



Shardul Amarchand Mangaldas

A DECADE YOUNG, A CENTURY STRONG

Navigating Tricky Waters

RECENT DEVELOPMENTS IN INDIAN COMPETITION LAW | MARCH 2026



Preface

We are delighted to present our review of developments in Indian competition law and policy in 2025-26.

On enforcement, the long-awaited commitments and settlements framework has moved from promise to practice, with the CCI issuing its first order under the settlements regime and inviting public comments on proposed commitments. The appellate courts have continued to shape the contours of enforcement, emphasising effects-based analysis in abuse cases, finding on both sides of the jurisdictional tussle between the CCI and sectoral regulators, and opining on the scope of the CCI's investigative powers. Together, these developments signal a more calibrated, outcomes-focused approach to competition regulation in India.

In the digital sphere, while the Digital Competition Bill remains in flux, policy momentum has not abated. A recent parliamentary committee has urged context-specific, evidence-led tools over blanket prohibitions, and the Government is undertaking a fresh consultative process to reassess the legislative design. Meanwhile, the CCI has kept digital markets squarely in its sights. Its market study on Artificial Intelligence maps the AI value chain end-to-end and recommends self-regulatory measures to mitigate anti-competitive outcomes from the use of AI.

Merger control has undergone material refinement. The CCI's decision-making timelines have quickened, with the first conditional Phase II clearance since 2019 being completed within six months.

Whether and when to notify a transaction remains a complex judgement call, but one that is increasingly navigable with the publishing of comprehensive FAQs. These FAQs clarify key concepts, which should improve predictability, but do not replace careful analysis. Missteps, especially around changes in control, Green Channel eligibility, and the sequencing of open-market purchases, can still trigger significant penalties.

Our team has grown with the market. We have around 50 dedicated competition lawyers in our Delhi and Mumbai offices. With a bench now comprising 13 partners and a deep cadre of associates at all levels, we remain at the centre of the competition debate and are equipped to handle the full spectrum of complex and cutting-edge matters – advisory, investigations, litigation, and transactions.

We hope this publication gives you a clear view of the pivotal developments in Indian competition law and policy over the last 12 months, and the heightened navigational challenges they present. As the enforcement and policy landscape continues to evolve, we look forward to steering you to a safe harbour.

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Year in Review and What Lies Ahead

*By Naval Satarawala Chopra, Shweta Shroff
Chopra and Harman Singh Sandhu¹*



2025 was an important year with significant enforcement outcomes, clarifications with respect to the merger regime, and policy direction-setting by the Competition Commission of India (CCI) and the appellate courts. As we take stock of 2025's milestones, we also turn our attention to the evolving landscape of competition law in 2026.

Look Back At 2025

Effects Drive The Finding: Abuse Of Dominance

While several important enforcement cases concluded either at the CCI or the appellate stage, the Supreme Court of India's (*Supreme Court*) observation that an effects-based analysis is required to establish abuse of dominant position by an entity took centre stage.² The Supreme Court emphasised the fact that net competitive harm must be shown before liability can attach, and this requires the CCI to undertake a balancing exercise of the conduct's likely anti-competitive impact against any demonstrated efficiencies that accrue to consumers. In this case, the CCI had failed to produce any economic evidence of price increases, output restriction or foreclosure.

We expect that effects-based analyses may impose a demanding evidentiary burden, particularly in digital markets where actual harm may not yet have manifested.

Tug Of War: The CCI's Jurisdictional Tussle

In several cases, the CCI's jurisdiction has been challenged in light of other sectoral regulators.

In a case relating to alleged abuse of dominant position by the parties on account of imposition of unfair licensing terms for patents, the Supreme Court refused to interfere with the Delhi High Court's decision, which held that the CCI lacked jurisdiction in disputes related to patents.³ Since the parties had already reached a settlement, the Supreme Court left open the question of law on the interplay between the Patents Act, 1970 and the Competition Act, 2002 (*Competition Act*). However, this judgment is helpful in signalling that settlements between parties in regulatory proceedings have the potential to close proceedings at an early stage.

In another case, the Kerala High Court affirmed the CCI's competence to investigate anti-competitive practices in the telecom sector without mandatory referrals to the Telecom Regulatory Authority of India.⁴

Recently, the National Company Law Appellate Tribunal (NCLAT) issued a decision finding that competition law and data protection frameworks are complementary.⁵

The Digital Surge

This year, the Standing Committee on Finance (*Standing Committee*) published its '*Report on the Evolving Role of the Competition Commission of India in the Economy, particularly the Digital Landscape*'. The Report analysed the impact of digitisation on market structures, the regulatory and enforcement responses of the CCI, recent legislative amendments, and the proposed Digital Competition Bill (DCB).

Most notably, the Standing Committee recommended that the DCB should avoid blanket prohibitions and instead allow for context-specific assessments, with ongoing market studies on AI and other sectors serving as foundational evidence to refine the DCB.

Unbundling AI: No Gods, No Gatekeepers

In line with the increased scrutiny of Artificial Intelligence (AI) by competition authorities across the globe, the CCI published its market study on Artificial Intelligence and Competition in India (AI Market Study), mapping the AI value chain from data and compute through development, foundation models, deployment and user interaction.

The AI Market Study notes that concentration of critical inputs with a few global hyper-scalers can raise entry barriers, increase dependency, and create ecosystem lock-in. Further, the study notes that the use of opaque algorithms could heighten risks of AI-facilitated collusion, discriminatory or personalised pricing that may undermine trust, self-preferencing across vertically integrated stacks, and exclusionary tying or bundling, especially where switching costs are high.

In this regard, the CCI outlines an action plan focused on fostering a culture of competition compliance, including a detailed self-audit framework. The CCI's calibrated approach combines competition enforcement with expectations on transparency and accountability.

What It Takes To Get To "Yes": The CCI's Merger Rules

This year also saw the CCI issue its first conditional merger approval in Phase II since 2019. Despite going into Phase II with a public consultation, the transaction was cleared within six months of notification.⁶ The CCI clarified that the purpose of a remedy is to preserve current competition in the market and the choices available to consumers that would be lost if the transaction were to proceed unmodified.

Further, the CCI published FAQs on combinations, addressing key

1 Naval Satarawala Chopra, Shweta Shroff Chopra and Harman Singh Sandhu, Partners, Shardul Amarchand Mangaldas & Co. The authors thank Natalia Bilimoria, Knowledge Associate, for her input. The views expressed here are personal.

2 *CCI v. Schott Glass India Private Limited*, Supreme Court of India, Civil Appeal No. 5843/2014 (13 May 2025).

3 *CCI v. Monsanto Holdings Private Limited*, Supreme Court of India, SLP(C) No. 25026/2023 (2 September 2025).

4 *Asianet Star Communications Private Limited v. CCI*, Kerala High Court WP(C) No. 29766 of 2022 (28 May 2025).

5 *WhatsApp LLC v. CCI*, Competition Appeal No. 1/2025; *Meta Platforms Inc. v. CCI*, NCLAT Competition Appeal No. 2/2025 (4 November 2025).

6 *Bharat Forge Limited and Others*, CCI, Combination Registration No. C-2024/10/1197 (22 April 2025).

concepts such as deal value thresholds, digital services, change in control, exemption rules, and gun-jumping, within the Indian merger review context. These FAQs are expected to improve process predictability and reduce avoidable errors in merger filings.

These updates indicate the CCI's growing emphasis on streamlining regulatory hurdles and balancing market realities with the CCI's goal to preserve competition in India.

Looking Forward To 2026

DCB In Flux, But Digital Scrutiny Remains Front And Centre

Although the DCB has been put on hold, the Ministry of Corporate Affairs is commissioning a comprehensive market study, involving consultations with other ministries such as the Ministry of Electronics and Information Technology and extensive engagement with industry stakeholders, before coming up with a fresh version of the legislation. Therefore, while the status of DCB remains unclear, the digital sector will continue to be a priority, both for enforcement as well as merger control cases.

Energising Open Offer Strategies

Pursuant to legislative amendments, acquirers enjoy a derogation from standstill obligations for open offers and other on-market purchases, provided a notification form is filed within 30 days of the acquisition. The CCI's approval of the first transaction under the open offers and on-market purchases provisions signals that investors may now effectively capitalise on market opportunities.⁷

Fast-Track Or Fact-Check: Green Channel Filings Set To Tighten Up

The Green Channel route (which provides for deemed approval for transactions with no horizontal overlaps or vertical / complementary relationships) has previously been frequently used by acquirers to get expedited approvals. The green channel filing is a 'trust based' process, with the CCI relying on the parties' representations that the criteria to benefit from the green channel route are satisfied.

However, recently the CCI imposed a penalty for an incorrect Green Channel filing, after finding vertical and complementary overlaps that rendered the transaction ineligible for deemed approval.⁸ This provides a clear signal to the market that investors must conduct rigorous due diligence to ensure that all the criteria for green channel approval are met. It also underscores the need to undertake substantive pre-filing consultations (PFCs), although these are non-binding, to ensure that the CCI agrees that the Green Channel route is available.

From Probe To Promise: Closing Cases With Commitments And Settlements

While the commitments and settlements framework came into force in 2024, in 2025 the CCI issued its first settlement order,⁹ and also invited public comments on a set of proposed commitments.¹⁰

The enforcement of the commitments and settlements framework has been considered as a positive development which would assist the CCI in facilitating market corrections more effectively and expeditiously, and separately, offering entities under investigation an opportunity to avoid lengthy and costly litigation. Further, given the commitment orders and the settlement orders are not appealable, we anticipate that such orders could also lead to expedited proceedings for compensation claims.

In The Dock: Judicial Scrutiny Of The CCI's Investigative Powers

There are various challenges in the Supreme Court and High Courts in relation to the CCI's powers to cross-examine witnesses, issue summons, conduct search and seizure operations, and the presence of advocates during depositions. The outcomes of these challenges are likely to shape the CCI's approach to investigations and enforcement and will hopefully serve as crucial safeguards for business.

⁷ *Abu Dhabi National Oil Company P.J.S.C. and Others*, CCI, Combination Registration No. C-2024/11/1204 (10 December 2024).

⁸ *CA Plume Investments and Others*, CCI, Combination Registration No. C-2023/10/1066 (26 June 2025).

⁹ *Kshtiz Arya and Another v. Google LLC and Others*, CCI, Case No. 19 of 2020 (21 April 2025).

¹⁰ *Winzo Games Pvt. Ltd. v. Google LLC and Ors.*, CCI, Case No. 42 of 2022 (28 November 2024).

10 Indian Competition Law Judgments That Mattered

By Naval Satarawala Chopra, Rohan Arora, Shivek Sahai Endlaw, Saachi Kale and Radhika Singhal¹

Indian competition law continued to mature in 2025, with courts playing a pivotal role in defining enforcement boundaries and providing doctrinal clarity. Courts and the Competition Commission of India (CCI) answered complex questions arising from digital markets, enforcement standards, and the evolving interface between sectoral regulation and antitrust law. Several decisions clarified the scope of the CCI's powers, refined substantive competition law principles, and signalled the judiciary's approach to procedural fairness.

The judgments summarized below shaped the trajectory of competition law enforcement and offer important guidance for businesses, regulators and practitioners alike.

Competition Commission Of India v. Schott Glass India Pvt Ltd & Another, Supreme Court

In one of the most consequential competition law judgments of the year, the Supreme Court of India in *Schott Glass* delivered a pointed critique of over-expansive and procedurally deficient

¹ Naval Satarawala Chopra and Rohan Arora, Partners, Shivek Sahai Endlaw, Senior Associate, and Saachi Kale and Radhika Singhal, Associates, Shardul Amarchand Mangaldas & Co. The views expressed in this article are personal.

competition law enforcement, while also clarifying the substantive standards applicable to rebate and pricing practices.² The Supreme Court held that the volume-based rebates and functional discounts offered by Schott were neutral, non-discriminatory, and efficiency-justified, and that there was no evidence to demonstrate that these practices resulted in foreclosure or throttling of output so as to attract liability under Section 4(2)(b)(i) of the Competition Act, 2002 (*Competition Act*). In doing so, the Supreme Court reaffirmed that a finding of abuse of dominance must rest on a robust effects-based analysis, rather than on assumptions drawn from the mere existence of rebates or market position.

Importantly, this was also the first instance of the Supreme Court setting out the test to establish an allegation of margin squeeze in the Indian context. Rejecting the allegation of margin squeeze, the Supreme Court noted first, that Schott was not active in the downstream market; second, that the wholesale-to-retail price spread was sufficient to permit an equally efficient competitor to earn sustainable margins; and third, that there was no evidence of competitive harm, including foreclosure. These findings underscored the Supreme Court's insistence on "hard" economic evidence, particularly in complex pricing cases.

Importantly, the Supreme Court noted that the CCI had drawn adverse inferences based on uncorroborated testimony and that the procedural defects arising from the denial of cross-examination to Schott were of a nature that could, in themselves, have warranted dismissal of the complaint. By proceeding on unverified assertions, the CCI denied itself the evidentiary foundation necessary for a legally sustainable determination, inconsistent with the principles of natural justice. In light of this, the Supreme Court also criticised the CCI's selective reliance on evidence, cautioning against "cherry-picking" material supportive of a contravention while disregarding exculpatory data and commercial justifications.

From an enforcement perspective, the judgment reflects clear judicial discomfort with "heavy-handed", outcome-driven intervention and penalty imposition divorced from rigorous analysis. For practitioners, *Schott Glass* reinforces the importance of challenging form-based theories of harm, pressing for effects-oriented economic assessment, and insisting on procedural safeguards such as cross-examination where disputed facts are central to the case.

Independent Sugar Corporation Ltd. v. Girish Sriram Juneja & Others, Supreme Court

In *Independent Sugar*, the Supreme Court reaffirmed the mandatory and *ex ante* nature of CCI's approval in combination review, including for transactions arising out of insolvency proceedings.³ The Supreme Court held that approval of a resolution plan by the Committee of Creditors (CoC) without prior CCI clearance was legally unsustainable, resulting in the invalidation of the approved resolution plan. The

decision underscores that merger control under the Competition Act is a substantive statutory requirement, not a post-facto or curable procedural step.

