The Merger Control Review

Thirteenth Edition

Editor
Ilene Knable Gotts

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THE MERGER CONTROL REVIEW

Thirteenth Edition

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PREFACE

Pre-merger competition review has advanced significantly since its creation in 1976 in the United States. As this book evidences, today almost all competition authorities have a notification process in place – with most requiring pre-merger notification for transactions that meet certain prescribed minimum thresholds. Additional jurisdictions such as Malaysia are continuing to consider imposing mandatory pre-notification regimes, and in the meantime can assert some jurisdiction to review certain transactions under their conduct laws and for specific sectors (e.g., aviation, communications). The intended readership of this book comprises both in-house and outside counsel who may be involved in the competition review of cross-border transactions.

Given the ability of most competition agencies with pre-merger notification laws to delay, and even block, a transaction, it is imperative to take each jurisdiction – small or large, new or mature – seriously. For instance, the international business community had a wake-up call when, in 2009, China blocked the Coca-Cola Company's proposed acquisition of China Huiyuan Juice Group Limited and imposed conditions on four mergers involving non-China-domiciled firms. In *Phonak/ReSound* (a merger between a Swiss undertaking and a Danish undertaking, each with a German subsidiary), the German Federal Cartel Office blocked the entire merger, even though less than 10 per cent of each of the undertakings was attributable to Germany. In the United Kingdom, the Competition and Markets Authority (CMA) has effectively blocked transactions in which the parties question its authority. It is, therefore, imperative that counsel develop a comprehensive plan before, or immediately upon, execution of an agreement concerning where and when to file notification with competition authorities regarding such a transaction. To this end, this book provides an overview of the process in 24 jurisdictions, as well as a discussion of recent decisions, strategic considerations and likely upcoming developments.

Some common threads in institutional design underlie most of the merger review mandates, although there are some outliers as well as nuances that necessitate careful consideration when advising a client on a particular transaction. Almost all jurisdictions vest exclusive authority to review transactions in one agency. The United States is now the major exception in this regard since China consolidated its three antitrust agencies into one agency in 2018. Most jurisdictions provide for objective monetary size thresholds (e.g., the turnover of the parties, the size of the transaction) to determine whether a filing is required. Germany has amended its law to ensure that it has the opportunity to review transactions in which the parties' turnovers do not reach the threshold, but the value of the transaction is significant (e.g., social media, new economy, internet transactions). Other jurisdictions are also focused on ensuring that acquisitions involving smaller internet, online and data companies, or, in other high-technology settings, a 'nascent' competitor, do not escape review.

Newly adopted laws have tried to vest jurisdiction on these transactions by focusing on the 'value of the consideration' rather than turnover for acquisitions of nascent firms, particularly in the digital economy (e.g., in Austria and Germany). Some jurisdictions have also adopted a process to 'call in' transactions that fall below the thresholds, but where the transaction may be of competitive significance. For instance, the Japan Federal Trade Commission (JFTC) has the ability of reviewing and taking action in non-reportable transactions (see discussion of *Google/Fitbit* in the Japan chapter), and has developed guidelines for voluntary filings. Note that the actual monetary threshold levels can vary in specific jurisdictions over time. To provide the ability to review acquisitions of nascent but potentially important rivals, the European Commission (EC) has recently adopted potentially the most significant change in its rules: to use the referral process from Member States to vest jurisdiction in transactions that fall below its thresholds but that could have Community-wide significance. Two recent referrals should provide significant guidance regarding the impact of this new referral process.

There are some jurisdictions that still use 'market share' indicia (e.g., Bosnia and Herzegovina, Colombia, Lithuania, Portugal, Spain, Ukraine and the United Kingdom). Most jurisdictions require that both parties have some turnover or nexus to their jurisdiction. However, there are some jurisdictions that take a more expansive view. For instance, in Poland, a notification may be required even though only one of the parties is present and, therefore, there may not be an impact on competition in Poland. Turkey recently issued a decision finding that a joint venture (JV) that produced no effect on Turkish markets was reportable because the JV's products 'could be' imported into Turkey. In Serbia, there is similarly no 'local' effect required. Germany also takes an expansive view by adopting as one of its thresholds a transaction of 'competitively significant influence'. Although a few merger notification jurisdictions remain 'voluntary' (e.g., Australia, Singapore, the United Kingdom and Venezuela), the vast majority impose mandatory notification requirements. Moreover, in Singapore, the transaction parties are to undertake a 'self-assessment' of whether the transaction will meet certain levels, and, if so, should notify the agency to avoid potential challenge by the agency.

Although in most jurisdictions the focus of the competition agency is on competition issues, some jurisdictions have a broader mandate. For instance, the 'public interest' approach in South Africa expressly provides for consideration of employment matters, local enterprises and procurement, and for economic empowerment of the black population and its participation in the company. Many of the remedies imposed in South Africa have been in connection with these considerations. Notably, current leadership at the US antitrust authorities have similarly suggested that their mandate under the antitrust laws is broader than the traditional focus on 'consumers' and 'consumer welfare' to include impact on labour, diversity and other considerations. It is unclear at this point how this shift will impact enforcement decisions and judicial challenges. Although a growing number of jurisdictions have separate regulations and processes for addressing foreign entity acquisitions when national security or specific industrial sectors are involved, in Romania, for example, competition law provides that the government can prohibit a merger if it determines that the merger could have a potential impact on national security.

As we pass the two-year anniversary of the covid-19 pandemic, challenges continue both for transaction parties and enforcement agencies. Many jurisdictions (particularly China) have had protracted review times to account for covid-19 disruptions at the agencies. The Ukrainian–Russian conflict may also have business implications, including on supply chain and economic recovery, which in turn may increase the number of reviews of companies in financial distress, if not at the point of failure. Some jurisdictions are exempt from notification (e.g., Ecuador) or have special rules for the timing of bankrupt firms (e.g., Brazil, Switzerland and the Netherlands where firms can implement before clearance if a waiver is obtained; Austria, India, Russia and the United States have shorter time frames). Also, in some jurisdictions, the law and precedent expressly recognise the consideration of the financial condition of the target and the failing firm doctrine (e.g., Canada, China and the United States). In Canada, for instance, the Competition Bureau explicitly permitted the *AIM/TMR* transaction to proceed on the basis of the failing company defence. Similarly, the Netherlands has recently recognised the defence in a couple of hospital mergers. In a major matter in the United Kingdom, *Amazon/Deliveroo*, the CMA provisionally allowed the transaction to proceed due to the target being a failing firm. This topic is likely to be an area to watch in other jurisdictions, particularly in some of the newer merger regimes.

