generally unavailable to smaller competitors.²¹ By combining

¹⁷ Council Regulation (EU) 2022/1925 of Sept. 14, 2022, on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), 2022 O.J. (L 265) 1.

¹⁸ Richard Whish & David Bailey, *Competition Law* 3–28 (11th ed. 2024).

¹⁹ Organisation for Economic Co-operation and Development, *Abuse of Dominance in Digital Markets* 9–21 (2020).

²⁰ OECD, *Algorithms and Collusion: Competition Policy in the Digital Age* 23–45 (2017).

²¹ Jacques Crémer, Yves-Alexandre de Montjoye & Heike Schweitzer, *Competition Policy for the Digital Era* 41–69 (Eur. Comm'n 2019).



these advantages with preferential algorithmic treatment, platforms may further reinforce network effects, increase consumer dependence, and reduce opportunities for market entry by innovative businesses. As rivals lose visibility within search results or recommendation systems, consumer traffic naturally shifts toward the platform's own products, thereby reducing competitive pressure and potentially weakening long-term innovation.

Competition authorities have increasingly recognised that traditional measures of consumer welfare based solely upon price may be insufficient in digital markets where many services are offered free of monetary charge.²² Instead, authorities now evaluate factors such as consumer choice, innovation, data access, quality of services, market contestability, and algorithmic fairness. AI-driven self-preferencing may adversely affect each of these parameters by reducing the diversity of products available to consumers and limiting opportunities for competing businesses to reach potential customers on equal terms.

International regulatory developments demonstrate an emerging consensus that algorithmic self-preferencing requires specific legal intervention. The European Union's Digital Markets Act expressly prohibits designated gatekeepers from treating their own products and services more favourably than those of third-party businesses using the same platform.²³ The European Commission considers such conduct capable of undermining fair competition by leveraging platform control into adjacent markets. Similarly, competition authorities in the United States have intensified investigations into dominant technology companies for allegedly using digital platforms to preference their own products and

services. Although U.S. antitrust law does not contain a statutory prohibition equivalent to the Digital Markets Act, existing provisions under the Sherman Act and the Federal Trade Commission Act continue to serve as the primary legal basis for challenging exclusionary digital conduct.²⁴

In India, concerns regarding self-preferencing have assumed increasing significance with the rapid expansion of digital commerce and online platform ecosystems. The Competition Commission of India has examined allegations involving search bias, preferential ranking, app store practices, and digital marketplace conduct while emphasizing the importance of maintaining competitive neutrality in online markets.²⁵ The recommendations of the Committee on Digital Competition Law further acknowledge that existing ex post competition enforcement may not always provide timely remedies against self-preferencing by dominant digital enterprises, thereby supporting the adoption of an ex ante regulatory framework for Systemically Significant Digital Enterprises (SSDEs).²⁶ These developments reflect a broader recognition that AI-powered self-preferencing presents novel challenges requiring competition law to evolve beyond traditional analytical frameworks.

4. Consumer Protection Challenges Arising from AI-Driven Self-Preferencing

Artificial Intelligence-driven self-preferencing is not merely a competition law issue; it also presents significant challenges for consumer protection. Consumer protection law is founded upon the principles of transparency, fairness, informed choice,

²² Fiona M. Scott Morton et al., *Committee for the Study of Digital Platforms: Market Structure and Antitrust Subcommittee Report* 33–60 (George J. Stigler Ctr., 2019).

²³ Council Regulation (EU) 2022/1925 of Sept. 14, 2022, on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), arts. 6–7, 2022 O.J. (L 265) 1.

²⁴ Sherman Act, 15 U.S.C. §§ 1–2 (1890); Federal Trade Commission Act, 15 U.S.C. §§ 41–58 (1914).

²⁵ Competition Commission of India, *Market Study on the Telecom Sector in India* (2021).