The Supreme Court emphasised the CCI's role as the sole authority competent to assess competitive effects and impose modifications to address competition concerns. It observed that prior CCI approval ensures that any competition-related issues are factored into the CoC's decision-making, and that allowing commercial approvals to precede competition scrutiny would undermine the effectiveness of *ex ante* merger control.

For transaction counsels, the takeaway is unambiguous: failure to obtain timely CCI approval can be fatal to the transaction itself. The decision signals that deal certainty, especially in distressed or time-sensitive acquisitions, depends on early and rigorous engagement with the CCI.

Competition Commission Of India v. Kerala Film Exhibitors Federation & Others, Supreme Court

In *Kerala Film Exhibitors*, the Supreme Court addressed the scope of procedural fairness in penalty proceedings, balancing the right to be heard against the need for time-bound enforcement.⁴ The case arose from findings that the Kerala Film Exhibitors Federation (KFEF) and its office bearers entered into an anti-competitive agreement by threatening film distributors with a boycott if they supplied films to a competing theatre. The CCI found a contravention of Section 3 of the Competition Act and imposed penalties and directions on both the association and its office bearers.

While the erstwhile Competition Appellate Tribunal upheld the findings on merits, it set aside the penalties imposed on the office bearers on the ground that no separate show cause notice was issued to them prior to the imposition of penalties under Sections 27 and 48 of the Competition Act. The Supreme Court reversed this finding and restored the CCI's order, holding that under the statutory scheme prevailing prior to the 2023 amendments, forwarding the Director General's (DG) report to the parties and calling for objections satisfied the notice requirement where the CCI agreed with the DG's findings and proposed no further inquiry. In such cases, a separate notice is not mandatory before imposing penalties, including personal liability under Section 48 of the Competition Act.

At the same time, the Supreme Court drew an important procedural distinction - where the DG finds no contravention, but the CCI disagrees and proceeds on the basis of further inquiry or supplementary material, the CCI must issue a specific notice identifying the points of disagreement. For practitioners, the decision provides much-needed certainty on notice requirements in penalty proceedings, particularly in cases involving liability of office bearers.

² *Competition Commission of India v. Schott Glass India Pvt. Ltd. & Anr.*, Supreme Court, 2025 INSC 668 (13 May 2025).

³ *Independent Sugar Corporation Ltd. v. Girish Sriram Juneja & Ors.*, Supreme Court, 2025 INSC 124 (29 January 2025).

⁴ *Competition Commission of India v. Kerala Film Exhibitors Federation & Ors.*, Supreme Court, 2025 INSC 1167 (26 September 2025).

Competition Commission Of India v. Monsanto Holdings Private Limited & Others, Supreme Court

In *Monsanto*, the Supreme Court declined to interfere with the Delhi High Court's decision that the CCI does not have jurisdiction to consider disputes related to patents as that authority lies solely with the Controller of Patents under the Patents Act, 1970.⁵ The Delhi High Court quashed the CCI's proceedings on the ground that challenges to patent licensing terms, earlier raised by licensees before the CCI, could not be pursued under the Competition Act, effectively excluding the CCI from scrutinising such licensing arrangements.⁶ Additionally, the Delhi High Court observed that the private settlement between the original informant and the patent holder had eroded the very substratum of the CCI's proceedings.

The Supreme Court disposed of the appeals leaving the questions of law open. One factor noted in disposing of the appeal was that the original informants had entered into private settlements and no longer sought continuation of the proceedings.

By keeping the questions of law open, the Supreme Court preserved the possibility of future challenges.

Whatsapp LLC & Another v. Competition Commission Of India & Others, NCLAT

In *WhatsApp*, the National Company Law Appellate Tribunal (NCLAT) partially allowed the appeals filed by Meta and WhatsApp against the CCI's order concerning WhatsApp's 2021 update to its Terms of Service and Privacy Policy.⁷ A central issue before the NCLAT was whether the CCI had jurisdiction to examine data-sharing practices under the Competition Act in light of parallel privacy and data-protection frameworks and ongoing proceedings before constitutional courts.

The NCLAT held that competition law and data-protection law operate in distinct but complementary spheres, and that the CCI is entitled to examine data-sharing practices insofar as they have competitive implications. The NCLAT, however, set aside the CCI's finding of anti-competitive leveraging under Section 4(2)(e) of the Competition Act and the ban on user data sharing with other Meta entities for advertising purposes. The NCLAT upheld the remainder of the CCI's order, including the other remedies and penalty of INR 213.14 crore imposed on WhatsApp and Meta.

The NCLAT's decision clarifies that the CCI's jurisdiction is not ousted merely because the impugned conduct involves issues of data collection or privacy, and that competition law may operate alongside privacy and data-protection regimes.

WhatsApp and Meta have preferred an appeal against the NCLAT's decision which is pending before the Supreme Court.

JioStar India Private Limited v. Competition Commission Of India & Others, Kerala High Court

In *JioStar*, the Division Bench of the Kerala High Court reaffirmed that the CCI's jurisdiction is not ousted merely because the conduct in question arises within the Telecom Regulatory Authority of India's (TRAI) domain.⁸ Dismissing JioStar's appeal, the Kerala High Court upheld the CCI's *prima facie* order under Section 26(1) directing investigation into allegations that JioStar and its group entities abused their dominant position by extending preferential pricing and discounts to a competing distributor.

Rejecting the contention that the TRAI enjoyed exclusive jurisdiction, the Kerala High Court held that the TRAI Act, 1997 does not address anti-competitive conduct such as abuse of dominance or discriminatory pricing, whereas the Competition Act is intended to address market-wide distortions. While TRAI may regulate licensing conditions and sectoral compliance, allegations of abuse of dominance fall squarely within the CCI's remit, and the mere existence of a sectoral regulator does not, by itself, bar competition law scrutiny.

Notably, in addressing the Supreme Court's decision in *Bharti Airtel*⁹ (which held that the CCI should await TRAI's findings on facts and whether the said conduct appears to be anti-competitive prior to exercising its jurisdiction and initiating an investigation), the Kerala High Court clarified that *Bharti Airtel* does not lay down a blanket principle of sectoral primacy. Instead, *Bharti Airtel* was confined to its facts, where technical and regulatory issues required initial determination by the sectoral regulator. In contrast, the allegations against JioStar concerned questions of competitive conduct, not regulatory interpretation.

No appeal has been filed against this decision on the date of publishing this article.

Asian Paints Limited v. Competition Commission Of India & Another, Bombay High Court

In *Asian Paints*, the Bombay High Court dismissed Asian Paints' challenge to the CCI's *prima facie* order under Section 26(1), and in doing so clarified the scope and operation of newly introduced Section 26(2A) of the Competition Act.¹⁰ Asian Paints argued that because the CCI had previously found no abuse of dominance in an earlier case based on similar allegations, the CCI was jurisdictionally barred from proceeding with the subsequent information. The Bombay High Court rejected this contention, holding that Section 26(2A) is an enabling provision, not a mandatory bar, permitting the CCI to close a matter where the same or substantially similar facts and issues have already been decided, but not obliging it to do so.

5 *Competition Commission of India v. Monsanto Holdings Private Limited & Ors.*, Supreme Court, Record of Proceedings, SLP(C) No.25026/2023 (2 September 2025).

6 *Telefonaktiebolaget LM Ericsson (Publ) v. Competition Commission of India & Anr.*, Delhi High Court, 2023:DHC:4783-DB (13 July 2023).

7 *WhatsApp LLC & Anr. v. Competition Commission of India & Ors.*, NCLAT, Competition Appeal Nos. 1 and 2 of 2025, NCLAT (4 November 2025).

8 *JioStar India Private Limited v. Competition Commission of India & Ors.*, Kerala High Court, 2025:KER:93252 (3 December 2025).

9 *Competition Commission of India v. Bharti Airtel Limited & Ors.*, Supreme Court, 2018 INSC 1154 (5 December 2018).

10 *Asian Paints Limited v. Competition Commission of India & Anr.*, Bombay High Court, 2025:BHC-OS:15008-DB (11 September 2025).

The Bombay High Court further held that where the CCI elects to proceed with an investigation and does not close the matter under Sections 26(2) or 26(2A), it is not required to separately record reasons for the non-applicability of Section 26(2A). The decision reiterates that the formation of a *prima facie* view under Section 26(1) is administrative in nature, and that the existence of a prior closure does not, by itself, preclude the CCI from examining fresh information, where the allegations, market context, or statutory provisions invoked differ.

For businesses, this decision underscores that prior findings do not guarantee immunity from future scrutiny.

Asian Paints appealed this decision before the Supreme Court but subsequently withdrew the appeal.

Alphabet Inc. & Others v. Competition Commission of India & Another, NCLAT

In the *Google Play Store* case, the NCLAT largely upheld the CCI's 2022 finding that Google had abused its dominant position by mandating the exclusive use of the Google Play Billing System (GPBS) for app and in-app purchases on Android.¹¹ The CCI found Google dominant in the markets for licensable mobile operating systems and app stores for Android, and concluded that Google's conduct i.e., forcing developers to use GPBS, discouraging rival Unified Payments Interface (UPI) based payment apps through technical design choices, and exempting its own apps such as YouTube from GPBS resulted in discriminatory and exclusionary effects.

On appeal, while the NCLAT disagreed with certain aspects of the CCI's reasoning, it upheld the core findings of abuse, emphasising the anti-competitive effects of Google's conduct. It affirmed that Google imposed discriminatory conditions in violation of Section 4(2)(a)(i) by mandating GPBS and had leveraged its dominance in the Android OS and app store markets to protect and strengthen its position in the market for UPI-enabled digital payment apps, amounting to a violation of Section 4(2)(e). The NCLAT's analysis moved away from form-based presumptions and instead focused on foreclosure risks, reduced choice for developers and users, and the competitive disadvantage imposed on rival payment service providers.

The NCLAT finally upheld directions requiring Google to allow third-party billing, prohibit anti-steering restrictions, ensure unhindered in-app access to developers' features and services, and prevent discrimination against UPI-based payment apps relative to Google's own offerings, while setting aside broader data-related and transparency remedies that were not sufficiently tethered to the established violations. This decision reinforces an important principle of *ex post* competition enforcement that remedies must be closely aligned with the specific conduct and competitive harm proved on record.

An appeal against this decision is currently pending before the Supreme Court.

Air Works India (Engineering) Private Limited v. GMR Hyderabad International Airport Limited & Another, CCI

In *Air Works*, the CCI closed abuse of dominance proceedings against GMR, holding that the non-renewal of Air Works' licence to operate from airside premises at Rajiv Gandhi International Airport (RGIA) did not amount to exclusionary or abusive conduct under Section 4 of the Competition Act.¹² While the CCI accepted that GMR was dominant in the upstream market for provision of access to airport facilities at RGIA, it emphasised that dominance alone is insufficient and must be accompanied by demonstrable anti-competitive effects in the downstream market for Line Maintenance Services (LMS).

Departing from the DG's conclusions, the CCI undertook a granular effects-based assessment and found no evidence that the impugned conduct resulted in foreclosure, denial of market access, or leveraging in favour of GMR's subsidiary. The CCI noted that multiple airlines undertook self-line maintenance, that third-party LMS providers could operate without dedicated airside space, and that Air Works continued to provide LMS even after non-renewal of the licence. Crucially, the CCI held that speculative concerns around higher prices or reduced output were insufficient, and that the DG had failed to establish actual or likely harm to competition, innovation, or consumer welfare. On the facts, the non-renewal was attributed to operational and expansion-related considerations rather than an exclusionary strategy.

The decision underscores a disciplined approach to competition enforcement, particularly in regulated infrastructure markets. The CCI reiterated that commercial decisions by a dominant enterprise, such as allocation of scarce facilities, will not attract liability unless supported by hard evidence of exclusionary intent and competitive harm. For businesses, especially infrastructure operators and concessionaires, the decision provides comfort that operational and capacity-driven decisions will withstand competition scrutiny if they are transparently justified, non-discriminatory in effect, and do not foreclose competitors from the market.

No appeal has been filed against this decision on the date of publishing this article.

Kshitiz Arya & Another v. Google LLC & Others, CCI

With the introduction of the Competition Commission of India (Settlement) Regulations, 2024, the CCI issued its first settlement order under Section 48A(3) of the Competition Act this year.

In *Kshitiz Arya*, the informants alleged, and the DG investigation confirmed, that Google had abused its dominant position in the markets for licensable operating systems (OSs) for smart TVs and for app stores such as OSs, by mandating pre-installation of Google

11 *Alphabet Inc. & Ors. v. Competition Commission of India & Anr.*, NCLAT, Competition Appeal (AT) No. 04 of 2023 (28 March 2025).

12 *Air Works India (Engineering) Pvt. Ltd. v. GMR Hyderabad International Airport Ltd. & Anr.*, CCI, Case No. 30 of 2019 (15 September 2025).

TV Services through the Television App Distribution Agreement (TADA), making the pre-installation of Google's proprietary apps (in particular, Play Store) a condition for signing the Android Compatibility Commitment (ACC) and tying YouTube with Play Store, to protect Google's position in the market for online video hosting platforms.¹³

Google then submitted a settlement application. Its proposal included: (a) a "New India Agreement" offering a paid, standalone licence for Google Play Store and Google Play Services without pre-installation obligations (the TADA would continue to be offered

alongside the new Agreement); (b) a waiver of the ACC for devices not preloading Google apps; (c) letters reminding Original Equipment Manufacturers of alternative options for OSs; and (d) a five-year duration with annual compliance reports.

The CCI (by majority) accepted the proposal. However, the minority dissent argued that allowing the original TADA to co-exist with the New India Agreement would render the proposal ineffective. From a practitioner's perspective, this order highlights the CCI's willingness to use the newly introduced settlement regime to ensure faster disposal of cases, especially as settlement orders are not appealable.