The potential consequences for failing to file in jurisdictions with mandatory requirements vary. Almost all jurisdictions require that the notification process be concluded before completion (e.g., pre-merger, suspensory regimes), rather than permitting the transaction to close as long as notification is made before closing. Many of these jurisdictions can impose a significant fine for failure to notify before closing, even where the transaction raises no competition concerns (e.g., Austria, Cyprus, India, the Netherlands, Romania, Spain and Turkey). In France, for instance, the competition authority imposed a €4 million fine on Castel Frères for failure to notify its acquisition of part of the Patriarche group. In Ukraine and Romania, the competition authorities have focused their efforts on discovering consummated transactions that had not been notified, and imposing fines on the parties. Chile's antitrust enforcer recommended a fine of US$3.8 million against two meat-packing companies, even though the parties had carved the Chilean business out of the closing. In 2021, Morocco similarly imposed a fine for failure to notify a transaction in excess of US$1 million.

Some jurisdictions impose strict time frames within which the parties must file their notification. For instance, Cyprus requires filing within one week of signing of the relevant documents and agreements; Serbia provides for 15 days after signing of the agreement; and Hungary, Ireland and Romania have a 30-calendar-day time limit for filing the notification that commences with entering into the agreement. Some jurisdictions that mandate filings within specified periods after execution of the agreement also have the authority to impose fines for 'late' notifications (e.g., Bosnia and Herzegovina, Indonesia and Serbia). Most jurisdictions also have the ability to impose significant fines for failure to notify or for closing before the end of the waiting period, or both (e.g., Austria, Canada, China, Greece, Portugal, Ukraine and the United States). In Macedonia, the failure to file can result in a misdemeanour and a monetary fine of up to 10 per cent of the worldwide turnover. In Belgium, the competition authority fined a party for late submission of information.

The United States and the EC both have a long history of focusing on interim conduct of the transaction parties, which is commonly referred to as 'gun-jumping', even fining companies that are found to be in violation. For example, the EC imposed the largest gun-jumping fine to date of €124.5 million against Altice. Other jurisdictions have more recently been aggressive. Brazil, for instance, issued its first gun-jumping fine in 2014 and recently issued guidelines on gun-jumping violations. Since then, Brazil has continued to be very active in investigating and imposing fines for gun-jumping activities. In addition, the sharing of competitively sensitive information before approval appears to be considered an element of gun-jumping. Also, for the first time, France imposed a fine of €20 million on the notifying party for failure to implement commitments fully within the time frame imposed by the authority.

In most jurisdictions, a transaction that does not meet the pre-merger notification thresholds is not subject to review or challenge by the competition authority. In Canada – like the United States – however, the Competition Bureau can challenge mergers that were not required to be notified under the pre-merger statute, as well as challenge notified transactions within the first year of closing. In Korea, Microsoft initially filed a notification with the Korea Fair Trade Commission (KFTC), but when it faced difficulties and delays in Korea, the parties restructured the acquisition to render the transaction non-reportable in Korea and consummated the transaction. The KFTC, however, continued its investigation as a post-consummation merger investigation and eventually obtained a consent order. This list of jurisdictions is illustrative rather than comprehensive and is consistent with the overarching concerns expressed above regarding catching transactions that may have fallen below the radar but are subsequently deemed problematic. In the same spirit, the EC has fined companies on the basis that the information provided at the outset was misleading (for instance, the EC fined Facebook €110 million for providing incorrect or misleading information during the *Facebook/WhatsApp* acquisition).

In almost all jurisdictions, very few transactions undergo a full investigation, although some require that the notification provide detailed information regarding the markets, competitors, competition, suppliers, customers and entry conditions. Most jurisdictions that have filing fees specify a flat fee or state in advance a schedule of fees based upon the size of the transaction; some jurisdictions, however, determine the fee after filing or provide different fees based on the complexity of the transaction. For instance, Cyprus is now considering charging a higher fee for acquisitions that are subjected to a full Phase II investigation.

Most jurisdictions more closely resemble the EC model than the United States model. In these jurisdictions, pre-filing consultations are more common (and even encouraged); parties can offer undertakings during the initial stage to resolve competitive concerns; and there is a set period during the second phase for providing additional information and for the agency to reach a decision. In Japan, however, the JFTC announced in June 2011 that it would abolish the prior consultation procedure option. When combined with the inability to 'stop the clock' on the review periods, counsel may find it more challenging in transactions involving multiple filings to avoid the potential for the entry of conflicting remedies or even a prohibition decision at the end of a JFTC review. Some jurisdictions, such as Croatia, are still aligning their threshold criteria and processes with the EC model. Even within the EC, there remain some jurisdictions that differ procedurally from the EC model. For instance, in Austria, the obligation to file can be triggered if only one of the involved undertakings has sales in Austria, as long as both parties satisfy a minimum global turnover and have a sizeable combined turnover in Austria. Finally, some jurisdictions have developed a fast-track process for transactions that are unlikely to raise antitrust concerns (e.g., because the parties' combined shares of potential relevant markets are all below a certain threshold or because of the size of the transaction). China and the EC are two such regimes in which the adoption of this fast-track process can make a significant difference to the review period.

The role of third parties also varies across jurisdictions. In some jurisdictions (e.g., Japan), there is no explicit right of intervention by third parties, but the authorities can choose to allow it on a case-by-case basis. In contrast, in South Africa, registered trade unions or representatives of employees must be provided with a redacted copy of the merger notification from the outset and have the right to participate in merger hearings before the Competition Tribunal; the Tribunal will typically also permit other third parties to participate. Bulgaria has announced a process by which transaction parties even consent to disclosure of their confidential information to third parties. In some jurisdictions (e.g., Australia, the EC and Germany), third parties may file an objection to a clearance decision. In some jurisdictions (including Canada, the EC and the United States), third parties (e.g., competitors) are required to provide information and data if requested by the antitrust authority. In Israel, a third party that did not comply with such a request was recently fined by the antitrust authority.

In almost all jurisdictions, once the authority approves the transaction, it cannot later challenge the transaction's legality. The United States is one significant outlier with no bar for subsequent challenge, even decades following the closing, if the transaction is later believed to have substantially lessened competition. Canada, in contrast, provides a more limited time period of one year for challenging a notified transaction (see the recent *CSC/Complete* transaction). In Hong Kong, the authority has six months post-consummation to challenge a transaction. Norway is also a bit unusual in that the authority has the ability to mandate notification of a transaction for a period of up to three months following the transaction's consummation. In 'voluntary' jurisdictions, such as Australia and Singapore, the competition agency can investigate and challenge unnotified transactions.