²⁶ Ministry of Corporate Affairs, Government of India, *Report of the Committee on Digital Competition Law* (2024).



and protection against unfair trade practices.²⁷ However, the increasing reliance on AI-powered algorithms by dominant digital platforms has altered the manner in which consumers receive information, compare products, and make purchasing decisions. Since consumers are often unaware of the criteria governing algorithmic recommendations, AI-enabled self-preferencing may substantially impair their ability to make informed and independent choices.

One of the foremost consumer protection concerns is the **lack of transparency** in algorithmic decision-making. AI systems frequently operate as "black box" models, where the internal reasoning behind recommendations or rankings remains inaccessible not only to consumers but also to regulators.²⁸ When a platform systematically prioritizes its own products or services through proprietary algorithms, consumers may reasonably assume that such rankings are based upon objective relevance, quality, or popularity. In reality, these recommendations may instead reflect commercial interests embedded within the algorithm. The absence of meaningful disclosure undermines the consumer's right to receive accurate and unbiased information before making purchasing decisions.

AI-driven self-preferencing also affects the principle of **consumer autonomy**. Modern recommendation engines are designed to predict consumer behaviour by analysing browsing history, purchase records, demographic information, online interactions, and behavioural patterns.²⁹ Although personalization can improve user experience, excessive algorithmic steering may manipulate consumer preferences by repeatedly directing users toward products or services offered by the platform itself. Such digital "choice architecture" may influence purchasing decisions without consumers fully appreciating that alternative

products of equal or superior quality have been systematically deprioritized. Consequently, consumer choice may become more apparent than real.

Another significant concern relates to **deceptive and unfair commercial practices**. Consumer protection laws generally prohibit representations or business practices that mislead consumers regarding the characteristics, quality, or comparative advantages of products and services.³⁰ AI-enabled self-preferencing may produce comparable effects where platforms create an impression of neutrality while covertly favouring their own commercial interests. The deceptive element lies not necessarily in false statements but in the undisclosed manipulation of digital visibility and product rankings. As consumers increasingly depend upon digital platforms as trusted intermediaries, algorithmic bias may erode confidence in online marketplaces and reduce overall market transparency.

The extensive collection and processing of personal data further intensify consumer protection concerns. AI systems rely heavily upon consumer data to optimize recommendations and personalize digital experiences.³¹ Dominant platforms possessing exclusive access to vast quantities of behavioural data may utilize such information to strengthen self-preferencing strategies, making competing businesses less capable of reaching consumers with equivalent precision. This data asymmetry not only reinforces market power but also raises important questions concerning informational privacy, consumer consent, and the ethical use of personal data in commercial decision-making.

The challenges associated with AI-driven self-preferencing are particularly significant in sectors

²⁷ Consumer Protection Act, No. 35 of 2019, §§ 2(47), 2(28), 10–21 (India).

²⁸ Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* 3–18 (2015).

²⁹ OECD, *Artificial Intelligence in Society* 85–112 (2019).

³⁰ United Nations Conference on Trade and Development (UNCTAD), *Manual on Consumer Protection* 57–74 (2018).

³¹ Organisation for Economic Co-operation and Development, *Enhancing Access to and Sharing of Data: Reconciling Risks and Benefits for Data Re-use Across Societies* 15–39 (2019).



such as e-commerce, digital advertising, online travel services, financial technology, healthcare platforms, and mobile application marketplaces. Consumers frequently rely upon search rankings, "recommended products," sponsored listings, default applications, and voice assistant responses without recognizing that these outputs may be influenced by commercial incentives rather than objective criteria.³² As AI systems become increasingly sophisticated through continuous learning, the distinction between legitimate personalization and unfair manipulation becomes progressively more difficult to identify.