13 *Kshitiz Arya & Anr. v. Google LLC & Ors.*, CCI, Case No. 19 of 2020 (21 April 2025).

10 Indian Merger Developments That Mattered

By Harman Singh Sandhu, Yaman Verma, Sonali Charak, Apurv Jain, and Khushi Agarwal¹

With more than 135 notifications being filed with the Competition Commission of India (CCI), 2025 was a particularly active period for merger control in India. It was the first full year under the revamped merger control framework introduced in late 2024, and the year witnessed the CCI rigorously applying the revised procedural and substantive standards. The CCI also issued guidance through its non-binding *FAQs on Combinations*, released in May 2025 (*Combination FAQs*), which provided much-needed clarity on critical issues such as the applicability of deal value thresholds and the assessment of control.

Against this backdrop of evolving jurisprudence, this article dissects the defining themes emerging from the CCI's and Indian courts' landmark decisions in 2025 that are set to influence not only the trajectory of the Indian merger control regime but also

the strategies and structures adopted by businesses navigating complex transactions in the years ahead.

Supreme Court Redefines The Nexus Between Competition Law And Insolvency Regime

In a landmark split verdict delivered on 29 January 2025 in the insolvency proceedings of Hindustan National Glass and Industries Ltd. (*HNGIL*), the Supreme Court of India (*Supreme Court*) decisively clarified the interface between the Insolvency and Bankruptcy Code, 2016 (*IBC*) and the Competition Act, 2002 (*Competition Act*).² By a 2:1 majority, the Supreme Court held that CCI approval of a proposed combination must precede the Committee of Creditors' (CoC) approval of a resolution plan, as mandated under the *proviso* to Section 31(4) of the IBC. Rejecting arguments favoring a purposive, post-CoC approval approach, the Supreme Court

¹ Harman Singh Sandhu and Yaman Verma, Partners, Sonali Charak, Principal Associate, Apurv Jain, Senior Associate, and Khushi Agarwal, Associate, Shardul Amarchand Mangaldas & Co. The views expressed in this article are personal.

² *Independent Sugar Corporation Ltd. v. Girish Sriram Juneja & Ors.*, Supreme Court, 2025 INSC 124 (29 January 2025).

adopted a strict literal interpretation of “*prior to*,” emphasizing that deviation could render CoC decisions commercially futile if the CCI subsequently modifies or rejects the combination. The judgment underscores that only resolution plans compliant with all laws “*for the time being in force*” can be placed before the CoC, ensuring that combinations with the potential for an appreciable adverse effect on competition are subject to scrutiny before approval.

In practice, the decision has already had tangible ramifications – to date, the CCI has approved five combination filings arising from the ongoing corporate insolvency resolution process of Jaiprakash Associates Limited.³ The key takeaways for legal practitioners and companies are unambiguous – competition law approval must be integrated into the earliest stages of resolution planning, with careful sequencing and procedural compliance, including active engagement with the target. Failure to do so can result in fatal defects that jeopardize the validity of resolution outcomes.

In the aforesaid background, the Insolvency and Bankruptcy Code (Amendment) Bill, 2025 (*2025 IBC Amendment Bill*) was introduced in the Lok Sabha on 12 August 2025. It proposes to amend the *proviso* to Section 31(4) of the IBC so that a resolution applicant is required to obtain the prior approval of the CCI before the resolution plan is submitted to the Adjudicating Authority (and not the CoC) for its approval.⁴

Expanded Contours Of Overlap Assessment

One of the most consequential developments in Indian merger control in 2025 has been the CCI’s recalibration of the analytical framework governing the assessment of horizontal overlaps as well as vertical or complementary relationships, whether existing or potential, between the parties’ business activities, from the earlier, more entity-specific approach towards a broader, Ultimate Controlling Person (UCP)-centric framework.

Historically, the overlap assessment exercise was undertaken on a relatively narrow and fragmented basis. On the target side, overlaps were examined only with reference to the target entity itself and those of its downstream entities that crossed the prescribed *Old Materiality Thresholds*.⁵ On the acquirer side, the scope of analysis extended to: (i) the acquirer; (ii) entities upstream in the ownership chain of the acquirer that satisfied the Old Materiality Thresholds; and (iii) entities controlled by the controlling entity of the acquirer, as well as the acquirer itself, where such thresholds were met.

In a major overhaul, codified under Rule 3 of the Competition (Criteria of Combination) Rules, 2024 and, further clarified under the Combination FAQs, the analytical focus has decisively shifted to the UCP, with overlaps required to be assessed across the entire economic group attributable to such UCP, subject to the *Revised Materiality Thresholds*.⁶ Specifically, the CCI now requires parties to consider overlaps between: (i) the acquirer, together with its UCP, the controlled entities of the UCP, affiliates of the UCP, affiliates of controlled entities of the UCP, and controlled entities of affiliates of the UCP, on one hand; and (ii) the target, together with its downstream controlled entities, its affiliates, affiliates of its controlled entities, and controlled entities of its affiliates, on the other hand. As a result, combinations that may have qualified for streamlined review earlier, particularly under the Green Channel Route (*defined below*), now warrant substantially more granular diligence.

Importantly, although this UCP-led framework has been discussed in the Combination FAQs under the specific rubric of “*management fund activities*” and, on its face, appeared to be tailored to investment fund structures such as private equity funds, sovereign wealth funds and pension funds, the CCI’s decisional practice in 2025 indicates that this approach is not confined to financial investors alone. In practice, the CCI has applied the same uniformly across investor categories, including strategic acquirers. For instance, in a transaction involving Allison Transmission Holdings, Inc.’s acquisition of sole control over Dana Incorporated’s off-highway business, the overlap analysis extended beyond the immediate transacting parties and their affiliates to further include the business activities of the relevant controlled entities of the affiliates of the Allison group (i.e., the acquirer group), illustrating the breadth of the UCP-centric approach.⁷

CCI Issues First Conditional Merger Approval In Phase II Since 2019

In its first approval following a Phase II investigation since 2019, the CCI approved the acquisition of 100% of the shareholding of AAM India Manufacturing Private Limited (AAM) by Bharat Forge Limited (BFL), subject to extensive behavioral remedies.⁸

In this case, the CCI identified substantial horizontal overlaps between AAM and certain BFL joint ventures (*BFL JVs*) in the broader market for axles for commercial vehicles and the narrower market

3 Dalmia Cement (Bharat) Limited / Jaiprakash Associates Limited, CCI, Combination Registration No. C-2025/06/1295 (5 August 2025); Adani Enterprises Limited and Adani Infrastructure and Developers Private Limited / Jaiprakash Associates Limited, CCI, Combination Registration No. C-2025/07/1302 (26 August 2025); Jindal Power Limited / Jaiprakash Associates Limited, CCI, Combination Registration No. C-2025/08/1318 (30 September 2025); PNC Infratech Limited / Jaiprakash Associates Limited, CCI, Combination Registration No. C-2025/08/1316 (16 September 2025); and Vedanta Limited / Jaiprakash Associates Limited, CCI, Combination Registration No. C-2025/09/1328 (14 October 2025).

4 The 2025 IBC Amendment Bill was referred to a Select Committee of the Lok Sabha on 12 August 2025, and the Report of the Select Committee was presented to the Lok Sabha on 17 December 2025.

5 All entities where an enterprise holds: (i) direct or indirect shareholding of 10% or more; or (ii) a right or ability to exercise any right (including any advantage of commercial nature with any of the party or its affiliates) that is not available to an ordinary shareholder; or (iii) a right or ability to nominate a director or observer in such entity(s) (*Old Materiality Thresholds*).

6 All entities where an enterprise holds: (i) shareholding or voting rights of 10% or more; or (ii) right or ability to have a representation on the board of directors of the entity either as a director or as an observer; or (iii) the right or ability to access commercially sensitive information of the entity (*Revised Materiality Thresholds*).

7 Allison Transmission Holdings, Inc. / Dana Incorporated’s off-highway business, CCI, Combination Registration No. C-2025/08/1312 (8 September 2025).

8 Bharat Forge Limited / AAM India Manufacturing Corporation Private Limited, CCI, Combination Registration No.C-2024/10/1197 (22 April 2025).

for axles for medium and heavy commercial vehicles. Key factors influencing the competitive assessment included high combined market shares of the parties, frequent competition for the original equipment manufacturer customers, and significant barriers to entry, including extended product development timelines and sunk investments. Following a show-cause notice, BFL proposed voluntary commitments, which were refined during the detailed Phase II investigation.

Approval was ultimately granted on the condition of a comprehensive seven-year hold-separate arrangement, ensuring competitive independence between AAM and BFL JVs. The remedy mandates separate management, branding, sales teams, pricing strategies, and bidding processes, with a strict prohibition on joint marketing or coordinated customer engagement. To safeguard commercially sensitive information, the order prescribes IT ring-fencing, robust non-disclosure agreements, periodic compliance audits, and structured competition compliance programmes overseen by an appointed compliance officer. Additional obligations include neutralizing conflicting JV rights and formally notifying customers and vendors, with compliance monitored by an independent agency reporting to the CCI.

This order is significant not only for its outcome, but also for the depth of the remedial architecture and, the CCI's proactive stakeholder engagement (both prior to forming its *prima facie* opinion and during the Phase II public consultation). It also reflects the CCI's willingness to clear transactions raising serious competition concerns through carefully calibrated, long-term behavioral commitments rather than structural remedies.

Consistent Scrutiny Of Deemed Approvals Under The Green Channel Route

The green channel framework, introduced by the CCI in 2018, enables deemed approval of combinations where there are no horizontal, vertical, or complementary overlaps between the business activities of the parties (*Green Channel Route*). While such transactions are formally cleared on the date of filing without an *ex-ante* review, the CCI has consistently emphasized that these filings remain subject to *post-clearance* scrutiny, to verify both the accuracy of declarations and continued eligibility for this expedited route.

This approach was reaffirmed in the CCI's recent order concerning the acquisition of up to 32.77% in Quest Global Services Pte. Ltd. (*Quest*) by CA Plume Investments and Bequest Inc. (*Acquirers*), both affiliated with the Carlyle Group.⁹ The combination was notified to the CCI under the Green Channel Route on 23 October 2023 and was deemed approved on the same day. During its *post-clearance* review, the CCI identified potential horizontal, vertical, and complementary linkages between certain portfolio entities of

the parties and sought clarifications. While the Acquirers' response indicated no horizontal overlaps, the CCI formed a *prima facie* view that the offerings of the parties appeared complementary, notwithstanding counter submissions that Quest's product engineering and ER&D services were not "essential" inputs for customers of the Acquirers' entities.

In response to a show cause notice issued by the CCI, the Acquirers ultimately acknowledged inadvertent lapses in their initial overlap assessment, tendered an unconditional apology, and offered to re-file the notice in the appropriate form, emphasizing the absence of any intent to misrepresent and the lack of competitive harm. Finally, the CCI held that the transaction did not qualify for the Green Channel Route, declared the deemed approval void *ab initio*, and found a contravention of Sections 43A and 44 of the Competition Act. However, considering the mitigating factors, including voluntary disclosure and cooperation, the CCI imposed a penalty of only INR 4 lakhs and directed the Acquirers to file a fresh notification.

The order is significant in reinforcing the high compliance threshold applicable to filings under the Green Channel Route, particularly in specialized and innovation-driven sectors, while also demonstrating the CCI's willingness to calibrate penalties based on *bona fide* conduct and corrective engagement by notifying parties.

CCI's Zero-Tolerance Enforcement Posture In Gun-Jumping Cases

The merger control regime in India is a mandatory and suspensory regime. Any transaction that is notifiable to the CCI cannot be consummated (in whole or in part, in form or in substance) until CCI approval is obtained. In 2025, the CCI continued to impose penalties for violation of standstill obligations and premature consummation of notifiable transactions.

For instance, the CCI imposed a penalty of INR 40 lakhs on Goldman Sachs (India) Alternative Investment Management Private Limited (*Goldman Sachs*), for failing to notify its subscription to optionally convertible debentures issued by Biocon Biologics Limited (*Biocon*).¹⁰ Although the resulting equity exposure was limited to 3.81%, the CCI held that the transaction was notifiable due to the rights acquired by Goldman Sachs, in particular, access to the minutes of the board meetings of Biocon, which would allow Goldman Sachs access to all commercially sensitive information discussed during Biocon's board meetings. Additionally, given the strategic nature of the rights being acquired, the CCI did not accept Goldman Sachs' contention that the acquisition was made to benefit from short term price movements (i.e., in the ordinary course of business).

In a separate order dated 31 July 2025, the CCI imposed a penalty of INR 20 lakhs on Manipal Health Systems Private Limited (*Manipal*) for part-consummating a notifiable transaction prior to filing, in

⁹ CA Plume Investments and Bequest Inc. / Quest Global Services Pte. Ltd., CCI, Combination Registration No. C-2023/10/1066 (26 June 2025).

¹⁰ Goldman Sachs (India) Alternative Investment Management Private Limited, Order under Section 43A of the Competition Act, Ref. No.: M&A/10/2020/01/CD (14 January 2025).

connection with its acquisition of shares in Aakash Educational Services Limited (*Aakash*).¹¹ The transaction involved the conversion of Aakash's debentures into 39.61% equity on 22 January 2024, whereas the notification to the CCI was filed only on 9 May 2024. While Manipal argued that the conversion was triggered by Aakash's default and undertaken to preserve the company as a going concern, the CCI rejected this defense, holding that commercial exigency does not override statutory standstill obligations.

Taken together, these decisions underscore the CCI's zero-tolerance stance on gun-jumping. Parties should conduct early and granular merger control assessments, particularly in structured finance and hybrid investment transactions.