It is becoming the norm, in large cross-border transactions raising competition concerns, for the US, Canadian, Mexican, EC and UK authorities to work closely together during the investigative stages, and even in determining remedies, minimising the potential of arriving at diverging outcomes. The KFTC has stated that it will engage in even greater cooperation with foreign competition authorities, particularly those of China and Japan, which are similar to Korea in their industrial structure. Regional cooperation among some of the newer agencies has also become more common; for example, the Argentinian authority has worked with Brazil's competition authority, which, in turn, has worked with the Chilean authority. Competition authorities in Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Montenegro, Serbia, Slovenia and Turkey similarly maintain close ties and cooperate on transactions. Taiwan is part of the Asia-Pacific Economic Cooperation forum, which shares a database. In transactions not requiring filings in multiple European jurisdictions, Member States often keep each other informed during the course of an investigation. In addition, transactions not meeting the EC threshold can nevertheless be referred to the EC in appropriate circumstances. The United States has signed cooperation agreements with a number of jurisdictions, including, most recently, Peru and India. China has 'consulted' with the United States and the EC on some mergers and entered into a cooperation agreement with the United States authorities in 2011.

The impact of such multi-jurisdictional cooperation is very evident. For instance, the transaction parties in *Applied Materials/Tokyo Electron* ultimately abandoned the transaction following the combined objections of several jurisdictions, including the United States, Europe and Korea. In *Office Depot/Staples*, the US Federal Trade Commission and the Canadian Competition Bureau cooperated and both jurisdictions brought suits to block the transaction (although the EC had also cooperated on this transaction, it ultimately accepted the undertakings offered by the parties). In the *GE/Alstom* transaction, the United States and the EC coordinated throughout, including at the remedies stage. Additionally, in the *Halliburton/Baker Hughes* transaction, the United States and the EC coordinated their investigations, with the United States suing to block the transaction while the EC's investigation continued. Also, in *Holcim/Lafarge*, the cooperation between the United States and Canada continued at the remedies stage, where both consents included assets in the other jurisdiction's territory. The United States, Canada and Mexico coordinated closely in the review of the *Continental/Veyance* transaction. In fact, coordination among the jurisdictions in multinational transactions that raise competition issues is becoming the norm.

Although some jurisdictions have recently raised the size threshold at which filings are mandated (e.g., Austria), others have broadened the scope of their legislation to include, for instance, partial ownership interests. Some jurisdictions continue to have as their threshold test for pre-merger notification whether there is an 'acquisition of control'. Many of these jurisdictions, however, will include, as a reportable situation, the creation of 'joint control', 'negative (e.g., veto) control' rights to the extent that they may give rise to *de jure* or *de facto* control (e.g., Turkey), or a change from 'joint control' to 'sole control' (e.g., the EC and Lithuania). Minority holdings and concerns over 'creeping acquisitions', in which an industry may consolidate before the agencies become fully aware, have become the focus of many jurisdictions. Some jurisdictions will consider as reviewable acquisitions in which only a 10 per cent or less interest is being acquired (e.g., Serbia for certain financial and insurance mergers), although most jurisdictions have somewhat higher thresholds (e.g., Korea sets the threshold at 15 per cent of a public company and otherwise at 20 per cent of a target; and Japan and Russia at any amount exceeding 20 per cent of the target). Others use, as the benchmark, the impact that the partial shareholding has on competition; Norway, for instance, can challenge a minority shareholding that creates or strengthens a significant restriction on competition. The United Kingdom also focuses on whether the minority shareholder has 'material influence' (i.e., the ability to make or influence commercial policy) over the entity. Several agencies during the past few years have analysed partial ownership acquisitions on a stand-alone basis as well as in connection with JVs (e.g., Canada, China, Cyprus, Finland and Switzerland). Vertical mergers were also a subject of review (and even resulted in some enforcement actions) in a number of jurisdictions (e.g., Belgium, Canada, China, Sweden and Taiwan). Portugal even viewed as an 'acquisition' subject to notification the non-binding transfer of a customer base.

For transactions that raise competition issues, the need to plan and to coordinate among counsel has become particularly acute. Multi-jurisdictional cooperation facilitates the development of cross-border remedies packages that effectively address competitive concerns while permitting the transaction to proceed. The consents adopted by the United States and Canada in the *Holcim/Lafarge* merger exemplify such a cross-border package. As discussed in the 'International Merger Remedies' chapter, it is no longer prudent to focus merely on the larger mature authorities, with the expectation that other jurisdictions will follow their lead or defer to their review. In the current enforcement environment, obtaining the approval of jurisdictions such as Brazil and China can be as important as the approval of the EC or the United States. Moreover, the need to coordinate is particularly acute, to the extent that multiple agencies decide to impose conditions on the transaction. Although most jurisdictions indicate that 'structural' remedies are preferable to 'behavioural' conditions, a number of jurisdictions in the past few years have imposed a variety of such behavioural remedies (e.g., China, the EC, France, Italy, Japan, the Netherlands, Norway, South Africa, Ukraine and Vietnam). This is particularly the case when non-compete or exclusive dealing relationships raise concerns (e.g., in Mexico and the United States). Some recent decisions have included as behavioural remedies pricing, sales tariffs and terms of sale conditions (e.g., Korea, Ukraine and Serbia), employee retrenchment (South Africa) and restrictions on bringing anti-dumping suits (e.g., Mexico). Many recent decisions have imposed behavioural remedies to strengthen the effectiveness of divestitures (e.g., Canada's decision in the *Loblaw/Shoppers* transaction, China's Ministry of Commerce remedy in *Glencore/Xstrata* and France's decision in the *Numericable/SFR* transaction). It is important to note, however, that one of the areas flagged for 'change' by the new leadership at the US antitrust authorities is the willingness to consider behavioural remedies, or, for that matter, any remedies, rather than bringing enforcement actions to challenge the transaction itself.

In many of the key enforcement regimes (e.g., the US, Canada, China and the UK), we are at a potentially transformational point in competition policy enforcement. This book should, however, provide a useful starting point in navigating cross-border transactions in this changing enforcement environment.

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Part II

Jurisdictions

Chapter 14

INDIA

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I INTRODUCTION

The Indian merger control regime came into force on 1 June 2011 and is primarily governed by the (Indian) Competition Act 2002 (the Competition Act) and the Combination Regulations.[2] Over the past decade, the law and practice have greatly evolved as various teething issues have been addressed, and the Competition Commission of India (CCI) has now begun to tackle more nuanced merger control-related issues.

During 2021 and the first half of 2022, the covid-19 pandemic continued to adversely impact deal-making globally, and recently, the Russia–Ukraine conflict has further added instability to global businesses and supply chains. However, the CCI remained busy with several big-ticket domestic and cross-border transactions. The CCI also introduced key amendments to the Combination Regulations and issued important decisions relating to gun-jumping and misrepresentation of information and methodology of computing asset and turnover values in certain 'grey area' transactions. Additionally, various important statutory exemptions, including the *de minimis* target exemption, were renewed, causing a sigh of relief from all stakeholders. Over these difficult times, the CCI has evolved as a regulator. It continues to respond well by ensuring there are minimal delays in its merger review process, and has simplified logistics and processes for parties and their advisers.

i The legal framework

Under the relevant provisions of the Competition Act and the Combination Regulations, the CCI has been tasked with the duty of reviewing mergers (referred to as 'combinations'[3] under Indian law). India follows a mandatory and suspensory merger control regime, and all transactions that meet the prescribed jurisdictional thresholds, and are not otherwise exempt, are required to be pre-notified to the CCI. The Competition Act provides jurisdictional thresholds on a party basis and a group basis, and if either test (based on either assets or turnover values)[4] is met, the transaction must be pre-notified to the CCI.