Recognizing these risks, several jurisdictions have strengthened consumer protection frameworks applicable to digital markets. The Consumer Protection Act, 2019 in India prohibits unfair trade practices and misleading representations that adversely affect consumers, while the Guidelines for Prevention and Regulation of Dark Patterns, 2023 seek to curb manipulative online interface designs capable of distorting consumer decision-making.³³ At the international level, the OECD Recommendation on Artificial Intelligence emphasizes transparency, explainability, accountability, and human-centred AI governance as essential principles for protecting consumers in AI-enabled markets.³⁴ Likewise, the European Union's Artificial Intelligence Act and complementary consumer protection legislation increasingly require providers of high-risk AI systems to maintain transparency and accountability throughout the lifecycle of AI deployment.³⁵ These developments indicate an emerging global consensus that effective consumer protection in the digital age requires regulatory oversight extending beyond traditional deceptive advertising to encompass

algorithmic fairness, transparency, and responsible AI governance.

5. Comparative Legal and Regulatory Framework Governing AI-Driven Self-Preferencing

The rapid expansion of artificial intelligence and digital platform ecosystems has prompted jurisdictions across the world to reconsider the adequacy of existing competition and consumer protection laws.³⁶ Although the objective of promoting fair competition and protecting consumers is shared globally, different jurisdictions have adopted distinct regulatory strategies to address AI-driven self-preferencing. Some jurisdictions have enacted comprehensive ex ante legislation specifically targeting digital gatekeepers, while others continue to rely primarily upon traditional competition law principles supplemented by sector-specific regulatory guidance. A comparative analysis of these approaches provides valuable insights into emerging global standards for regulating AI-enabled digital markets.

The European Union (EU) has established the most comprehensive legal framework for addressing self-preferencing by dominant digital platforms. The Digital Markets Act (DMA) expressly prohibits designated gatekeepers from ranking or treating their own products and services more favourably than those of third-party businesses operating on the same platform.³⁷ The DMA represents a significant shift from traditional ex post competition enforcement toward an ex ante regulatory model intended to prevent anti-competitive conduct before market harm occurs. Complementing the DMA, the Artificial Intelligence Act introduces obligations concerning transparency, risk management, human oversight, and

³² European Commission, *Behavioural Study on Advertising and Marketing Practices in Social Media* (2021).

³³ Central Consumer Protection Authority, *Guidelines for Prevention and Regulation of Dark Patterns, 2023*, Gazette of India, Nov. 30, 2023; Consumer Protection Act, No. 35 of 2019 (India).

³⁴ Organisation for Economic Co-operation and Development, *OECD Recommendation of the Council on Artificial Intelligence* (May 22, 2019).

³⁵ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 2024 O.J. (L).

³⁶ OECD, *Ex Ante Regulation and Competition in Digital Markets* 7–18 (2021).

³⁷ Council Regulation (EU) 2022/1925 of Sept. 14, 2022, on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), arts. 5–7, 2022 O.J. (L 265) 1.



accountability for AI systems deployed within the European Union.³⁸ Together, these legislative instruments seek to ensure that algorithmic decision-making does not undermine fair competition or consumer welfare.

In the United States, the regulation of AI-driven self-preferencing continues to be governed primarily through existing antitrust statutes rather than dedicated legislation. The Sherman Act, the Clayton Act, and the Federal Trade Commission Act remain the principal legal instruments available to challenge exclusionary conduct by dominant digital firms.³⁹ Federal agencies, particularly the Federal Trade Commission (FTC) and the Department of Justice (DOJ), have increasingly scrutinized the conduct of major technology companies where algorithmic practices may reinforce market dominance or reduce consumer choice. Although the United States has not adopted legislation equivalent to the EU Digital Markets Act, recent enforcement actions demonstrate a growing willingness to address algorithmic discrimination and digital platform dominance through established antitrust principles.

The regulatory landscape in India has evolved significantly in response to the expansion of digital markets. The Competition Act, 2002 empowers the Competition Commission of India (CCI) to investigate abuse of dominant position, anti-competitive agreements, and practices adversely affecting competition.⁴⁰ While the Act does not expressly prohibit self-preferencing, the CCI has increasingly examined allegations involving preferential search rankings, digital marketplace practices, and app store conduct involving dominant technology enterprises. The Consumer Protection Act,

2019, together with the Central Consumer Protection Authority (CCPA), further strengthens consumer rights by prohibiting unfair trade practices and misleading commercial conduct within digital environments.⁴¹ More recently, the Committee on Digital Competition Law recommended the introduction of an ex ante regulatory framework governing Systemically Significant Digital Enterprises (SSDEs), including explicit restrictions on self-preferencing practices by dominant digital platforms.⁴² These proposals reflect India's movement toward a regulatory approach broadly consistent with international developments.