Reaffirming CCI's Merger Control Jurisdiction In Regulated Sectors

The jurisdictional interface between the CCI and sectoral regulators (such as the Telecom Regulatory Authority of India¹² and the Controller of Patents¹³) has long been a contested issue in Indian competition law enforcement. This was brought sharply into focus in the context of merger control when the CCI's order dated 14 January 2025 examined Torrent Power Limited's (*Torrent*) acquisition of a 51% shareholding in Dadar and Nagar Haveli and Daman and Diu Power Distribution Corporation Limited – a transaction consummated without prior notification to the CCI.¹⁴

In response to a show cause notice issued by the CCI, *Torrent* argued that while the transaction was notifiable to the CCI, it fell exclusively within the regulatory ambit of the Electricity Act, 2003 (*Electricity Act*), asserting that: (i) Section 60 of the Electricity Act empowered the Joint Electricity Regulatory Commission to address combinations and anti-competitive conduct arising out of the Electricity Act; and (ii) as a later and special statute, the Electricity Act prevailed over the Competition Act.

Rejecting these submissions, the CCI reaffirmed that the Competition Act and the Electricity Act are special statutes with distinct and complementary objectives, operating in mutually exclusive regulatory domains. While the Electricity Act governs sector-specific matters such as tariffs, licensing, and technical standards, the Competition Act establishes a comprehensive and cross-sectoral framework for regulating combinations based on their effects on competition, including in regulated industries such as electricity distribution. The CCI accordingly held that *Torrent* had failed to comply with its mandatory notification obligation under the Competition Act.

The order is significant in unequivocally reaffirming that mergers and acquisitions in regulated industries such as electricity distribution, banking, or telecommunications must include merger control clearance as an integral part of transaction planning. Any attempt to rely solely on sectoral approvals risks *post-facto* invalidation and/or penalties by the CCI.

Penalties In Cases Involving Structural Deviations To Approved Transaction Structures

Approval from the CCI does not mark the end of merger control oversight. Even after clearance, a transaction, when consummated, must replicate the structure placed before and approved by the CCI. In 2025, the CCI continued its firm stance against post-approval deviations, (i) imposing penalties in a case involving, *inter alia*, Matrix Pharma Private Limited;¹⁵ and (ii) directing parties to file fresh notifications in a case involving the Maini group,¹⁶ where the implemented transaction diverged from the approved framework.

In such cases, the post-clearance material deviations included, *inter alia*, (i) changes to the identity or role of the acquirer(s); (ii) introduction of additional inter-connected steps (such as demergers or revised funding arrangements); (iii) entry of new investors / co-acquirers; (iv) internal restructurings or alterations in intermediate holding structures; and (v) revisions to consideration mechanisms.

The clear takeaway is that CCI approval is both transaction-specific and structure-specific. Any post-approval change, however incremental, commercially expedient, or driven by implementation constraints, must therefore be carefully assessed to determine whether a fresh notification is required.

Substance Over Form In Intra-Group Transfers Of Existing Shareholding

Rule 3 of the Competition (Criteria of Exemption of Combination) Rules, 2024 (*Exemption Rules*) provides an exemption for incremental minority acquisitions, where the acquirer (or its group entities) holds less than 25% shareholding both before and after the transaction, subject to: (i) the absence of control, board representation, or access to commercially sensitive information; and (ii) compliance with limits on incremental acquisitions where horizontal overlaps, or vertical / complementary linkages exist (*Rule 3 Exemption*). While conceptually straightforward, Rule 3 Exemption's reference to "*additional*" shares or voting rights creates interpretative uncertainty for intra-group restructurings, which involve mere transfers of existing shareholding within a

11 Proceedings under Section 43A of the Competition Act, 2002 in relation to notice filed under sub-section (2) of Section 6 of the Act by Manipal Health Systems Private Limited and MEMG Family Office LLP, CCI, Combination Registration No. C-2024/05/1142 (31 July 2025).

12 *CCI v. Bharti Airtel Limited*, Supreme Court, Civil Appeal No. 11843 of 2018 (18 July 2018).

13 *Telefonaktiebolaget LM Ericsson (Publ) v. CCI*, Delhi High Court, LPA 247/2016 (13 July 2023).

14 *Torrent Power Limited*, Order under Section 43A of the Competition Act (14 January 2025).

15 Proceedings under section 43A of the Competition Act, 2002 (Act) in relation to notice filed under sub-section (2) of section 6 of the Act by Matrix Pharma Private Limited, Mudhra Labs Private Limited, Mudhra Lifesciences Private Limited, Mudhra Pharmacorp LLP, Kotak Strategic Situations India Fund II - a fund managed by Kotak Alternate Asset Managers Limited, and Kingsman Wealth Fund PCC Aurisse Special Opportunities Fund, CCI, Combination Registration No. C-2024/04/1139 (7 March 2025).

16 Combination Registration No. C-2025/04/1277, CCI (27 May 2025).

group without any incremental acquisition or material change in competitive positioning.

This uncertainty was addressed by the CCI in its order dated 8 September 2025, where a notice was filed by Kedaara II Continuation Fund as a “*matter of technical compliance*” (given the absence of an explicit exemption for intra-group restructurings under the Exemption Rules) in relation to the proposed acquisition of a 1.64% equity shareholding in Lenskart Solutions Limited from Kedaara Norfolk Holdings Limited and Kedaara Capital Fund II LLP, both belonging to the Kedaara Group.¹⁷

Rejecting such a narrow and literal interpretation of the Rule 3 Exemption, the CCI emphasized that such analysis must align with the scheme and spirit of the Competition Act and Exemption Rules. Where all the conditions contained in Rule 3 Exemption are otherwise fulfilled, intra-group transfers will be eligible to

claim such an exemption. By adopting this substance-over-form, effects-oriented approach, the CCI provided critical certainty for investment fund restructurings, signaling a pragmatic methodology in merger control that prioritizes competitive impact over technical formalities.

Looking Ahead: What This Means For Dealmakers

The merger control landscape that emerged in 2025 demands a fundamental shift in how transactions involving India are planned and executed. CCI’s approval can no longer be treated as a downstream regulatory formality; it is now a front-end strategic consideration that directly affects deal sequencing, risk allocation and certainty of outcomes. The clear lesson is that early, transaction-specific competition law inputs, aligned with commercial objectives and implementation realities, are indispensable to preserve value and ensure that complex deals close as intended in an increasingly exacting regulatory environment.

¹⁷ Kedaara II Continuation Fund / Lenskart Solutions Limited, CCI, Combination Registration No. C-2025/08/1311 (8 September 2025).

No Poach Agreements: Antitrust's Turn to Intervene in India?

By Yaman Verma, Supritha Prodaturi and Raveena Kumari Sethia¹

In recent years, no poach arrangements have gained significant traction from both antitrust practitioners and labour economists. For example, as recently as May 2025, the European Commission (EC) imposed a fine of EUR 329 million on food delivery firms Delivery Hero and Glovo for participating in a cartel in the online

food delivery sector and engaging in anti-competitive conduct by agreeing not to poach each other's employees.

These arrangements, involving agreements between competing employers not to solicit or hire each other's employees, are

¹ Yaman Verma and Supritha Prodaturi, Partners and Raveena Kumari Sethia, Principal Associate, Shardul Amarchand Mangaldas & Co. The views expressed here are personal.

considered to run afoul of competition law since they effectively allocate the labour market amongst themselves. Regulators around the world have taken cognizance of such practices - some have initiated formal probes and others have addressed the issue through policy instruments.²

From an Indian competition law perspective, while such no poach arrangements are publicly known to exist (for example, major private sector banks are understood to have also entered into an informal 'no poach' arrangement where they agreed not to hire candidates with less than 2 years of experience from a rival, owing to high attrition rates),³ they have not been examined by the Indian competition authority i.e., Competition Commission of India (CCI).

Against this backdrop, this brief piece examines the incentives driving no poach arrangements, their impact on market dynamics, considerations for antitrust regulators and whether such arrangements should be an enforcement priority for the CCI.

Weighing The Trade-Offs: Cost-Benefit Of No Poach Agreements

The relationship between demand and supply determines the price, output and quality of any product or service. In labour markets, this principle translates into bargaining and negotiations between an employer and employee to fix salaries, responsibilities, growth trajectories, etc. From the employee's perspective, a comparison between the current potential employer's offer conditions and those of its competitors plays a crucial role in making a final decision. From the employer's perspective, the ability to hire an employee working for a competitor may mean paying lower wages or recruiting pre-trained talent at a lesser cost.⁴ Thus, there are net gains on either side to follow free market principles in terms of hiring / employment decisions as well.

That said, despite the logical arguments against stifling free market hiring / employment conditions, firms may be incentivized to enter into no poach arrangements based on a strategy to cut losses rather than taking risks to maximize gains. Ordinarily, firms would want to poach a rival firm's employees for better efficiency as outlined above. However, in the long-term, such constant poaching between rival firms may result in driving up employee wages, and lead to firms spending time and resources to train and upskill new employees within short cycles, leading to higher costs. They also help in protecting investment in training,⁵ preserving trade secrets and proprietary information,⁶ and reducing labour costs from the

perspective of employers.⁷ Therefore, no poach agreements result in a lower risk alternative bargain ensuring consistency across the industry even at the cost of sacrificing some degree of efficiency.

Impact Of No Poach Arrangements

As stated above, firms have an incentive to hire more employees if it is profitable to expand output. Further, firms have an incentive to poach employees from rival firms if these employees are likely to reduce costs and result in better profits. In addition, more productive employees are more likely to search for new positions, because they stand to gain more from switching. This results in benefits such as reduced cost of operations, better output and greater innovation for the industry at large. These are fundamental considerations for competition / antitrust law globally as they eventually result in better evolving markets and products for consumers.

Therefore, considering labour / employee quality as a parameter for competition, no poach agreements may prevent the efficient allocation of employees to firms and consequently, result in stagnant wages and working conditions for employees who may be unable to switch to a better alternative. For employers, no poach agreements may result in less-than-optimal efficiency, and eventually, stagnation of innovation and development.

Empirical literature also confirms these theories.⁸ For example, a working paper examining the impact of no poach agreements among Silicon Valley firms indicated that such agreements resulted in about a 5% reduction in wages.⁹ In another study, evidence indicated that when such practices were discontinued, there was an increase in opportunities.¹⁰ A study on the Washington Attorney General's No Poach Initiative in 2018 indicated that the companies subject to the initiative reported a 4% increase in wages and 6% increase in job postings.¹¹ Therefore, the concerns surrounding such agreements are not without merit.

Considerations For Antitrust Authorities

No poach agreements bear little to no welfare benefits. They result in artificially: (a) limiting innovation in the market; and (b) sustaining collusive behavior.¹² Both consequences are contrary to the natural forces of demand and supply, which would have otherwise determined employee cross-mobility and payouts. This conflicts with the object and purpose of competition / antitrust laws globally as it leads to worsened innovation and lower quality of products for consumers in the long run. As a result, antitrust regulators have

2 European Commission, *Competition policy brief*, Issue 2 (May 2024).

3 G. Gopakumar and D. Sengupta, *Large private lenders join hands informally to stem attrition tide*, Mint Premium News, India (15 February 2024).

4 P. Déchamps, A. Descamps, F. Arduini, C. Baye and L. Damstra, *Labour markets: a blind spot for competition authorities?*, *Concurrences* (2020).

5 M. Marx and R. Shrestha, *Non-compete agreements, worker effort, and firm competition*, *The Journal of Law and Economics* 63(2), 339-375 (2020).

6 E. Starr, *Employer collusion in the labour market*, *Annual Review of Economics* 11, 479-508 (2019).

7 D. Card and J. DiNardo, *Skill-biased technological change and rising wage inequality: Some problems and puzzles*, *Journal of Labour Economics* 20(4), 733-783 (2002); and Joint Nordic report, *Competition and Labour Markets* (2024).

8 F. Lafontaine, S. Saattvic and M. Slade, *No-Poaching Clauses in Franchise Contracts: Anticompetitive or Efficiency Enhancing?* (13 April 2023).

9 M. Gibson, *Employer Market Power in Silicon Valley*, IZA Discussion Paper No. 14843 (November 2021).

10 B. Callaci, M. Gibson, S. Pinto, M. Steinbaum and M. Walsh, *The Effect of Franchise No-Poaching Restrictions on Worker Earnings*, IZA Discussion Paper No. 16330 (26 July 2023).

11 *ibid*, n 8.

12 *ibid*, n 7.

scope to intervene by characterizing these agreements as 'unfair arrangements' between competitors that lead to an adverse effect on the market. Several regulators have taken cognizance of the impact and either initiated enforcement action or issued guidance notes to address the issue.

For example, in the United States of America, no poach agreements, have been in the spotlight for a while. In 2010, the Department of Justice (DOJ) settled an action involving no poach bilateral agreement setting out internal "companies that are off-limits" and "do not call" lists amongst Silicon Valley tech companies, such as Intel, Apple, Google, etc. Academic literature indicates that such no poach agreements depress stock bonuses and wages resulting in low job satisfaction amongst employees. Since then, the DOJ has initiated criminal proceedings against numerous such arrangements and has also been active in civil cases related to no poach and wage-fixing. On 16 January 2025, the Federal Trade Commission and DOJ jointly issued antitrust guidelines for business activities affecting workers,¹³ reiterating that naked no poach and wage-fixing agreements would be prosecuted criminally as per se offences to the Sherman Act.

In the EU, the Directorate-General for Competition of the EC issued a 3 May 2024 policy brief,¹⁴ which heralds a new focus on wage-fixing and no poach agreements. The policy brief classifies such agreements as restrictions "by object". The brief compares such agreements to buyer cartels, which fall within the scope of Article 101 of the Treaty on the Functioning of the European Union.