1 Naval Satarawala Chopra and Gauri Chhabra are partners, and Ritwik Bhattacharya is a principal associate, at Shardul Amarchand Mangaldas & Co. The authors would like to thank Saumya Raizada and Eesha Sheth, associates at Shardul Amarchand Mangaldas & Co, for their research work.

2 Competition Commission of India (CCI) (Procedure in regard to the transaction of business relating to Combinations) Regulations 2011 (the Combination Regulations).

3 'Combination' includes acquisitions (of shares, voting rights, assets or control), mergers and amalgamations, which are reportable to the CCI.

4 The jurisdictional thresholds are available at https://cci.gov.in/combination/combination/filing-of-combination-notice/introduction.

The Competition Act and the Combination Regulations also prescribe certain exemptions; for instance: (1) minority acquisitions of less than 25 per cent shareholding, provided that the acquisition is either 'solely for investment purposes' or is in the 'ordinary course of business' and does not lead to the acquisition of control; (2) creeping acquisitions of between 25 per cent and 50 per cent shareholding without change in control; and (3) purely internal reorganisations (subject to certain conditions). Additionally, in 2017, the government also introduced a *de minimis* target-based exemption, initially for a period of five years (until March 2022), pursuant to which transactions in which the value of the enterprise being acquired, merged or amalgamated (or in the case of an asset or business acquisition, the value of the assets or business being acquired, merged or amalgamated) is less than 3.5 billion rupees in India (or turnover attributable to the assets is less than 10 billion rupees in India) do not need to be notified to the CCI (target exemption). In March 2022, the government extended the validity of this exemption for another five years (until 28 March 2027).

Therefore, while the jurisdictional thresholds seek to cast a wide net, the exemptions appropriately filter out transactions that are unlikely to raise any competition concerns, ensuring that the notification process is well balanced.

ii Regular updates to the framework

The CCI regularly updates or amends the merger control framework to address prevailing and trending issues and to align with international best practice.

In January 2016, the Combination Regulations were amended to provide guidance on the scope of 'solely for investment purposes' (which is a critical limb of the minority share acquisition exemption discussed above). It was clarified that an acquisition of less than 10 per cent shareholding or voting rights of a target will be treated as solely for investment purposes, provided the acquirer: (1) is able to exercise only rights of ordinary shareholders, to the extent of their respective shareholding; (2) does not have or intend to have a seat on the board; and (3) does not intend to participate in the management or affairs of the target. This has provided much-needed clarity and has drawn a clear line in the sand, especially for private equity investors who are regularly involved in minority investments.

In November 2016, the CCI published FAQs for the first time, providing helpful informal guidance to stakeholders on various merger control-related aspects. The CCI has occasionally updated the FAQs, and certain important issues such as the methodology for calculating turnover have been clarified through these FAQs.[5]

In June 2017, in response to concerns raised by various stakeholders, the government (in consultation with the CCI) removed the requirement of parties having to file a notification form within 30 days of executing definitive documents. Initially, this exemption was introduced for a period of five years (until June 2022); however, in March 2022, the government extended the validity of this exemption for an additional five years (until June 2027). The previous 30-day timeline was a sticking point for parties as it was insufficient for the preparation of a robust filing, or for aligning with filings in other jurisdictions. Pursuant to this exemption, parties are now permitted to file at any time before closing, adding a lot more flexibility to the process and aligning the regime with international best practice.

5 For the first time, the FAQs clarified that intra-group turnover is not required to be included, and export turnover is required to be included, while computing the turnover value. Previously, this was a grey area with conflicting decisions and practices.

In October 2018, the CCI introduced a number of helpful amendments to the Combination Regulations, in particular allowing parties to 'pull and refile' a merger notification (to avoid 'invalidations' of defective filings) and enabling parties to offer remedies before the start of a detailed Phase II investigation. This has helped in reducing the number of transactions that are required to enter a detailed Phase II investigation.

In August 2019, in response to industry feedback that review timelines often acted as a bottleneck and could even delay the implementation of non-problematic transactions, the CCI introduced the 'green channel' route. Under this route, transactions in which there are no horizontal overlaps, vertical relationships or complementary activities between the parties (including their groups) will be 'deemed approved' on the day of filing the notification form itself (in the prescribed format) with the CCI. This is a welcome change and has greatly facilitated the government's 'ease of doing business in India' mission. The CCI has been fairly constructive while allowing transactions to be notified under this route, and has even allowed transactions[6] with minor vertical relationships to avail of this route. A case-by-case analysis is required to be undertaken while assessing the applicability of this route.

In March 2020, the CCI introduced certain key clarifications through its guidance notes. For the first time, it clarified the scope of entities that are required to be included while determining overlaps, and clarified that it should include all entities where a party has a 10 per cent or more shareholding, or the right or ability to exercise any rights not available to an ordinary shareholder, or the right or ability to nominate a director or observer. This has significantly widened the scope of the overlap analysis, especially for private equity firms that typically have minority investments in multiple portfolio entities. Various stakeholders have raised concerns that these goalposts established by the CCI are too wide, and will make the information-gathering process extremely burdensome and complex.

The March 2020 guidance notes also provide helpful guidance on the scope of 'complementary activities', which is an important issue for any competitive assessment, as well as in examining the availability of the green channel route (discussed above). The guidance notes now clarify that products and services shall only be considered complementary when they are related products as they are typically combined and used together (e.g., printers and ink cartridges), and in general, a complementary product or service will enhance the value of the other complementary product or service. This is helpful as there was previously no guidance from the CCI on its understanding of complementary activities, and parties were shooting in the dark while setting out their analysis of these.

Further, in response to covid-19, in March 2020 the CCI also swiftly introduced measures allowing for electronic merger filings and virtual pre-filing consultation meetings with the case teams, ensuring that there were no roadblocks created as the world moved into a remote working environment. This was a significant logistical change as the CCI was previously a stickler for hard copy filings and furnishing of original documents.

During this time, the government also introduced an exemption for banks placed under moratorium by the Reserve Bank of India from having to notify and seeking prior approval of the CCI for entering into a combination, for a period of five years (until March 2025). This is expected to assist with resolving bankruptcy issues in relation to ailing banks in the country.

In November 2020, the CCI discontinued the requirement to provide details (and to justify the scope and extent) of any non-compete provisions being entered into along

6 C-2021/02/812 *IFC/Dodla Dairy* (February 2021).

with the notification form. This was a welcome change as, previously, the CCI would often delay approving a transaction until parties revised their non-compete clauses to address the CCI's concerns.