Despite differences in legislative design, the comparative analysis reveals several common regulatory principles. First, regulators increasingly recognize that digital platforms function as critical market intermediaries whose algorithmic decisions substantially influence consumer behaviour and competitive outcomes.⁴³ Second, there is growing acceptance that traditional competition law alone may not provide sufficiently timely or effective remedies against AI-driven self-preferencing, particularly where algorithmic practices continuously evolve. Third, transparency, accountability, non-discrimination, and explainability have emerged as universal principles guiding the governance of AI systems affecting consumers and markets. Finally, regulatory authorities are increasingly adopting interdisciplinary approaches combining competition law, consumer protection law, data governance, and AI regulation to address the multifaceted nature of digital platform conduct.

Although regulatory convergence is gradually emerging, important differences remain. The

³⁸ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 2024 O.J. (L).

³⁹ Sherman Act, 15 U.S.C. §§ 1–2 (1890); Clayton Act, 15 U.S.C. §§ 12–27 (1914); Federal Trade Commission Act, 15 U.S.C. §§ 41–58 (1914).

⁴⁰ Competition Act, No. 12 of 2003, §§ 3–4 (India).

⁴¹ Consumer Protection Act, No. 35 of 2019, §§ 2(47), 10–21 (India).

⁴² Ministry of Corporate Affairs, Government of India, *Report of the Committee on Digital Competition Law* (2024).

⁴³ Organisation for Economic Co-operation and Development, *Competition in Digital Markets* (2020).



European Union has adopted a proactive legislative model emphasizing preventive regulation, whereas the United States continues to rely predominantly upon judicial enforcement under traditional antitrust doctrines. India presently occupies an intermediate position by strengthening existing competition and consumer protection mechanisms while simultaneously considering specialized legislation for digital markets.⁴⁴ These varying approaches provide valuable lessons for future policymaking, demonstrating that effective regulation of AI-driven self-preferencing requires legal frameworks capable of balancing innovation, market efficiency, technological development, consumer welfare, and competitive neutrality.

6. Judicial and Regulatory Responses to AI-Driven Self-Preferencing

The rapid evolution of artificial intelligence has compelled courts and regulatory authorities to reconsider traditional legal principles governing competition and consumer protection.⁴⁵ Unlike conventional anti-competitive practices, AI-driven self-preferencing is often embedded within complex algorithmic systems that continuously adapt to consumer behaviour and market conditions. Consequently, judicial institutions and regulatory agencies increasingly recognize that effective enforcement requires not only the application of existing legal doctrines but also a deeper understanding of algorithmic decision-making, data governance, and digital market dynamics.

The European Union has emerged as the leading jurisdiction in addressing self-preferencing through both judicial interpretation and regulatory enforcement. One of the most significant developments was the decision of the General Court of the European Union in Google Shopping, where the

Court upheld the European Commission's finding that Google's preferential treatment of its own comparison shopping service constituted an abuse of dominant position under Article 102 of the Treaty on the Functioning of the European Union (TFEU).⁴⁶ The Court observed that dominant digital platforms functioning as gateways between businesses and consumers must not distort competition by systematically favouring their own services through search algorithms. The judgment has become a foundational precedent for understanding algorithmic self-preferencing within modern competition law and significantly influenced the subsequent adoption of the Digital Markets Act.