Most recently, as mentioned above, in May 2025, in a first, the EC imposed a fine of EUR 329 million on food delivery firms Delivery Hero and Glovo for participating in a cartel in the online food delivery sector and using minority shareholding in a competitor as a means to influence conduct (for 2 years prior to Delivery Hero's sole acquisition of Glovo).¹⁵ The EC noted that these competitors had engaged in anti-competitive conduct by agreeing not to poach each other's employees, exchanging commercially sensitive information and allocating geographical markets in the European Economic Area (EEA). Both the companies admitted their involvement in the cartel and settled the case. The EC emphasised that such no poach agreements reduce consumer and business partner choice, limit opportunities for employees and, stifle competition and innovation. Earlier, the European Court of Justice (ECJ) labelled FIFA's rules on player transfers and compensation obligations as akin to no poach agreements.¹⁶ While the key issue there was not an agreement between competitors, the effect of the arrangement was restricting players' mobility which distorted market forces.

Several national regulators in Europe have also taken note of anti-competitive agreements between rivals. For example, in June 2025, the Autorité de la concurrence (i.e., the French Competition Authority (FCA)) fined two anticompetitive no poach agreements involving (a) Ausy with Alten and (b) Expleo with Bertrandt. The FCA uncovered the practices through Ausy's leniency application in April 2018 and dawn raids in November 2018. The FCA imposed fines totalling EUR 29.5 million on Alten, Expleo, and Bertrandt, while Ausy received full immunity as a leniency applicant. The decision reinforced that human resources are a key competitive factor, especially in engineering, tech consulting, and IT services.

In 2025, the Portuguese Competition Authority (AdC) has imposed a fine on three companies of the consulting group Inetum for engaging in anti-competitive practices in the labour market.¹⁷ These companies had entered into bilateral agreements to not recruit or make unsolicited offers to employees of the other company. In 2022, it had penalized companies for having entered into an agreement not to hire players who unilaterally terminated their employment contract while invoking issues caused by the Covid-19 pandemic, calling such agreements restrictions by object.¹⁸ A similar finding was made by the Lithuanian Competition Council in 2022 finding that an agreement between the Lithuanian Association of Real Estate Agencies and 39 of its members not to compete for each other's real estate brokers constituted a restriction by object.¹⁹ Other European countries have also taken enforcement action against no poach agreements including Germany, Spain, Hungary, Croatia, and Greece. Countries like Poland have issued guidance as well.²⁰

Position In India

In India, no poach agreements have not been an enforcement priority for the CCI as yet. Notably, there have been no public statements made by the CCI on whether it considers no poach arrangements as a concern from an antitrust perspective either despite the fact that there have been news reports of companies entering into such arrangements. From an Indian competition law standpoint, non-solicitation / no poach provisions can be considered to be anti-competitive horizontal agreements under section 3(3) of the Competition Act, 2002 as these can be viewed as arrangements between competitors which result in limiting supply of skilled labour in the market.

The CCI made a passing observation with respect to poaching only once, in *Air India Limited (Air India) v. InterGlobe Aviation Limited (Indigo)*,²¹ where Air India alleged that Indigo Airlines poached its trained pilots to avoid training costs, creating a pilot shortage for rivals.

¹³ U.S. Department of Justice and the Federal Trade Commission, *Antitrust Guidelines for Business Activities Affecting Workers* (January 2025).

¹⁴ *ibid*, n 2.

¹⁵ Press Release from the European Commission, *Commission fines Delivery Hero and Glovo €329 million for participation in online food delivery cartel* (2 June 2025).

¹⁶ BCLP, *Lassana Diarra foils FIFA's transfer rules* (21 October 2024).

¹⁷ Press Release from the AdC, *AdC imposes fines Inetum Group for anti-competitive practices in the labour market* (19 February 2025).

¹⁸ OECD, *Competition and Professional Sports – Note by Portugal*, DAF/COMP/WP2/WD(2023)43, Paras 47 and 49 (4 December 2023).

¹⁹ Press Release from the Competition Council of the Republic of Lithuania (Konkurencijos taryba), *Real estate agencies agreed not to compete for clients and employees* (29 December 2022).

²⁰ P. Komorowska-Mrozik, A. Bryńska and K. Biskup (PwC), *Anti-Competitive Agreements in the Polish Labour Market*, Kluwer Competition Law Blog (18 September 2024).

²¹ *Air India Limited v. InterGlobe Aviation Limited*, CCI, Case No. 108 of 2015 (10 February 2016).

However, the CCI dismissed the claim, stating that pilot recruitment by competitors does not raise competition concerns or affect market structure, and is instead an employment law matter. This passing observation, though not about a no poach agreement, remains the only identifiable CCI comment on poaching and serves as a useful reference point.

Even from an employment / contract law perspective, although Section 27 of the Indian Contract Act, 1872 (*Contract Act*) provides that any agreement in restraint of trade is void to that extent that is restrains anyone from exercising any kind of lawful trade, profession, or business, the High Court of Delhi has held that a non-solicitation clause does not amount to a restraint of trade, business or profession and is not hit by Section 27 of the Contract Act as being void *per se*.

In *Wipro Limited v. Beckman Coulter International S.A.*,²² the High Court of Delhi considered the impact of a non-solicitation clause between two companies, which placed a bar on them from “soliciting, inducing or encouraging any employees of the other party to terminate his employment with or to accept employment with any competitor, supplier or customer of the other party”. The Court noted that the clause was “a restriction cast upon the contracting parties and not on the employees... The restriction is put on the petitioner and the respondent and, therefore, has to be viewed more liberally than a restriction in an employer-employee contract. In my view, therefore, the non-solicitation clause does not amount to a restraint of trade, business or profession and would not be hit by Section 27 of the Indian Contract Act, 1872 as being void.” This has been followed in other decisions such as *Embee Software Private Ltd. V. Samir Kumar Shaw and Ors.*²³ Thus, from an employment / contract law perspective, a no poach agreement is not, by itself, in violation of Section 27 of the Contract Act since it does not restrict the rights of any person to seek employment.

No poach agreements can be interpreted as restricting supply, markets, or technical progress (as prohibited under Section 3(3) of the Competition Act, 2002) by shaping the manner in which businesses compete with one another—an issue that clearly falls within the remit of the CCI. Nevertheless, the CCI may be required to

consider established legal principles from contract and employment law, where such agreements are not automatically deemed invalid.

Perhaps, a key aspect for the CCI to consider would be whether there is any room for legitimate no poach agreements – for instance, those limited in scope and duration or to achieve a specific objective that cannot be achieved through less restrictive means (as considered by the European Commission in the *Lithuanian Notaries* case).²⁴

Conclusion

With increasing global regulatory focus on no poach agreements, it may only be a matter of time before the CCI considers no poach arrangements an enforcement priority provided a suitable factual scenario for intervention presents itself. Following the general principle that collusion among competitors results in limitation of efficiencies, there is no reason that such arrangements in labor markets should be considered any differently.

It may also be helpful for the CCI to consider publishing informal guidance on no poach agreements, that may be used as a yardstick for industry participants to ensure that labour markets remain competitive. This may result in strengthening compliance initiatives as well.

In parallel, companies should seek legal counsel before entering into or enforcing no poach clauses and prioritize continuous competition law training sessions to embed compliance within their organizational culture. These steps will help mitigate against legal risks and promote fair, transparent employment practices in line with evolving antitrust norms. Companies should also focus on routine competition compliance trainings that ensure an inculcation of principles of competition law in the corporate culture, which always helps in identifying unaddressed risks and staying on the right side of legal developments. In this context, implementing mandatory codes of conduct for senior executives, similar to the U.S. 2025 Antitrust Guidelines for Workers,²⁵ would be a prudent step. By adopting such measures, companies can better navigate the evolving landscape of competition law and foster a more transparent, compliant, and ethical approach to labour market practices.

²² *Wipro Limited v. Beckman Coulter International S.A.*, Delhi High Court, 2006 (3) ARBLR 118 (Delhi) (11 July 2006).

²³ *Embee Software Private Ltd. v. Samir Kumar Shaw & Ors.*, Calcutta High Court, (2012) 3 CHN 250 (Cal) (19 August 2014).

²⁴ *Lietuvos notary rūmai and Others*, European Commission, Case C-128/21 (18 January 2024) and M. Mustafa Polat, *The Assessment of Labor Market Collusion: EC Policy Brief on Antitrust Issues in Labour Markets*, Kluwer Competition Law Blog (7 May 2024).

²⁵ *ibid*, n 13.



Reshaping 'On-market Purchases' In India: Recent Amendments And Its Implications

By Shweta Shroff Chopra, Rohan Arora, Ritesh Puri
and Khushi Dharewa¹

In 2024, the Government of India (*GoI*) introduced transformative changes to the merger control regime under the Competition Act, 2002 (*Competition Act*). In a welcome move, these reforms mark a pivotal shift, and include streamlining the regulatory process of on-market purchases and aligning it with global best practices. In this article, we explore the evolving landscape of the Competition Commission of India's (*CCI*) scrutiny of on-market purchases (including open offers), challenges faced by investors in the pre-amendment framework and benefits (or hurdles) that the amendments offer to India's M&A landscape.

Prior to the amendment, all on-market purchases (including open offers), which triggered the jurisdictional thresholds and were not otherwise exempt, were subject to the CCI's suspensory regime until the regulator reviewed and approved the transaction. Such on-market purchases could either be standalone transactions or interconnected to a larger set of transactions, and if such transactions were consummated without CCI's approval, the transacting parties would face the risk of significant gun-jumping penalties. The rationale for this suspensory regime was to pre-emptively deter M&A transactions that could distort competition or cause irreversible harm to the free-market business environment.

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For instance, in the case of *CCI vs. Thomas Cook (India) Ltd. & Anr.*,² the Supreme Court of India (*Supreme Court*) upheld the penalty imposed by the CCI on the parties for gun-jumping and not complying with the standstill obligations prescribed under the Competition Act. Among other steps, the proposed transaction involved an open offer by Thomas Cook to purchase up to 26% of the equity share capital of Sterling Holiday Resorts and on-market purchases of ~10% shareholding of Sterling Holiday Resorts. Thomas Cook, prior to notifying the CCI, purchased ~10% shareholding of Sterling Holiday Resorts from the open market. The CCI held that the on-market purchases were inter-connected and inter-dependent to the overall transaction, and thus, imposed a penalty on the parties for gun-jumping. Similarly, in *SCM Soilfert Limited/ Mangalore Fertilizers and Chemicals Limited*,³ the Supreme Court upheld the CCI's decision to impose a penalty for gun-jumping on SCM Soilfert Limited and Deepak Fertilizers and Petrochemicals Corporation Limited for, *inter alia*, failing to notify prior to their acquisition of shares in Mangalore Chemicals and Fertilizers Limited from the open market.

The imposition of standstill obligations on such time-sensitive transactions created operational bottlenecks, delaying critical timelines and risking price volatility in the target's share price. The requirement to notify the CCI and defer consummation till approval often rendered such on-market purchases unviable or penalties inevitable. Further, such delays would undermine the strategic intent and commercial viability of the transaction, adding layers of complexity to an already challenging process. Specifically, in the case of hostile takeovers, which triggers an open offer, acting swiftly is crucial for the acquirer to successfully consummate the contemplated transaction.

In a developing economy like India, which aims to attract investors with programs such as ease of doing business, the pre-amendment framework posed significant challenges due to the risks involved in relation to on-market purchases. Navigating the complexities imposed by the standstill obligations required immense strategic planning to avoid premature disclosure of sensitive information leading to price fluctuations, often slowing down the whole process. The approval process was often time-consuming, and during that interval, the stock price could fluctuate, leading to undermining the commercial and strategic intent of the on-market purchases. The inefficiencies of this process called for a more agile and investor-friendly approach that would align India's regulatory framework with global standards and foster confidence among market participants.

In light of this, the GoI on 9 September 2024, introduced a new provision i.e., Section 6A of the Competition Act, which allows acquirers derogation from standstill obligations for open market

purchases and other transactions undertaken on a regulated stock exchange, thereby allowing them to capitalize on market opportunities.⁴

To appreciate the impact of the recent amendments, it is crucial to first understand the framework within which on-market purchases operate, as set out below.

The Securities and Exchange Board of India (*SEBI*) has established clear guidelines for scenarios where acquisitions cross certain thresholds. This creates a balance between acquirers' strategic intent and protection of shareholder interests.

While on-market purchases are focused on quick and discreet acquisition, certain regulatory thresholds require the acquirer to make an open offer to the shareholders. Under the extant regulations, an open offer is made by the acquirer to the shareholders of a listed target company inviting them to tender their shares in the target company at a particular price. The rationale of an open offer is to provide the existing shareholders of the target company with an option to exit on account of the change in control or substantial acquisition of shares, occurring in the target company (particularly in hostile takeovers, where there is no pre-arranged agreement with the management).

A mandatory open offer is triggered in the following scenarios:⁵

- Acquisition of 25% or more shares or voting rights (if the acquirer currently holds less than 25%); or
- Acquisition of more than 5% shares or voting rights in a financial year (if the acquirer already holds more than 25%); or
- Acquisition of control.

The process allows existing shareholders to make informed decisions regarding their investment since control of the target company changes hands, particularly in unsolicited or hostile takeovers. It is pertinent to note that the open offer should be subject to a minimum offer size of 26%.⁶

Under the erstwhile framework, the standstill obligations imposed by the CCI with respect to on-market purchases required an acquirer to notify the CCI and obtain prior approval before consummating the transaction, unless an applicable exemption applied. The standstill obligations often led to price volatility or the loss of strategic opportunity before the acquirer could complete the acquisition. Acquirers were thus placed in an untenable position, as they were compelled to act swiftly under the regulatory framework administered by SEBI, whilst simultaneously being precluded from implementing the acquisition pending receipt of the CCI's approval. This underscored the urgent need to reconcile the operational

² *CCI vs. Thomas Cook (India) Ltd. & Anr.*, Supreme Court of India, Civil Appeal No. 13578 of 2015 (17 April 2018).

³ *SCM Soilfert Limited/ Mangalore Fertilizers and Chemicals Limited*, Supreme Court, Civil Appeal No(S). 10678 of 2016 (17 April 2018).

⁴ Section 6A, Competition Act 2002 (as amended).