In February 2021, the CCI opened an office in Chennai, Tamil Nadu. The Chennai office is set to cater to southern India and will aid cooperation efforts with the CCI's Delhi office. Subsequently, another regional office was opened in May 2022, in Kolkata, West Bengal, which is set to cater to eastern India.

In March 2022, as discussed above, the government (in consultation with the CCI) extended the validity of two important exemptions for another five years (i.e., the *de minimis* target exemption and the removal of the 30-day filing deadline). These extensions brought great relief to all stakeholders.

In April 2022, the CCI amended the long form (Form II)[7] to make it more streamlined by removing several information or data requests that were not particularly relevant for its review of the market dynamics in relation to a transaction. However, it has increased the duration of market-facing data and the level of information and analysis required to be provided for vertical or complementary activities.

In April 2022, the CCI also introduced certain amendments to its confidentiality framework. The amendments, inter alia, introduce a 'self-certification' requirement, pursuant to which parties must certify that their confidentiality claims are consistent with the CCI's prescribed parameters. This self-certification framework will reduce time lost in a clause-by-clause disposal of confidentiality claims between the CCI and the parties, as was done previously.

Accordingly, the legal framework is constantly being fine-tuned, which has greatly contributed to the regime evolving fairly quickly. Having said that, there are still several holes that need to be plugged as the CCI matures in its practice, as is further discussed below.

II YEAR IN REVIEW

Since its inception, the CCI has reviewed approximately 900 transactions, with substantive remedies[8] being imposed in approximately 22 cases (approximately 2 per cent of all cases). Only eight cases (less than 1 per cent of all cases) have moved into a detailed Phase II investigation (all others have been approved during Phase I), and no transaction has been blocked as yet, demonstrating that the CCI has largely followed a business-friendly approach.

The CCI had its hands full in 2021, and reviewed over 100 transactions. There were no remedies imposed or any Phase II investigations in 2021. The CCI received approximately 30 cases under the green channel route in 2021, corroborating the importance of this route (given that it accounted for nearly one-third of all notifications filed with the CCI in 2021). The busiest sectors were financial markets, digital markets, power and healthcare and pharmaceuticals.

We set out below various key issues and trends over the past few years.

7 Form II (long form) is recommended to be filed for transactions where the parties have more than 15 per cent market share (on a combined basis) in horizontally overlapping markets or more than 25 per cent market share in vertically related markets.

8 These do not include cases where parties voluntarily amended their non-compete provisions.

i Hard line on gun-jumping

The merger control regime in India is suspensory in nature. Accordingly, if parties consummate a notifiable transaction (or any step of a notifiable transaction) prior to CCI approval, the CCI has the power to impose a penalty of up to 1 per cent of the combined turnover or assets of the transaction, whichever is higher.

The CCI refrained from imposing penalties during the first two years of the merger control regime. However, thereafter, it has not shied away from this, including in cases where parties may have made a bona fide mistake, signalling its 'zero-strikes' policy to the industry going forward.

Over recent years, the CCI has had the opportunity to address a number of different forms of gun-jumping conduct and has come down hard on errant enterprises. The forms of conduct found to be violative have included:

a a valuation methodology that the CCI believed would allow the acquirer to exercise notional control over the target prior to closing;[9]

b prepayment of consideration,[10] granting a loan to the target[11] or providing a corporate guarantee on behalf of the target to secure a loan prior to closing;[12]

c gaining permission to use the target's trademarks prior to closing;[13]

d closing the global leg of a deal, pending CCI approval;[14] and

e failing to disclose or notify a subsequent 'inter-connected' step of a transaction while seeking approval for a prior step or transaction, and closing the subsequent step or transaction.[15]

In December 2021, the CCI imposed a penalty of 2 billion rupees on Amazon,[16] which is the highest penalty ever levied by the CCI in a gun-jumping case. The CCI held that Amazon had: (1) failed to identify and notify all the inter-connected steps of a transaction (it had identified and notified only certain select steps, and went ahead and consummated certain non-notified steps); and (2) made false and incorrect representations, and concealed or suppressed material facts, including its strategic rationale or intent for the transaction.

In addition to the penalty for gun-jumping, the CCI also separately imposed a penalty of 20 million rupees on Amazon for misrepresentation and suppressing the actual scope and purpose of the transaction.

This is a first of its kind order passed by the CCI, as the CCI directed Amazon to re-notify a transaction that was approved by the CCI in 2019 and held that until the decision on the revised notification form was granted, the approval provided by the CCI for the already notified steps should remain in abeyance. This case is also unique in terms of the

9 C-2017/10/531 *Bharti Airtel/Tata Teleservices* (27 August 2018).

10 C-2016/04/387 *LT Foods/DMCC* (11 May 2018); C-2018/01/544 *Chhatwaal Group/Infraventure* (8 August 2018).

11 C-2018/01/547 *Adani/Reliance* (30 July 2018).

12 C-2015/02/246 *Ultratech/Century* (12 March 2018).

13 C-2017/02/485 *ITC/Johnson* (11 December 2017).

14 C-2015/07/297 *Baxter/Baxalta* (8 March 2016); 2015/07/289 *Eli Lilly/Novartis* (15 July 2016).

15 C-2017/11/536 *CPPIB/ReNew* (21 November 2019).

16 C-2019/09/688 *Amazon/Future* (17 December 2021).

penalty levied, as prior to this, the maximum penalty levied by the CCI for failure to notify a transaction was 50 million rupees. The penalty amount levied in the *Amazon* case was therefore around 40 times higher than the previous maximum penalty levied by the CCI.

More recently, in March 2022, the CCI imposed a penalty of 500,000 rupees on Adani Green Energy Limited.[17] The CCI found that the purchase agreement entered into between the parties to the transaction contained a clause that allowed the acquirer and the target to discuss the ongoing operations of the target, and the acquirer could provide non-binding suggestions or input to the target on its operations (even prior to closing). The CCI held that this essentially had the effect of consummating a part of the transaction prior to CCI approval and could result in exchange of commercially sensitive information and tacit collusion between the parties prior to closing. The parties had sought to argue that they had clean team protocols in place; however, the CCI held that the parties were unable to demonstrate whether or how these alleged protocols addressed the concerns identified by the CCI in relation to standstill obligations.

Additionally, in a series of three penalty orders issued in March 2022, the CCI imposed a penalty of 500,000 rupees on Tata Power under each of the three orders[18] (totalling 1.5 million rupees) for its failure to notify and consummating its acquisition of shares of three electricity supply companies. Tata Power had sought to argue that combinations under the electricity sector would fall under the exclusive domain of the (Indian) Electricity Act and the relevant regulator under that statute. It therefore sought to argue that the CCI had no jurisdiction over these combinations. However, predictably, the CCI rejected these submissions and held that there was no such overarching exemption for combinations under the electricity sector, and they were equally subject to merger control rules and the CCI's jurisdiction. However, the CCI did consider compliance with timelines set by other sectoral regulators (i.e., the regulator under the Electricity Act in this case) as a mitigating factor while determining the amount of penalty.