Regulatory authorities within the European Union have continued to expand enforcement against digital gatekeepers through investigations concerning online marketplaces, mobile operating systems, advertising technologies, and digital ecosystems.⁴⁷ Rather than waiting for prolonged litigation under traditional competition law, the Digital Markets Act authorizes the European Commission to impose ex ante obligations requiring designated gatekeepers to refrain from discriminatory ranking practices and to ensure equal treatment of third-party businesses. This preventive approach reflects an acknowledgement that algorithmic self-preferencing may cause irreversible competitive harm if regulatory intervention is delayed.

In the United States, judicial and administrative responses continue to rely primarily upon established antitrust principles. The Federal Trade Commission (FTC) and the Department of Justice (DOJ) have intensified investigations into dominant technology companies whose AI-driven business practices may

⁴⁴ Competition Commission of India, *Market Study on the Telecom Sector in India* (2021).

⁴⁵ OECD, *Artificial Intelligence in Society* 153–74 (2019).

⁴⁶ Case T-612/17, **Google LLC v. European Commission**, EU:T:2021:763 (Gen. Ct. Nov. 10, 2021).

⁴⁷ Council Regulation (EU) 2022/1925 of Sept. 14, 2022, on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), 2022 O.J. (L 265) 1.



reinforce market power or reduce consumer choice.⁴⁸ Although American courts have historically adopted a cautious approach toward unilateral business conduct, recent enforcement actions demonstrate increasing concern regarding digital platforms that leverage algorithmic systems to preference their own products or services. Regulatory guidance issued by the FTC further emphasizes that AI technologies must not facilitate deceptive practices, unfair methods of competition, or discriminatory commercial conduct prohibited under federal law.

In India, the Competition Commission of India (CCI) has progressively expanded its examination of digital platform conduct. In *XYZ v. Google LLC*, the Commission considered allegations relating to Google's search practices and recognized that digital platforms possessing significant market power must operate in a manner consistent with competitive neutrality.⁴⁹ Subsequently, in *Re: Updated Terms of Service and Various Conduct of WhatsApp LLC and Meta Platforms, Inc.*, the Commission emphasized the growing relationship between data concentration, consumer welfare, and competition within digital markets.⁵⁰ Although these proceedings did not exclusively concern AI-enabled self-preferencing, they illustrate the Commission's willingness to examine digital conduct extending beyond conventional price-based competition analysis. The recommendations contained in the Committee on Digital Competition Law Report, 2024 further support a transition toward ex ante obligations designed to prevent discriminatory conduct by Systemically Significant Digital Enterprises before irreversible market harm occurs.⁵¹

Consumer protection authorities have likewise strengthened oversight of AI-driven commercial practices. In India, the Central Consumer Protection Authority (CCPA) has adopted guidelines addressing misleading advertisements, endorsements, and digital dark patterns that manipulate consumer decision-making.⁵² These regulatory measures recognize that consumer harm in digital markets may arise not only from false representations but also from algorithmic manipulation that limits informed consumer choice. Similar developments can be observed internationally, where regulators increasingly emphasize algorithmic transparency, explainability, accountability, and human oversight as essential safeguards against deceptive AI-enabled commercial practices.

Collectively, these judicial and regulatory developments demonstrate an important shift in legal thinking. Courts and regulators no longer assess digital platforms solely through the lens of traditional competition analysis but increasingly consider broader issues of algorithmic fairness, consumer autonomy, transparency, and responsible AI governance.⁵³ The emerging jurisprudence indicates that future enforcement against AI-driven self-preferencing will likely combine competition law, consumer protection law, and AI-specific regulation to ensure that digital markets remain innovative, competitive, and fair for both businesses and consumers.

7. Challenges in Regulating AI-Driven Self-Preferencing

Despite significant developments in competition law and consumer protection, regulating AI-driven self-preferencing remains one of the most complex

⁴⁸ Fed. Trade Comm'n, *Aiming for Truth, Fairness, and Equity in Your Company's Use of AI* (Apr. 19, 2021); U.S. Dep't of Justice & Fed. Trade Comm'n, *2023 Merger Guidelines* (2023).