⁵ Regulations 3,4 and 5 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (as amended).

⁶ Query 28, FAQs on Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

imperatives of the SEBI framework with the standstill obligations under the Competition Act.

Need For Balancing Obligations Between SEBI and CCI

To address hurdles faced by companies in balancing obligations of both SEBI and CCI, and to facilitate smoother implementation of such transactions, the Competition Law Review Committee (CLRC) (formed by the Ministry of Corporate Affairs in 2019) recommended adopting an approach which allows implementation of on-market purchases in an efficient and timely manner, while ensuring that such transactions do not avoid CCI's scrutiny. The CLRC found that in mature jurisdictions such as EU and Brazil, standstill obligations do not prevent the implementation of a public bid or a series of transactions in securities in a market, where control is acquired from various sellers.⁷ The European Union Merger Regulations provide that during the pendency of the approval of the merger, the acquirer should not exercise any ownership or voting rights attached to the securities involved. A similar position has also been adopted in Brazil.⁸ In light of this, the CLRC proposed allowing parties to undertake on-market purchases, provided they surrender all beneficial rights until the CCI's approval is granted.⁹

This recommendation reflected widespread feedback from investors who were calling for more flexibility in navigating the regulatory environment. The challenges posed by stringent standstill obligations often delayed transactions and hindered the investors' ability to make timely acquisitions and respond to market opportunities. Moreover, they highlighted the importance of acting swiftly in hostile takeovers and other market-driven acquisitions for staying competitive, especially in a rapidly evolving market.

Derogation Of Standstill Obligations

The GoI recognized these difficulties, and implemented a pragmatic solution for investors looking to undertake on-market purchases. Investors are now permitted to proceed with on-market purchases; however, due care and attention must be exercised to ensure that the acquirer does not exercise any ownership or beneficial rights in the target, prior to the CCI's approval.

A notice under Section 6A is subject to: (i) the parties filing a notification form (in a standard Form-I (short form) or Form-II (long form), as applicable) within 30 days of the first on-market acquisition; and (ii) the acquirer not exercising ownership or beneficial rights or interest in such securities (including exercising voting rights), until the CCI approves the transaction.¹⁰

However, the acquirer can: (i) receive economic benefits, such as: dividends, bonus shares, stock-splits, etc.; and (ii) exercise voting rights only in matters relating to liquidation and/ or insolvency proceedings. Provided that the acquirer shall not influence the target (including affiliates) in any manner, either directly or indirectly.¹¹

The amendment makes it easier for companies to implement open offers and other on-market purchases, without waiting for prior CCI's approval, significantly reducing delays and enabling faster execution. It is also in line with the government's ease of business program and allows investors to benefit from competitive pricing while ensuring that the CCI retains its regulatory oversight over market activities.

These changes are anticipated to have a significant impact on deal-making in India and offer greater flexibility to acquirers, while reducing the risk of gun-jumping penalties, which was previously a significant deterrent for time-sensitive acquisitions. The 30-day approval window not only helps expedite deal closure timelines but also minimizes holding costs, benefiting both buyers and shareholders who are eager for liquidity.

Till date, a very limited number of transactions have been approved under Section 6A of the Competition Act, such as, the CCI's approval in *Abu Dhabi National Oil Company P.J.S.C / Covestro AG* transaction¹² and *Amundi Asset Management S.A.S. / ICG plc*.¹³

Conclusion

It is yet to be seen how the process will play out if the CCI blocks such an application, given the acquirer would have already acquired shares of the target from the open market. Going forward, the focus should be on assessing the effectiveness of these provisions and ensuring that any potential gaps or challenges are addressed appropriately. A balanced approach that ensures operational flexibility, while safeguarding competitive integrity and market fairness, will be crucial. The CCI has shown openness to feedback and suggestions, which bodes well for refining the regulatory framework further.

In conclusion, a streamlined and responsive framework will help make India a more attractive destination for investment. A holistic approach, in collaboration with regulators and stakeholders will ensure that the regulatory landscape supports growth while maintaining the integrity of India's competitive market.

7 Competition Law Review Committee Report (2019), paragraph 72.

8 Competition Law Review Committee Report (2019), paragraphs 7.6-7.7.

9 Competition Law Review Committee Report (2019), paragraphs 7.8.

10 Section 6A, Competition Act 2002 (as amended).

11 Section 6A, Competition Act 2002 (as amended).

12 Abu Dhabi National Oil Company P.J.S.C., ADNOC International Limited and ADNOC International Germany Holding AG, CCI, Combination Registration No. C-2024/11/1204 (10 December 2024).

13 Press release by the CCI, Amundi Asset Management S.A.S. and ICG plc, CCI, Combination Registration No. C-2025/12/1358 (12 February 2026).

Playbook for Competitor Collaborations in India: Strategy, Governance and Compliance

By Shweta Shroff Chopra, Harman Singh Sandhu, Nitika Dwivedi, Sonali Charak, Apurva Badoni and Janhavi Singh¹

Businesses that compete (actually or potentially) at the same level of a market may agree to work together to achieve business objectives that cannot be achieved by one party alone or are more efficiently accomplished through pooled resources. Competitor collaborations can serve legitimate and pro-competitive purposes, including joint innovation, investment in new products and services, or pursuit of shared sustainability objectives.

Such collaborations may take multiple forms: creation of a new joint venture (JV) entity; collaboration agreements directed at specific

activities; trade associations formed to develop industry standards or coordinate industry-wide initiatives; or exchanges of industry-specific information. However, because these arrangements may also be used to disguise unlawful conduct or may inadvertently restrict competition, businesses must carefully assess collaboration risks under Indian competition law.

How Indian Competition Law Frames Collaboration Risk

Collaborative arrangements between competitors in India are primarily governed by the Competition Act, 2002 (*Competition Act*).

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Section 3 prohibits agreements that cause or are likely to cause an appreciable adverse effect on competition (AAEC) in India. Certain horizontal agreements (i.e., between enterprises engaged in identical or similar trade or if a market player intends to participate in furtherance of such agreement) are presumed to cause AAEC. These include agreements that directly or indirectly fix prices; limit or control production, supply, markets, technical development or investment; allocate markets or customers; or result in bid-rigging or collusive bidding.

Once such an agreement is established, the presumption of AAEC applies, although it is rebuttable. The burden rests on the parties to demonstrate the absence of AAEC. In assessing this, the Competition Commission of India (CCI) considers factors such as entry barriers, foreclosure effects (i.e., preventing competitors from accessing distribution channels or customers in the market), consumer harm or benefit, efficiencies in production or distribution, and promotion of technical, scientific and economic development.

A threshold requirement for Section 3 is the existence of an agreement between two or more enterprises. Agreements within a single economic entity fall outside its scope,² although this doctrine is applied on a case-by-case basis, depending on economic inseparability³ and actual independence in decision-making. The CCI has rejected single-entity defences where group companies acted as independent decision-making centres or were treated as competitors by procurers,⁴ and has held that common government ownership alone does not establish a single economic entity in the absence of control over pricing decisions.⁵

Common Types Of Collaborative Agreements

Indian competition law does not have distinct guidelines for different types of collaborative agreements (for example, research and development (R&D) agreements, intellectual property (IP) licensing agreements, production/manufacturing agreements, sales/marketing agreements, or purchasing agreements). The CCI is empowered to scrutinize any such agreement based on the AAEC test.

Joint Ventures And The Efficiency Carve-Out

So far, the CCI has primarily examined collaboration agreements where the parties have sought to rely on the JV efficiency exemption. Joint ventures are exempt from the AAEC presumption under section 3(3) of the Competition Act if the parties can demonstrate that the JV would increase efficiency with regards to the production, supply, distribution, storage, acquisition, or control of goods or provision of services. Put differently, a JV will not be deemed to have an AAEC in terms of factors under section 19(3) if the exemption applies.

The parties to the JV have the burden of proving the benefits of the

JV. According to the limited guidance available from the CCI, the parties must be able to demonstrate both:

- the specific efficiencies to be gained from the arrangement, which must be quantifiable and verifiable to some extent. Efficiencies could include, for example: lower prices for consumers; better-quality products; wider distribution reach to consumers; enhanced R&D activities; and
- how the efficiencies will be passed on to consumers within a foreseeable timeframe.

When considering proposed benefits, the CCI takes a holistic approach, weighing the pro-competitive benefits of the JV against any anti-competitive effects. Purported benefits such as the promotion of technical, scientific, or economic development, or consumer benefits, may support an argument that the agreement does not harm competition and should qualify for the exemption. However, horizontal co-operation agreements that involve hard-core restrictions (such as price-fixing, bid-rigging, or market allocation) or are otherwise intended to restrict market competition are likely to be considered anti-competitive due to actual or potential overwhelming market harm.

Since parties cannot pre-notify or seek approval from the CCI as to whether the exemption will apply, any party seeking the exemption should undertake a self-assessment based on the following questions:

- Is there a joint venture?
- Is the agreement in question a JV agreement or directly ancillary to the JV?
- Are any restrictions ancillary to JV objectives?
- Does the JV involve any hard-core restrictions (e.g. price-fixing, bid-rigging, market allocation)?
- Does the JV increase efficiencies, and if so, how? Will the efficiencies (if any) be passed on to consumers within a foreseeable timeframe?

Some illustrative examples of when the JV exemption has been accepted by the CCI are as follows.

In 2011, four insurance companies set up a JV to act as a third-party administrator (TPA) for providing health insurance claims management services. The CCI recognised that the objectives of the proposed JV were to: (a) reduce the increasing losses; (b) improve the quality of customer service; (c) create benchmarking standards for such services. The CCI concluded that the JV was designed to enhance efficiencies and therefore, not a cartel under section 3(3) of the Competition Act.⁶

In 2016, six movie production companies established a JV with the purpose of establishing and documenting voluntary technical specifications for an open digital cinema architecture, aimed

² *Exclusive Motors Pvt. Limited v. Automobili Lamborghini SPA*, CCI, Case No. 52 of 2012 (6 November 2012).

³ *Shamsher Kataria v. Honda Sael Cars India Ltd. & Ors*, CCI, Case No. 3 of 2011 (25 August 2014).

⁴ *Delhi Jal Board v. Grasim Industries Ltd.*, CCI, Case Nos. 03 and 04 of 2013 (5 October 2017).

⁵ *In Re: Cartelization by public sector insurance companies in rigging the bids submitted in response to tenders floated by the Government of Kerala for selecting insurance service provider for Rashtriya Swasthya Bima Yojna v. National Insurance Co Ltd & Ors.*, CCI, Suo Moto Case No. 02 of 2014 (10 July 2015).

⁶ *Association of Third Party Administrators v. General Insurers (Public Sector) Association of India*, CCI, Case No. 49 of 2010 (12 July 2011).

at ensuring a uniform and high level of technical performance, reliability and quality control. The CCI found that the JV increased the efficiency of distribution and exhibition of movies and quality of images and so was entitled to the exemption.⁷

In 2016, a group of health insurance companies formed a JV with the objective of providing TPA services to help settle insurance claims, as permissible under the regulations formulated by the Insurance Regulatory and Development Authority of India (IRDA). The CCI concluded that the JV was efficiency-enhancing because it helped to facilitate the effectiveness of the health insurance sector and ensure speedy cashless hospitalisation for policyholders.⁸

IP Licensing Agreements

Horizontal agreements entered into between competing entities will not be deemed to constitute an AAEC when they relate to the licensing of IP rights conferred under the Copyright Act, 1957, Patents Act, 1970, Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999, Geographical Indications of Goods (Registration and Protection) Act, 1999, Designs Act, 2000, Semiconductor Integrated Circuits Layout-Design Act, 2000 and any other applicable law in force relating to the protection of IP rights.

Other Horizontal Co-operation Agreements

Given that the CCI has primarily examined collaborative agreements between horizontal competitors in the context of the JV efficiency exemption, there are only limited cases otherwise addressing horizontal co-operation agreements.

One case considered by the CCI concerned a co-operation agreement between Geep and Panasonic for the supply of batteries from Panasonic to Geep.⁹ Panasonic sought to justify a clause in the agreement which required Geep to both: (i) maintain the re-sale prices set by Panasonic; and (ii) refrain from taking any steps which could be detrimental to Panasonic's market interests, specifically in relation to prices.

Panasonic argued that such a clause was necessary to ensure discipline in trade by Geep. However, the CCI rejected this, observing that any co-operation agreement between competitors to protect the other's interests could not be considered pro-competitive and that the very objective of the agreement was to restrict or even eliminate fair competition.

Information Exchange: From "Plus Factor" To Independent Violation Risk

In India, the exchange of information among competitors is not specifically mentioned in the Competition Act and has not traditionally been treated as a standalone violation. Historically, such exchanges have been relied upon by the CCI as evidence in support of broader cartel findings. However, the CCI's approach has evolved considerably over time, and in recent decisions, the mere exchange of commercially sensitive information—even absent direct evidence of implementation or an agreement to fix prices or limit supply—has been held sufficient to establish a violation of Sections 3(1) and 3(3) of the Competition Act.

Early cases involving jute¹⁰ and cement¹¹ manufacturers relied on information exchange through trade associations, coupled with price parallelism and coordination, to infer cartelisation on a preponderance of probabilities.¹² While an outlier 2018 decision held that mere exchange of information without evidence of implementation did not establish a cartel,¹³ subsequent jurisprudence has taken a stricter view. In cases involving paper manufacturers,¹⁴ beer manufacturers,¹⁵ and shipping liners,¹⁶ the CCI has held that mere exchange of commercially sensitive information – particularly where it diminishes independent decision-making or is likely to cause AAEC is sufficient to establish a violation, even absent evidence of implementation.