Given the close lens with which the CCI is analysing transactions, it would be advisable for parties to err on the side of caution and be mindful of their standstill obligations.

ii Evolution of the CCI's approach towards remedies

In its early days, while the CCI was still finding its footing, its 'go-to' remedy was divestments, which are globally considered to be the easiest and cleanest fix. To date, the CCI has imposed divestments in approximately 11 cases.[19] However, the CCI's orders have received some criticism from the industry as being over-interventionist and excessive at times.

17 C-2021/05/837 *Adani/S.B. Energy* (9 March 2022).

18 C-2021/03/824 *Tata Power/WESCO* (17 March 2022); C-2021/03/825 *Tata Power/SOUTHCO* (17 March 2022); and C-2021/03/826 *Tata Power/CESU* (17 March 2022).

19 C-2014/05/170 *Sun/Ranbaxy* (5 December 2014); C-2014/07/190 *Holcim/Lafarge* (30 March 2015); C-2016/08/418 *Abbott/Saint June* (13 December 2016); C-2016/08/424 *China National Agrochemical Corporation* (16 May 2017); C-2016/05/400 *Dow/DuPont* (8 June 2017); C-2017/06/519 *FMC* (18 September 2017); C-2016/10/443 *Agrium/PotashCorp* (27 October 2017); C-2017/08/523 *Bayer/Monsanto* (14 June 2018); C-2018/01/545 *Linde/Praxair* (6 September 2018); C-2019/11/703 *ZF/WABCO* (14 February 2020); and C-2020/03/735 *Outotec/Metso* (18 June 2020).

Over the past two to three years, the CCI has demonstrated its willingness to accept other forms of remedies, provided that they are sufficient to address the competition concerns. The CCI has signalled that it will not follow a 'one size fits all' approach and will carefully tailor its remedies to the specific harm identified in each case.

In April 2019, in *Schneider/L&T*,[20] the CCI cleared a Phase II investigation purely based on behavioural remedies to address horizontal concerns for the first time. The CCI accepted an array of behavioural remedies, including price caps, private labelling arrangements, removal of any exclusivity obligations in the parties' distribution agreements, granting of technology licences, agreed minimum research and development spend and commitment not to reduce current product lines. Importantly, the parties were able to present effective arguments on why a divestment was not feasible in this case, owing to the specific industry dynamics.

In October 2019, in *Hyundai/Kia/Ola*,[21] the CCI accepted remedies in the form of undertakings filed by parties not to engage in certain discriminatory conduct, to allay concerns around self-preferencing.

In June 2020, while considering the proposed acquisition by Outotec of the minerals equipment business of fellow Finnish company Metso, the CCI accepted a remedy pursuant to which Metso India was required to transfer its business by granting an exclusive and irrevocable licence of its technology to a third party. This was the first time that the CCI accepted the transfer of rights for a technology as a stand-alone remedy to address competition concerns.[22]

Thus, the CCI has demonstrated flexibility in crafting remedies, provided it believes that they are sufficient to address the concerns identified.

There have been no orders involving remedies in 2021 or the first half of 2022.

iii Close attention to private equity deals

Over the past few years, the CCI has been keeping a very close eye on transactions involving minority investments by private equity funds. The CCI's focus has been on issues arising from cross shareholding in competing enterprises and interlocking directorates.

In *ChrysCapital/Intas*,[23] for the first time, the CCI imposed a remedy in a transaction involving a minority acquisition by a private equity fund. The CCI approved the transaction on the condition that the acquirer fund would remove its nominee director on the board of a competing portfolio entity (to the target) and would not exercise its veto rights on certain strategic matters in the competing entity. This represents a shift in the CCI's previous light-touch approach in transactions involving common minority ownership.

The CCI will need to be mindful that it does not overextend itself as it has been previously criticised for inappropriately distinguishing between control rights and mere minority protection rights, often blurring the line between the two. Accordingly, the CCI will need to strike an appropriate balance in its approach.

Further, with the March 2020 guidance notes (discussed in Section I.ii), the CCI has significantly widened the scope of overlap analysis, not only in its purview of controlled entities, but of all entities in which a party has a direct or indirect shareholding of 10 per cent or more, or the right or ability to exercise any rights not available to an ordinary shareholder,

20 C-2018/07/586 *Schneider/L&T* (18 April 2019).

21 C-2019/09/682 *Hyundai/Kia* (30 October 2019).

22 C-2020/03/735 *Outotec/Metso* (18 June 2020).

23 C-2020/04/741 *ChrysCapital/Intas* (30 April 2020).

or the right or ability to nominate a director or observer. This has made the entire notification process rather cumbersome and time consuming, leading to a significant increase in the level of information required to be disclosed (especially by private equity firms) in notification forms.

Additionally, the CCI has also announced that it is conducting a market study on the private equity investments landscape in India. The study is aimed at understanding the trends and patterns of common ownership by private equity investors across various sectors in India and should help the CCI attain a better understanding of these aspects.

Therefore, private equity firms should be careful in structuring transactions in India as the CCI is 'interested' if, pursuant to an investment, the investor receives any rights (including the right to appoint an observer) not available to an ordinary shareholder. Also, given the CCI's focus on investments in the same sector, an extensive review of portfolio investments is necessary prior to notifying the CCI.

iv Recent decisional practice on calculation of assets and turnover

In the past year, the CCI has provided some helpful guidance on the nuances of calculating asset or turnover values in certain situations, while examining thresholds.

In December 2021, in its gun-jumping proceedings against Investcorp,[24] the CCI has, for the first time, explicitly clarified that in cases involving the acquisition of any investment management business, the value of assets and turnover of the portfolio entities of funds whose management and control is being acquired must be included while computing thresholds. The CCI held that under demutualised investment schemes, the investment manager is entrusted with the authority to control the operations of the fund even when the beneficial ownership may still lie with the unit holders. Accordingly, in the case of the acquisition of any investment management business, the value of assets and turnover of the controlled portfolio entities would be attributable to the financials of the investment manager and become relevant for the purpose of computing thresholds.

In *Phoenix/Parexel*,[25] for the first time, the CCI elucidated upon the select circumstances in which 'intra-group' turnover must be included while computing the turnover value of an entity. This marks a change in the approach taken by the CCI to date, given that intra-group turnover was previously excluded for the purposes of calculating thresholds. This order will serve as an important benchmark for parties grappling with issues related to treatment of intra-group sales while assessing whether transactions are notifiable.

In *Allcargo/GATI*,[26] the CCI recently reiterated its well-settled position that, while examining thresholds, the target's consolidated financials must be considered (which would aggregate the values of its subsidiaries and controlled entities) rather than merely the stand-alone financials.

The CCI is thus seeking to increase the level of certainty and predictability on key issues such as the computing of thresholds through its decisional practice.