⁴⁹ *XYZ v. Google LLC*, Case No. 07 of 2020, Competition Comm'n of India (2022).

⁵⁰ *In re Updated Terms of Service and Privacy Policy for WhatsApp Users*, Suo Motu Case No. 01 of 2021, Competition Comm'n of India (2021).

⁵¹ Ministry of Corporate Affairs, Government of India, *Report of the Committee on Digital Competition Law* (2024).

⁵² Central Consumer Protection Authority, *Guidelines for Prevention and Regulation of Dark Patterns*, 2023, Gazette of India, Nov. 30, 2023.

⁵³ OECD, *Ex Ante Regulation and Competition in Digital Markets* (2021).



challenges confronting modern legal systems.⁵⁴ Artificial intelligence evolves rapidly through continuous learning, data processing, and algorithmic adaptation, whereas legal frameworks generally develop through gradual legislative reforms and judicial interpretation. This disparity between technological innovation and regulatory response creates a persistent enforcement gap, allowing potentially anti-competitive practices to evolve faster than legal institutions can effectively address them.

A principal challenge lies in the opacity of AI systems. Many advanced machine learning models operate as "black-box" algorithms whose internal decision-making processes are neither readily explainable nor easily auditable.⁵⁵ Digital platforms frequently regard their algorithms as proprietary trade secrets, thereby limiting the ability of regulators, competitors, and consumers to determine whether rankings, recommendations, or search results have been manipulated through self-preferencing. The absence of algorithmic transparency complicates investigations because competition authorities must establish not only the existence of preferential treatment but also its anti-competitive effects within highly dynamic digital environments.

Another significant challenge concerns the identification of market dominance in digital ecosystems. Traditional competition law primarily evaluates dominance by reference to market share, pricing power, and barriers to entry.⁵⁶ Digital markets, however, derive competitive advantages from access to consumer data, network effects, artificial intelligence capabilities, and platform ecosystems rather than conventional economic indicators. Consequently, a platform may possess substantial influence over consumer behaviour despite offering

services without monetary charge. This evolution requires regulators to adopt broader analytical frameworks capable of assessing data concentration, algorithmic control, digital intermediation, and ecosystem dependence alongside traditional competition metrics.

The dynamic and personalized nature of AI decision-making presents additional evidentiary challenges. AI algorithms continuously modify recommendations based on individual consumer behaviour, browsing history, purchasing patterns, geographical location, and real-time market conditions.⁵⁷ As a result, different consumers may receive different search results or product rankings even when conducting identical searches. Such personalization makes it considerably more difficult for regulatory authorities to establish consistent patterns of discriminatory treatment or to demonstrate that algorithmic outcomes systematically favour the platform's own products over those of competitors.

Jurisdictional limitations further complicate effective regulation. Digital platforms typically operate across multiple jurisdictions while storing and processing data through globally distributed technological infrastructure.⁵⁸ Consequently, national competition authorities frequently encounter difficulties in investigating conduct involving cross-border digital services, multinational corporations, and AI systems operating simultaneously in numerous legal regimes. Differences among national regulatory frameworks may create opportunities for regulatory arbitrage, enabling digital enterprises to exploit inconsistencies between domestic legal systems.

Balancing innovation with regulation also remains a delicate policy challenge. Artificial intelligence

⁵⁴ Organisation for Economic Co-operation and Development, *Artificial Intelligence in Society* 153–76 (2019).

⁵⁵ Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* 3–30 (Harvard Univ. Press 2015).

⁵⁶ Richard Whish & David Bailey, *Competition Law* 173–235 (11th ed. 2024).

⁵⁷ OECD, *Algorithms and Collusion: Competition Policy in the Digital Age* 31–58 (2017).