Dual Distribution Agreements

At present, the CCI's scrutiny of information exchanges between parties to dual distribution agreements remains largely untested. In the *Geep/Panasonic* case,¹⁷ although the parties argued that their agreement to co-operate for the supply of batteries amounted to them acting at different levels of the supply chain, the CCI noted that, although the arrangement involved one competitor selling batteries to the other for resale, the purchasing party was selling the batteries under its own brand name rather than as a distributor of the supplying party. Accordingly, the CCI concluded that, from a demand perspective, the parties were market competitors and operated a cartel by exchanging information to further their own commercial interests.

The CCI also made note of the EU's guidelines (Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements) which state

⁷ *K Sera Digital Cinema Private Limited v. Digital Cinema Initiatives LLC & Ors.*, CCI, Case No. 30 of 2015 (22 April 2015).

⁸ *Association of Third Party Administrators v. General Insurers (Public Sector) Association of India*, CCI, No. 107 of 2013 (4 January 2016).

⁹ *In Re: Anticompetitive conduct in the Dry-Cell Batteries Market in India*, CCI, Suo Moto Case No. 02 of 2017 (30 August 2018) (*Geep / Panasonic*).

¹⁰ *Indian Sugar Mills Association & Others v. Indian Jute Mills Association & Ors.*, CCI, Case No. 38 of 2011 (31 October 2014).

¹¹ *Ambuja Cement Limited & Others v. CCI & Ors.*, NCLAT, TA(AT) (Compt) No. 22 of 2017 (25 July 2018).

¹² *Rajasthan Cylinders and Containers Limited v. Union of India & Anr.*, Supreme Court, Civil Appeal No. 3465 of 2014 (1 October 2018).

¹³ *In Re: Alleged Cartelisation in Flashlights Market in India*, CCI, Suo Motu Case No. 1 of 2017 (6 November 2018) (*Flashlights*).

¹⁴ *In Re: Anti-competitive conduct in the paper manufacturing industry*, CCI, Suo Motu Case No. 05 of 2016 (17 November 2021).

¹⁵ *In Re: Alleged anti-competitive conduct in the Beer Market in India*, CCI, Suo Motu Case No. 06 of 2017 (24 September 2021) (*Beer*).

¹⁶ *In Re: Cartelisation by Shipping Lines in the matter of provision of Maritime Motor Vehicle Transport Services to the Original Equipment Manufacturers*, CCI, Suo Motu Case No. 10 of 2014 (20 January 2022). In this case, the companies had shared freight rates with each other via several multi-lateral/ bi-lateral contracts/ discussions/ meetings/ emails.

¹⁷ *ibid*, n 9.

that vertical agreements, for example, distribution agreements, concluded between competitors, may have effects on the market and possible competition concerns similar to horizontal agreements. Accordingly, parties to dual distribution agreements, for abundant caution, should consider analysing whether information sharing may violate the principles set out in those guidelines.

Hub-and-spoke Arrangements

Following the enactment of the Competition (Amendment) Act, 2023 (*Amendment Act*), unlawful hub-and-spoke arrangements are now specifically included within the scope of section 3 of the Competition Act. With these arrangements, a violation may occur where a third party (the hub) does not have a horizontal relationship with horizontal competitors who are parties to the restrictive agreement (the spokes), but instead facilitates the co-ordination among the spokes, even if the spokes do not directly communicate with each other.

The Amendment Act makes it clear that: (i) such arrangements are unlawful; and (ii) even non-competing entities (such as trade associations, online platforms providing intermediation services in digital markets, dealers, distributors, and so on) can be presumed to be part of a cartel if they participate in, or intend to participate in, any horizontal anti-competitive agreement.

Trade Associations: High-Utility Platforms With High Enforcement Salience

Trade associations are a consistent focus of CCI scrutiny due to their potential to facilitate information exchange and coordination. The CCI has penalised associations for enabling bid-rigging and cartelisation, even where the association itself did not engage in commercial activity.¹⁸

In the beer cartel case, both member companies and trade associations faced significant penalties for facilitating information exchange and coordinated conduct. That said, the CCI has also recognised mitigating factors, such as non-profit orientation and lack of monetary gain.¹⁹

The Amendment Act has codified that even non-competing entities—such as trade associations, digital platforms, distributors and intermediaries—may be presumed to be part of a cartel if they participate in or facilitate horizontal anti-competitive agreements. The CCI relies on a broad evidentiary toolkit, including emails, messaging apps, call records, travel data and technical evidence.

Given the increased scrutiny of trade associations, it is imperative for businesses who are members of such bodies to adopt robust compliance measures to mitigate their risk of being implicated in anti-competitive conduct.

It is therefore advisable for trade associations to:

- attend trade events only when there has been an approved agenda from their legal or compliance departments. At the event, they should ensure that topics of discussion are pre-vetted for competition law risks;
- avoid any discussions (formal or informal, written or verbal) on market-facing or back-end activities such as pricing, production levels, capacity utilisation, or the allocation of markets or customers; and
- maintain detailed and contemporaneous records of all discussions and meetings (including minutes that accurately reflect the topics discussed and any dissent or reservations expressed);
- agree only to common approaches or industry solutions that comply with India's competition laws. At a trade event, it is therefore advisable to focus only on regulatory issues or the setting of standards, rather than the co-ordination of commercial strategies;
- ensure that any information shared or received through the association is historical, aggregated, and anonymised, and does not relate to any of the company's current or future commercial strategies; and
- seek legal advice promptly if there is any uncertainty regarding the permissibility of a proposed discussion or activity within the association.

Sustainability Or ESG Agreements

The Competition Act does not expressly reference or provide any exemption for environmental, social, and governance (ESG) measures or sustainability agreements and the CCI has not issued any guidance or protocols on this front yet. Nevertheless, the statutory framework contains certain enabling provisions that may be relevant to the assessment of such initiatives. The Preamble to the Competition Act places its provisions within the broader context of the “economic development of the country” and recognises the protection of consumer interests as a central objective. This overarching policy goal provides a potential basis for considering the pro-competitive and public interest dimensions of ESG measures within the Competition Act's ambit.

The absence of judicial or decisional guidance on ESG leaves open the question of whether ESG-related efficiencies – such as reduced environmental impact, improved working conditions, or enhanced product safety – could be advanced as a defence to justify otherwise restrictive agreements. Section 18 of the Competition Act further mandates the CCI to protect the interests of consumers and ensure freedom of trade carried on by other participants in markets in India. This statutory duty may be invoked to support the consideration of ESG measures. In the context of merger control, the CCI has demonstrated a willingness to consider the market impact of ESG policies. For instance, the CCI, while approving the proposed acquisition by AM Green Ammonia (India) Private Limited of certain assets of Nagarjuna Fertilizers and Chemicals Limited and a 100%

¹⁸ *In Re: India Glycols Limited and Indian Sugar Mills Association & Ors.*, CCI, Case No. 21 of 2013 (18 September 2018); *National Association of Container Freight Stations, Chennai Chapter v. Trailer Owners Association & Ors.*, CCI, Case No. 04 of 2018 (20 July 2022).

¹⁹ *In Re: Alleged anti-competitive conduct in the Beer Market in India*, CCI, Suo Motu Case No. 06 of 2017 (24 September 2021).

shareholding of Greenko ZeroC Private Limited, accepted submissions that an ESG mandate could affect the substitutability of green and non-green ammonia.²⁰ This suggests a nascent recognition of the relevance of ESG considerations in competition assessments, at least in the context of market definition and competitive dynamics. Although untested as a defence in cartel cases, Section 19(3) factors – consumer benefits, improvements in production/distribution, and promotion of technical, scientific and economic development, may support a pro-competitive justification where collaboration is necessary and proportionate and preserves rivalry. Businesses should ensure that any joint initiative is structured to maximise demonstrable consumer and societal benefits, is proportionate to the objectives pursued, and does not eliminate competition in the relevant market. Where possible, parties should document the efficiencies and public interest benefits arising from the collaboration and be prepared to substantiate these claims should the arrangement come under regulatory scrutiny.

Structuring Collaborative Arrangements – Practical Guardrails

While the CCI itself has not issued any formal guidance on structuring collaborative agreements between competitors, we set out below some practical considerations and best practices that could be effective in mitigating legal and commercial risks.

- *Limiting the scope and duration of collaboration:* Collaborative agreements should be precisely defined in terms of their objectives, activities, and the markets or products they cover. The scope should be no broader than necessary to achieve the intended purpose, and the duration should be limited to the minimum period required. This helps prevent the arrangement from becoming a platform for broader or indefinite coordination, which could attract regulatory scrutiny. Businesses should also include mechanisms for periodic review and, where appropriate, sunset clauses to ensure the collaboration remains justified and proportionate over time.
- *Regular legal audits and training:* Ongoing legal oversight is critical. Regular legal audits should be conducted to monitor the activities of the collaboration, ensure adherence to the agreed scope, and identify any emerging competition law risks. All personnel involved, especially those with access to commercially sensitive information, should receive tailored and periodic training on competition law compliance. Training should be updated to reflect changes in law, regulatory guidance, or enforcement priorities.
- *Establishing clean teams for information exchange:* The exchange of information between competitors is a particularly sensitive area. To minimise risk, it is best practice to establish “clean teams” - designated groups of individuals who are permitted to access and process competitively sensitive information strictly on a need-to-know basis. Clean team protocols should be clearly documented, with safeguards to prevent the flow of such information to individuals involved in day-to-day competitive decision-making. Where possible, information should be aggregated or anonymised before sharing, and access should be strictly limited.
- *Competition law compliance programmes:* A comprehensive competition law compliance programme is essential for any business engaging in collaborative initiatives with competitors. Such a programme should include clear policies and procedures for entering into and managing collaborations, approval processes, escalation mechanisms for potential issues, and detailed guidance on prohibited conduct and information exchange. The programme should be actively supported by senior management, regularly reviewed, and adapted to reflect evolving legal and regulatory expectations.
- *Clear documentation (particularly regarding efficiencies):* Clearly document the objectives, expected efficiencies, and benefits of the collaboration. Maintain contemporaneous records of decision-making and the rationale for the arrangement, which can be useful in the event of regulatory scrutiny.
- *Avoiding “By Object” restrictions:* Ensure the arrangement does not involve any form of price-fixing, market or customer allocation, output limitation, or other conduct that is *per se* prohibited under the Competition Act.
- *Independent legal advice:* Seek independent legal advice at the outset and throughout the duration of the collaboration, especially when novel or complex issues arise or when the arrangement may have significant market impact.
- *Defined roles and responsibilities:* Clearly define the roles, responsibilities, and decision-making processes for all parties involved to avoid ambiguity and potential conflicts.
- *Exit and termination provisions:* Set out clear terms for the termination of the collaboration, including triggers for exit and procedures for winding down joint activities.

Navigating Gun-Jumping in India: Regulatory Insights, Penalty Trends, and Future Outlook

By Harman Singh Sandhu, Manika Brar, Supritha Prodaturi, Apurv Jain and Sanjana L.B.¹

The Indian merger control regime is suspensory in nature, and the Competition Commission of India (CCI) exercises *ex ante* jurisdiction over the regulation of combinations. Combinations which meet the asset, turnover or deal value thresholds (*Jurisdictional Thresholds*) prescribed under Section 5 of the Competition Act, 2002 (*Competition Act*), and which do not qualify for any exemptions under the law, require the approval of the CCI prior to consummation. Consummation of notifiable transactions either without notification, or consummation after notification but prior to approval, is viewed as gun jumping.

Gun jumping can be of various forms, and the nature and extent of the violation factors into the quantum of penalty imposed by the CCI. Gun jumping could be procedural, due to a violation of the notification and

approval requirement because of misapplication of the Jurisdictional Thresholds or misinterpretation of the exemptions provided under the law. Substantive gun jumping occurs when parties coordinate competitively before CCI approval or breach standstill obligations under the Competition Act.

The Competition Act empowers the CCI to initiate penalty proceedings for gun jumping. Section 43A of the Competition Act allows the CCI to impose a penalty which may extend up to 1% of the total global assets or turnover for the preceding year or the value of the transaction, whichever is higher. Further, Section 44 of the Competition Act allows the CCI to penalise parties (up to INR 5 crores (approx. USD 575,177)) for making false statements or for omission of material information.

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Since 2011, the CCI imposed penalties under Section 43A of the Competition Act in: (a) 11 cases between FY 2011-12 to FY 2015-16;² (b) 27 cases between FY 2016-17 to FY 2020-21;³ and (c) 24 cases between FY 2021-22 to 2024-25.⁴ Evidently, there has been an increase in the number of cases of gun jumping over the last few years.

While imposing a penalty, the CCI also considers various aggravating and mitigating factors. For instance, the CCI considers aggravating factors such as repeated violations by a party and inordinate delay in furnishing information, and mitigating factors such as: (a) cooperation during the inquiry; (b) prompt and complete disclosure of information; (c) no appreciable adverse effect on competition (AAEC) due to the transaction; (d) legal ambiguities (e.g., overlapping regulatory provisions), among others.

For instance, in January 2025, the CCI found that Torrent Power Limited had jumped the gun by not notifying its acquisition of 51% shareholding in Dadra and Nagar Haveli and Daman and Diu Power Distribution Corporation Limited.⁵ The acquirer was of the view that the acquisition did not require notification to the CCI as the parties (by virtue of operating in the electricity sector) were governed by the Electricity Act, 2003. Despite finding a violation, the CCI did not impose a penalty, considering various mitigating factors such as Torrent's cooperation during the inquiry, stringent timelines in the bidding process for the acquisition, ambiguity due to the overlapping provisions of the Competition Act and the Electricity Act, and the fact that the transaction did not cause AAEC in India. On the other hand, in *Bharti Airtel Limited (2023)*,⁶ the CCI considered repeated violations by Bharti Airtel in the past to be an aggravating factor while computing the quantum of penalty. Interestingly, the CCI's approach in cases involving regulated sectors such as electricity and telecom does not appear to be consistent. While the CCI acknowledged the ambiguities arising out of the regulatory overlap in *Torrent Power* and refrained from imposing a penalty, the CCI did not do so in the telecom sector and imposed a penalty (in *Bharti Airtel*). It appears that the CCI is taking a case-by-case approach in regulated sectors, and parties should assess the regulatory framework carefully to not fall foul of the suspensory merger control regime.