24 Proceedings against Investcorp India Asset Managers Private Limited under Section 43A of the Competition Act (17 December 2021).

25 C-2021/08/836 *Phoenix/Paraxel* (25 October 2021).

26 Proceedings against Allcargo Logistics Limited (2 May 2022).

v Examination of data-related issues

Similar to other agencies around the world, the CCI has demonstrated a great interest in big data and data-related theories of harm.

Previously, in 2020, in at least two transactions, the CCI considered the consequences of data sharing between the relevant parties.[27] In both cases, the CCI ultimately came to the view that the transactions did not raise any data-related or other concerns. In 2018, in the *Bayer/Monsanto* transaction,[28] one of the key remedies imposed by the CCI while approving this major agrochemicals merger was that the parties were required to provide the government of India with free access to their Indian agroclimatic data.

In the coming years, we anticipate that data will continue to play a key role and we can also expect more data-centric remedies to be imposed.

vi Distressed company transactions

The CCI has been receiving an increasing number of notifications for transactions filed pursuant to the (Indian) Insolvency and Bankruptcy Code, 2016 (the Code). The Code sets out a specific timeline for the bankruptcy process, and there were concerns regarding whether the CCI would be able to review transactions within the framework of the Code. The CCI has reviewed approximately 30 of these transactions, and has approved all of these relatively quickly, within Phase I, allaying any concerns around timelines.

Recently, the CCI has indicated that it is likely to consider the worsening financial health of a target (i.e., the failing firm defence) as a mitigating factor while determining whether a proposed transaction raises competition concerns. In the *Talace/Air India*[29] transaction, the CCI approved Talace's acquisition of Air India, owing to factors such as the improvement of operational efficiencies, and the likelihood that Air India is unlikely to survive but for the transaction. The CCI acknowledged these mitigating factors despite an increased market concentration in certain origin-destination pairs arising from the transaction.

The trends discussed above demonstrate that the CCI is becoming a more experienced authority and has started sinking its teeth into more complex merger control issues. Parties should be mindful of these trends to ensure they do not trip up in their filings with the CCI.

III THE MERGER CONTROL REGIME

i Timelines and review process

The CCI's review process involves two phases, namely Phase I and Phase II (the latter being reserved for more problematic transactions that are not cleared during Phase I).

Phase I

In its Phase I review, the CCI is required to form a prima facie opinion on whether a transaction causes or is likely to cause an appreciable adverse effect on competition (AAEC) in India, within 30 working days of the filing. This period will be extended by 15 working days if the CCI reaches out to third parties (such as customers, competitors, suppliers and government agencies). This period may be further extended by 15 calendar days if the parties

27 C-2020/06/747 *Facebook/Jio* (24 June 2020); and C-2020/09/775 *Google/Jio* (11 November 2020).

28 C-2017/08/523 *Bayer/Monsanto* (14 June 2018).

29 C-2021/11/883 *Talace/Air India* (20 December 2021).

offer remedies in Phase I. If the CCI requests additional information or requires the parties to remove defects, it 'stops the clock', which is restarted only once the parties have filed the complete information sought. Therefore, in practice, the Phase I review typically lasts between 60 and 90 days.

If the CCI forms a prima facie view that a transaction is likely to cause an AAEC in India, it will issue a show cause notice asking the parties to explain within 30 calendar days why an in-depth investigation should not be conducted. After reviewing the parties' response, if the CCI is still of the view that the transaction is likely to cause an AAEC in India, it will proceed with a detailed Phase II investigation.

To date, all but eight transactions have been cleared by the CCI during Phase I.

Phase II

If the transaction moves to Phase II, the CCI has an overall period of 210 calendar days from the date of notification to conclude its entire review. However, this 210-day period excludes two periods of 30 working days (which is the time taken to negotiate remedies), as well as any extensions taken by the parties to furnish additional information. Therefore, in several cases, the overall period has exceeded 210 days.

Parties can generally seek to accelerate timelines by regularly engaging with the case team formally and informally to address any concerns. Further, engaging in pre-filing consultations with the CCI before making the formal filing, on both procedural and substantive issues, also helps to speed up the formal review process once the formal filing goes in. Pre-filing consultations are particularly recommended when proposing to notify a transaction under the green channel route, so parties can align with the CCI on whether the conditions for availing the green channel route are met.

ii Third-party involvement

Third parties may be involved in both Phase I and Phase II of the review process. In Phase I, the CCI can reach out to third parties for their comments and observations on the transaction. The CCI is increasingly using this power and is contacting third parties during the Phase I review period. If the review goes into the detailed Phase II process, public consultation is a mandatory requirement. Any member of the public may file written objections within 15 working days of the date of publication of the details of the combination in the public domain. In various cases (for instance, *PVR/DT*,[30] *Bayer/Monsanto*[31] and *Schneider/L&T*[32]), numerous third parties filed their objections to the transaction. However, the CCI typically allows notifying parties a fair opportunity to address any concerns raised by third parties.

iii Appeals

Any person aggrieved by a CCI order approving or prohibiting a transaction, or imposing fines for gun-jumping, may file an appeal with the National Company Law Appellate Tribunal (NCLAT) within 60 days of receipt of the order. Orders of the NCLAT can be further appealed to the Supreme Court of India (i.e., the apex court of India). Previously, in *Jet/Etihad*, the appellate authority held that a third party was not an 'aggrieved party' and the

30 C-2015/07/288 *PVR/DT* (4 May 2016).

31 C-2017/08/523 *Bayer/Monsanto* (14 June 2018).

32 C-2018/07/586 *Schneider/L&T* (18 April 2019).

appeal[33] was dismissed. However, in the *Walmart/Flipkart* case, the NCLAT adjudicated an appeal[34] filed by a third party on its merits. It therefore appears that third parties may have a right to appeal merger decisions in certain limited cases if they are able to demonstrate that they are an aggrieved party.

IV OTHER STRATEGIC CONSIDERATIONS

Cooperation with other jurisdictions

With the surge in multi-jurisdictional filings, the call for international cooperation among competition authorities has greatly increased. To this end, the CCI has signed memoranda of understanding (MOUs) with several foreign competition authorities, including those in the European Union, the United States, Brazil, Russia, South Africa, Canada, Australia and, most recently, Japan, setting up a framework for mutual cooperation between the CCI and the competition authorities in these jurisdictions.

In numerous cases, the CCI has relied on these MOUs to engage with other authorities. For instance, in the *EMC/Denali* transaction,[35] the CCI engaged with authorities in Australia, the EU and the US to align on issues such as market definition. Thereafter, in two cases in the agrochemicals space (*Chemchina/Syngenta*[36] and *Dow/DuPont*[37]), the CCI reached out to various foreign authorities to align on various issues, including remedies. Accordingly, parties should be mindful of the possibility of the CCI reaching out to other authorities in multi-jurisdictional filings and should therefore seek to take consistent positions across their filings.