⁵⁸ United Nations Conference on Trade and Development, *Digital Economy Report 2021: Cross-Border Data Flows and Development* 45–69 (2021).



generates substantial economic and social benefits by improving efficiency, promoting innovation, reducing transaction costs, and enhancing consumer experiences. Excessively restrictive regulation may discourage technological development, increase compliance costs, and reduce incentives for innovation.⁵⁹ Conversely, inadequate regulatory oversight may permit dominant digital platforms to strengthen market power through opaque algorithmic practices, thereby reducing competition and consumer welfare. Policymakers must therefore design legal frameworks that preserve innovation while ensuring accountability, fairness, and competitive neutrality. Another emerging concern is the absence of standardized algorithmic auditing mechanisms. Most jurisdictions currently lack uniform legal standards governing independent audits of AI systems used by dominant digital platforms.⁶⁰ Without standardized audit procedures, regulators often rely upon information voluntarily disclosed by the very enterprises under investigation. This informational asymmetry may significantly weaken enforcement efforts and reduce public confidence in regulatory outcomes. Increasingly, scholars and international organizations advocate mandatory algorithmic impact assessments, periodic compliance audits, explainability requirements, and independent technical verification as essential safeguards against discriminatory AI practices.

Finally, the fragmented nature of existing legal regulation presents a continuing obstacle. Competition law, consumer protection law, data protection legislation, intellectual property law, and AI governance frameworks frequently operate independently despite addressing overlapping aspects of digital platform conduct.⁶¹ Effective regulation of AI-driven self-preferencing therefore requires greater

institutional coordination among competition authorities, consumer protection agencies, data protection regulators, and AI oversight bodies. A coherent and integrated regulatory framework would reduce enforcement inconsistencies while promoting transparency, accountability, innovation, and consumer trust within increasingly AI-driven digital markets.

The foregoing challenges demonstrate that traditional legal mechanisms alone are insufficient to address the complexities of algorithmic self-preferencing. Future regulatory responses must combine technological expertise, interdisciplinary enforcement, international cooperation, and adaptive legal frameworks capable of responding to the evolving nature of artificial intelligence and digital platform governance.

8. Recommendations and Conclusion

The increasing integration of artificial intelligence into digital markets has fundamentally transformed the manner in which businesses compete and consumers make purchasing decisions. While AI has generated remarkable improvements in efficiency, innovation, and personalized services, it has simultaneously created unprecedented opportunities for dominant digital platforms to engage in algorithmic self-preferencing. As demonstrated throughout this paper, AI-driven self-preferencing affects not only market competition but also consumer autonomy, transparency, and fairness. Existing legal frameworks, although increasingly responsive, continue to face significant challenges in addressing the speed, complexity, and opacity of algorithmic decision-making.⁶²

An effective regulatory response requires a combination of legislative reform, institutional

⁵⁹ Organisation for Economic Co-operation and Development, *OECD Recommendation of the Council on Artificial Intelligence* (May 22, 2019).

⁶⁰ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 2024 O.J. (L).

⁶¹ Ministry of Corporate Affairs, Government of India, *Report of the Committee on Digital Competition Law* (2024).

⁶² OECD, *Artificial Intelligence in Society* 173–92 (2019).



coordination, technological expertise, and international cooperation. The following recommendations may assist policymakers in developing a balanced legal framework capable of promoting innovation while protecting competitive markets and consumer interests.

First, governments should establish clear statutory prohibitions against unjustified AI-driven self-preferencing by dominant digital platforms. Existing competition laws should expressly recognize algorithmic discrimination, discriminatory ranking practices, and AI-enabled preferential treatment as potential forms of abuse of market dominance where such conduct substantially restricts competition or consumer choice.⁶³ Clear legislative standards would reduce legal uncertainty and facilitate more effective enforcement.

Second, regulatory authorities should introduce mandatory algorithmic transparency and explainability requirements for systemically significant digital platforms. Although complete disclosure of proprietary algorithms may not be commercially feasible, platforms should be required to provide meaningful explanations regarding the principal criteria governing rankings, recommendations, and automated commercial decisions affecting consumers and competing businesses.⁶⁴ Greater transparency would strengthen consumer confidence while enabling regulators to detect discriminatory algorithmic conduct more effectively.