V OUTLOOK AND CONCLUSIONS

Over the next couple of years, economies the world over will be in the process of recovering from the effects of the covid-19 pandemic and the Russia–Ukraine conflict. We expect the CCI to continue playing a constructive role, given that a conducive deal-making environment will be a priority for the government, and the CCI has already proven itself as sufficiently experienced in crafting innovative remedies to address competition concerns.

The economic downturn is also likely to result in increased consolidation and an increase in the number of transactions filed with the CCI pursuant to the Bankruptcy Code, and the failing firm defence may come into play more often (as seen in the recent *Talace/Air India* transaction).

Further, private equity deals are expected to proliferate, and the CCI is likely to continue to closely examine and address issues arising from common ownership in competing entities. However, the CCI will need to be mindful that it does not overextend itself and will need to strike an appropriate balance in its approach while dealing with minority investments.

We also anticipate that the CCI will continue to draw a hard line on gun-jumping cases and will punish even technical and bona fide errors. Parties should be mindful of this and should try to be as careful and honest as possible on this issue.

33 *Jitendra Bhargava v. CCI*, March 2014.
34 *CAIT v. CCI*, March 2020.
35 C-2016/01/370 *EMC/Denali* (13 April 2016).
36 C-2016/08/424 *China National Agrochemical Corporation* (16 May 2017).
37 C-2016/05/400 *Dow/DuPont* (8 June 2017).

Further, the CCI has been increasingly focusing on public disclosures, internal email correspondence, filings with other regulators, etc., while examining gun-jumping and misrepresentation issues, and to assess the real 'intention' of a transaction. Therefore, internal documentation, board minutes, correspondence, etc., become extremely critical.

Further, given the internet of things movement and the growth of e-commerce, we believe that the number of data-related transactions filed with the CCI will likely increase over the next few years. The CCI is well equipped to deal with these transactions and has demonstrated its capabilities in the past year.

In terms of review timelines, we expect the CCI to continue to operate efficiently (as it has done over the past years) without any significant delays in its review process. Further, digital filings and virtual hearings are likely to continue to be the norm for the coming months, depending on the covid-19 situation.

Finally, the government of India had launched a public consultation on a new draft Competition Amendment Bill, dated 12 February 2020. The proposed amendments include revisions in the process for setting thresholds (including granting the CCI the power to introduce deal value-based thresholds), changes to the definition of 'control' to lower the standard from 'decisive influence' to 'material influence', reducing the review timelines, and introducing the possibility of seeking waivers of the standstill obligation in certain cases. The Bill may be taken up in the June–July 2022 session of the Parliament and, while some of the proposed amendments may be contentious, the proactive approach of the government in seeking to update and amend the law is welcome.

Therefore, it seems that the next few years will bring an interesting mix of calm waters and rough storms for India's merger control regime.

Appendix 1

ABOUT THE AUTHORS

NAVAL SATARAWALA CHOPRA

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Naval Satarawala Chopra is a senior partner in the firm's competition law practice, and has been involved with competition law since its inception in India. He focuses on both contentious and non-contentious matters.

On the merger control front, Naval has successfully obtained approval in several prominent cases, including Facebook's investment in Jio Platforms, Bayer's acquisition of Monsanto, Ctrip's investment in MakeMyTrip, PVR's acquisition of DT Cinemas, HP's acquisition of Samsung's printer business, the failed merger of Publicis and Omnicom and Avago's acquisition of Broadcom. Naval also worked closely with the government of India and the Competition Commission of India in finalising the Indian merger control framework.

Naval features in *Who's Who Legal Thought Leaders: Competition* (2017–2022). He was listed in Global Competition Review's top '40 under 40' competition lawyers in the world in 2015, and more recently featured in *Forbes India* as one of the 'Top 100 Individual Lawyers' in India.

Naval has authored the India chapters of the *Global Antitrust and Competition Law Compliance Handbook* (Oxford University Press), *Private Equity Antitrust* (American Bar Association) and *Competition and Patent Law in the Pharmaceutical Sector* (Kluwer Law International).

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Gauri Chhabra is a partner in the firm's competition law practice, and has worked on a wide range of matters, including cartel enforcement, abuse of dominance, merger control and competition compliance. She has represented Indian and multinational clients across various sectors.

In the area of merger control, Gauri primarily represents private equity investors and has successfully obtained unconditional merger control clearances for, among others, Carlyle's acquisition of Hexaware (largest transaction in the information technology space), Blackstone's acquisition of Piramal Glass, Warburg Pincus' acquisition of Medplus and NIIF's investment in Manipal Hospitals, and in the following mergers: *Warburg/Tata*; *Emerson/Pentair*; *TPG/Intel*; *Brookfield/Reliance*; *Capital Square/Aegis*; *Ultra Tech/Jaypee*; *Johnson/Hitachi*; *Nippon/Reliance Capital*; *Blackstone/Pune Dynasty*; *JSW Ispat/JSW Steel*; *Tetra Laval/Alfa Laval*; *Thriveni/Brahmani River*; and *Blackstone/Sona*.

Gauri has co-authored various articles, including 'India's New Competition Regime Steadily Gaining Ground' in *Competition Law International* (the journal of the International Bar Association's Antitrust Section) and 'Latest Merger Control Trends Analysed' in *International Finance Law Review*. She also co-authored the India chapter in *The Cartels and Leniency Review*.

She was recognised as a leading lawyer in 2019–2022 by *Asialaw Profiles* and she features in *Who's Who Legal Future Leaders: Competition 2017*, *2018*, *2020*, *2021* and *2022*.

RITWIK BHATTACHARYA

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Ritwik Bhattacharya is a principal associate in the firm's competition law practice with nine years of experience in this field. He has been involved in several landmark merger control and enforcement matters.

On the merger control side, he has been involved in some of the most complex cases before the CCI, including *ZF/WABCO* (GCR 'Merger Control Matter of the Year 2021 – Asia Pacific'), *Facebook/Jio* (in which unconditional approval was obtained during Phase I), *L&T/Schneider* (the first case in which the CCI was convinced to accept purely behavioural remedies in a Phase II investigation), *PVR/DT* (the first case in which the CCI accepted hybrid remedies), *Suzuki/Toyota* (in which an expedited unconditional approval was obtained in Phase I, despite high market shares), *HP/Samsung* (in which unconditional approval was received in Phase I, despite high market shares), *Siemens/Varian*, *OMERS/Azure* and *Ctrip/MMT*.

He has co-authored several publications and articles, including 'Merger Control, Trends and Challenges', published in *USIBC Legal*, the India chapter of *The Merger Control Guide* (Chambers) in 2018–2021 and 'Antitrust Compliance Programmes in India – The Road Less Travelled', published in the *American Bar Association Journal*.

He has also featured in *Who's Who Legal Future Leaders: Competition 2020*, *2021* and *2022*.

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