Third, governments should require independent algorithmic audits for high-impact AI systems

deployed by dominant digital enterprises. Periodic technical audits conducted by qualified independent experts would assist regulators in identifying discriminatory outcomes, hidden biases, and anti-competitive self-preferencing practices before substantial market harm occurs.⁶⁵ Such audits should evaluate not only technical accuracy but also compliance with competition law, consumer protection principles, and ethical AI governance standards.

Fourth, competition authorities and consumer protection agencies should strengthen institutional cooperation through coordinated investigations, information sharing, and joint enforcement mechanisms. AI-driven self-preferencing frequently produces overlapping concerns relating to market competition, consumer welfare, data governance, and privacy. Consequently, isolated regulatory action may prove insufficient. Coordinated enforcement would enable authorities to address the multidimensional nature of algorithmic misconduct more effectively.⁶⁶ Fifth, international cooperation should be expanded through greater regulatory harmonization and exchange of best practices. Digital platforms operate across national borders, whereas regulatory powers remain largely territorial. Enhanced cooperation among competition authorities, consumer protection agencies, and AI regulators would facilitate consistent enforcement against multinational digital enterprises while reducing opportunities for regulatory arbitrage. International organizations such as the OECD, the International Competition Network (ICN), and UNCTAD can play an important role in promoting common regulatory principles governing AI-enabled digital markets.⁶⁷

⁶³ Council Regulation (EU) 2022/1925 of Sept. 14, 2022, on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), arts. 5–7, 2022 O.J. (L 265) 1.

⁶⁴ Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), arts. 13–15, 2024 O.J. (L).

⁶⁵ OECD, *OECD Framework for the Classification of AI Systems* (2022).

⁶⁶ Consumer Protection Act, No. 35 of 2019 (India); Competition Act, No. 12 of 2003 (India).

⁶⁷ Organisation for Economic Co-operation and Development, *Ex Ante Regulation and Competition in Digital Markets* (2021); United Nations Conference on Trade and Development, *Digital Economy Report 2021* (2021).



Finally, legal regulation should remain sufficiently flexible to accommodate continuing technological innovation. Artificial intelligence is evolving at a pace that traditional legislation cannot easily match. Legislatures should therefore adopt technology-neutral legal principles supplemented by adaptive regulatory guidance capable of responding to emerging forms of algorithmic conduct without requiring constant statutory amendment. Such an approach would preserve innovation while ensuring that fundamental principles of fairness, transparency, accountability, and competitive neutrality remain protected.

In conclusion, AI-driven self-preferencing represents one of the most significant legal challenges confronting contemporary competition law and consumer protection. Artificial intelligence has altered the traditional understanding of market power by enabling dominant digital platforms to influence consumer behaviour through complex algorithmic systems that often remain invisible to users. Although existing legal frameworks have begun responding through instruments such as the European Union's Digital Markets Act, the Artificial Intelligence Act, evolving antitrust enforcement in the United States, and India's proposed Digital Competition framework, considerable regulatory challenges persist.

The future governance of digital markets will depend upon the ability of legal systems to balance technological innovation with effective regulatory oversight. Competition law alone cannot adequately address all dimensions of AI-driven self-preferencing; similarly, consumer protection law must evolve beyond traditional concepts of misleading representations to encompass algorithmic transparency, digital fairness, and responsible AI governance. An integrated legal framework combining competition regulation, consumer protection, data governance, and AI accountability is therefore essential for ensuring that artificial

intelligence remains a tool for innovation rather than an instrument for market distortion. By promoting transparency, accountability, competitive neutrality, and consumer trust, regulators can ensure that AI continues to contribute to sustainable economic growth while preserving the fundamental principles of fair competition and consumer welfare in the digital economy.

⁶⁸ Ministry of Corporate Affairs, Government of India, *Report of the Committee on Digital Competition Law*

(2024); Council Regulation (EU) 2022/1925, 2022 O.J. (L 265) 1.