This article examines the penalties imposed by the CCI in different forms of gun jumping, evolution in the CCI's approach and expectations for the future. Given the recent overhaul of the Indian merger control regime,

reliance on past interpretational guidance and decisional practice can help guide the way forward.

Penalties Imposed By The CCI In Procedural Gun-Jumping Cases

Incorrect Application Of Thresholds

There have been multiple cases where a combination has not been notified on account of an incorrect application of the Jurisdictional Thresholds or the *de minimis* target based exemption.⁷ The CCI has imposed penalties (even if minor) for the incorrect application of these thresholds, irrespective of the fact that the error may have been *bona fide*.⁸ Specifically, during the initial years of the Indian merger control regime taking effect, several cases attracted penalties as the interpretation and applicability of the thresholds were still being settled.

Application Of The Target Exemption

Prior to 2017, the Target Exemption required that the *entire* value of the assets and turnover of the target be considered to apply the Target Exemption. During this period, there were several cases where the CCI imposed a penalty on enterprises for failing to notify a combination which would breach the Target Exemption if the entire value of the assets and turnover of the target would be considered. For instance, in *SRF Limited / DuPont (2016)*,⁹ the acquirer believed that the Target Exemption was available as only the assets and turnover attributable to the relevant business being transferred in the acquisition was considered. The CCI, however, observed that the assets and turnover of the entire target enterprise had to be considered,¹⁰ and resultantly, imposed a nominal penalty of INR 10 lakhs (approx. USD 11,503).

In 2017, the Ministry of Corporate Affairs (MCA) issued a notification revising this standard (*De Minimis Clarification*), and clarified that where a portion of an enterprise or division or business is being acquired and / or taken control of, the value of assets and turnover of the said portion or division or business attributable to it should be considered for determining the applicability of the Target Exemption. Therefore, since 2017, the method of applying the Target Exemption and the CCI's decisional practice have evolved accordingly.

Calculation Of Assets And Turnover In Certain Cases

The CCI has also imposed penalties in cases where parties incorrectly calculated the value of assets and turnover, or the parties' interpretation

² CCI Annual Report, FY 2015-16, page 18.

³ The CCI imposed a penalty under Section 43A of the Competition Act in: (a) 10 cases in FY 2016-17; (b) 7 cases in FY 2017-18; (c) 9 cases in FY 2018-19; (d) 1 case in FY 2019-20; and (e) no cases in FY 2020-21 (CCI Annual reports for FY 2017-18 and FY 2020-21).

⁴ As per the CCI Annual Report, FY 2023-24, page 15-16, the CCI imposed penalties in 20 cases between FY 2021-22 and FY 2023-24. Further as per the CCI's website, in FY 2024-25, the CCI passed orders under Section 43A of the Competition Act in 4 cases – imposing a penalty in 3 cases and finding a contravention without imposing any penalty in one case. This information is updated as on 30 June 2025.

⁵ *Torrent Power Limited / Dadra and Nagar Haveli and Daman and Diu Power Distribution Corporation Limited*, Order under Section 43A of the Competition Act (14 January 2025).

⁶ *Bharti Airtel Limited and Lion Meadow Investment Limited*, Order under Section 43A of the Competition Act (23 August 2023).

⁷ The Government of India, through the Competition (Minimum Value of Assets and Turnover) Rules, 2024 (*De Minimis Rules*), read with Section 5 (e) of the Competition Act, codified a *de minimis* target based exemption, pursuant to which acquisitions where the target enterprise has either assets in India less than INR 450 crore or turnover in India less than INR 1,250 crore are not required to be pre-notified to the CCI (*Target Exemption*).

⁸ *Axis Bank Limited*, Order under Section 43A of the Competition Act (9 August 2023).

⁹ *SRF Limited / DuPont*, Combination Registration No. C-2015/12/347, Order under Section 43A of the Competition Act (16 August 2016) (*SRF / DuPont*).

¹⁰ *SRF / DuPont*, paragraph 8.4.

of 'assets' and 'turnover' under the Competition Act did not align with the CCI's interpretation. As a result, the Jurisdictional Thresholds and / or Target Exemption were incorrectly applied by the parties. In *Reydel Automotive Holdings and Visteon Interiors System (2017)*,¹¹ the CCI fined the acquirer INR 25 lakhs (approx. USD 28,759) for not notifying the transaction, and consummating it without the CCI's approval, due to an incorrect application of the Jurisdictional Thresholds.

Particularly, in the case of fund management activities or mutual funds, interpretational clarity is crucial. For instance, in *Massachusetts Mutual Life Insurance Company (2023)*,¹² the CCI found that the acquirer had incorrectly calculated the value of assets and turnover for the purpose of applying the Jurisdictional Thresholds, resulting in a penalty of INR 5 lakhs (approx. USD 5,752). While calculating the turnover of the target (i.e., Invesco Limited, which was a mutual fund), the acquirer failed to consider the turnover generated by Invesco Mutual Fund in India, and only considered the turnover generated by Invesco's India subsidiaries. Through this case, the CCI provided guidance on the calculation of assets and turnover of mutual funds, while applying the thresholds under the Competition Act. The CCI held that any income generated from the securities held by a mutual fund company is considered as turnover, irrespective of whether holding of those securities confer control to the mutual fund company.

Similarly, in *InvestCorp (2021)*,¹³ which dealt with the acquisition of a fund management business, the acquirer had availed of the Target Exemption, considering the value of the assets and turnover of the fund management business being acquired. However, the CCI opined that the assets and turnover value of the controlled portfolio entities of the fund management business would also need to be considered, for the purpose of the Competition Act.¹⁴ The acquirer also argued that, at best, only a portion of the value of assets and turnover of portfolio entities should be considered. However, the CCI opined that the whole of the turnover of the investee companies would have to be attributed to the fund management business being acquired.¹⁵ As the transaction had been consummated without approval from the CCI, the CCI imposed a penalty of INR 20 lakhs (approx. USD 23,007) on InvestCorp.

In fact, the CCI's guidance in *InvestCorp* was also eventually incorporated into the frequently asked questions on combinations, for future reliance.¹⁶ Further, the Competition (Amendment) Act, 2023 (*Amendment Act*) has also clarified the definition and the inclusions and exclusions for computation of assets and turnover. The CCI has also published an updated set of frequently asked questions on the merger control regime (*Combination FAQs*),¹⁷ in which it has provided guidance on the inclusions and exclusions to be considered for computing 'turnover' for banking, financial services and insurance sectors. For banks, turnover must include operating income (i.e. interest income) and income such

as commission, exchange and brokerage, income earned by way of dividends, profit / loss on sale of investments, leasing income and profit / loss on exchange transactions. For insurance companies, turnover includes gross premium and income from investments in shares, securities, real estate or other assets in case such investments amount to control over the enterprise involved.

Practical Guidance

The CCI's decisional practice over the years has largely solidified the guidance to calculate the value of assets and turnover for the purpose of the Competition Act. However, with the introduction of the deal value thresholds (DVT) through the Amendment Act (relevant provisions of which were brought into force in September 2024), there is likely to be an adjustment period for parties as well as the regulator, on the application of the deal value limb and the 'significant business operations' limb of the DVT.

The 2024 Combination Regulations (defined below) provide some guidance on calculation of relevant metrics, such as deal value and gross merchandise value, which have been supplemented with guidance in the Combination FAQs.

The Combinations FAQs provide valuable guidance on the application of certain metrics / criterion in the DVT, such as inter alia: (a) the meaning of 'digital services' and the kind of businesses which would fall within this category; (b) clarifying that the mere use of the internet to sell goods / services would not constitute a digital service; (c) the applicability of the 'gross merchandise value' metric to different types of businesses; and (d) how put options and call options must be considered for the purpose of calculating deal value, among others.

As enterprises navigate the new regime, during the adjustment period for the new thresholds, the CCI can expect instances of procedural gun jumping. Having said that, a substantive pre-filing consultation (PFC) with the CCI could help provide clarity to parties at initial stages and reduce gun jumping risks.

Incorrect Application Of Exemptions

Under the Competition Act and the relevant regulations / rules, combinations which meet certain criteria are exempt from the notification and approval process. However, the interpretation and application of these exemptions have been the subject of several cases of gun jumping.

The most litigated exemption was the exemption under Item 1 of Schedule I of the *erstwhile* Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (*2011 Combination Regulations*). Item 1 set out the exemption in relation to minority acquisitions, including when the acquisition is solely for

11 *Reydel Automotive Holdings and Visteon Interiors System*, Order under Section 43A of the Competition Act (2 February 2017).

12 *Massachusetts Mutual Life Insurance Company*, Ref. No. M&A – 2021/01/810, Order under Section 43A of the Competition Act (7 August 2023).

13 *InvestCorp*, Order under Sections 43A and 44 of the Competition Act (17 December 2021) (*InvestCorp*).

14 *InvestCorp*, paragraph 15-16.

15 *InvestCorp*, paragraph 18.

16 Frequently Asked Questions on Combinations, Competition Commission of India.

17 Frequently Asked Questions on Combinations, Competition Commission of India

investment purposes (SIP) or in the ordinary course of the business (OCB) of the acquirer. There have been several cases where the CCI has imposed a penalty on the parties where it was of the view that the acquisition did not meet either condition.

In *Zuari Fertilisers (2015)*,¹⁸ the acquirers had not notified their transaction, as they were of the view that the acquisition was exempt under Item 1 because it met the SIP condition. However, the CCI (based on various materials on record, public statements, etc.) came to the conclusion that the acquisition was strategic in nature and could not be considered to be 'solely as an investment' (and accordingly, did not meet the SIP condition). Resultantly, the non-notification of the transaction was viewed as gun jumping, and the CCI imposed a penalty of INR 3 crores (approx. USD 345,106) on the acquirers.¹⁹

In *PI Opportunities Fund – I and Pioneer Investment Fund (2022)*,²⁰ the parties did not notify their transaction and consummated the transaction without the CCI's approval, as they believed that the exemption under Item 1 was available. In the acquirer's view, the acquisition was made in the acquirer's routine and ordinary course of business. The acquirer was an alternative investment fund (AIF), and investment in portfolio companies was a part of its ordinary course of business. However, based on the sequence of events (during which the acquirer was offered the opportunity to appoint a director to the target's board, and subsequently made such appointment), the CCI concluded that the acquirer intended to participate in the affairs and management of the target, and as such, the OCB condition under Item 1 was not met. Further, the CCI also noted that where the transaction is an 'investment', i.e., a capital transaction, it cannot be a transaction in the ordinary course of business (and cannot meet the OCB condition for Item 1). The CCI held that although the nature of a capital or revenue transaction varies from business to business, a revenue transaction means and implies items of income and expenditure, whereas 'investments' by their very nature are capital transactions. The CCI ultimately imposed a penalty of INR 20 lakhs (approx. USD 23,007) on the acquirer.

In January 2025, in *Goldman Sachs*, the CCI imposed a penalty of INR 40 lakhs (approx. USD 46,014) for the consummation of Goldman Sachs' acquisition of optionally convertible debentures of Biocon Biologics Limited without prior notification and approval from the CCI.²¹ The parties were of the view that the Item 1 exemption was available, however, the CCI observed that Goldman Sachs was acquiring information rights, which are not generally available to ordinary shareholders in a company (even if they were available to all shareholders in the target). This as per the CCI indicated the strategic nature of the combination, and therefore, the Item 1 exemption was not available as neither the SIP nor the OCB condition had been satisfied. The CCI held that the nature of the right would be

considered while assessing the strategic intent of the combination, and whether or not such rights were available to all shareholders was not the main consideration.

Due to the various interpretations of the SIP and OCB conditions and the need to assess their applicability on a case by case basis, the Item 1 exemption was the most litigated. That said, the CCI has also imposed penalties in cases where other exemptions were incorrectly applied or misinterpreted.

For instance, in *ITC Limited / Johnson & Johnson (2017)*,²² the acquirer had not notified the acquisition of certain trademarks. The acquirer was of the view that the acquisition of the trademarks would qualify for the Target Exemption, and without prejudice to this, also argued that the Item 3 exemption under the 2011 Combination Regulations was available. Item 3 of the 2011 Combination Regulations was applicable to the acquisition of assets which are not related to the business of the acquirer. The acquirers argued that the Item 3 exemption was available because: (a) the acquisition of the trademarks was not directly related to the business activity of ITC as it was not present in the relevant markets (to which the trademarks relate); (b) the acquisition was in the ordinary course of business of ITC; and (c) ITC did not gain any control over the enterprise from whom the trademarks were acquired. However, the CCI held that ITC was present in the general segment of personal care products (to which the acquired trademarks related), and accordingly, the Item 3 exemption was not available. The CCI separately concluded that the Target Exemption was not available (as, at the time of the transaction, the De Minimis Clarification²³ was not in force). The CCI imposed a nominal penalty of INR 5 lakhs (approx. USD 5,752) on the acquirer, considering the totality of the facts of the case.

On appeal, the National Company Law Appellate Tribunal (NCLAT) set aside the penalty imposed by the CCI, noting that although the facts of the case arose prior to the issuance of the De Minimis Clarification issued by the MCA in 2017, the De Minimis Clarification had retrospective effect; and due to this retrospective effect, the acquisition of the trademarks by ITC would qualify for the Target Exemption. The NCLAT accordingly set aside the penalty imposed on ITC.²⁴

In *Telenor (2018)*,²⁵ the parties consummated two legs of their transaction without notification to the CCI, as they were of the view that these were intra-group transactions exempt under Item 8 under the 2011 Combination Regulations. The CCI, however, found that the transactions did not meet the conditions for the Item 8 exemption as the transactions were not purely intra-group in nature, and the CCI imposed a penalty of INR 5 lakhs (approx. USD 5,752).

¹⁸ *Zuari Fertilisers and Chemicals Limited / Zuari Fertilisers and Chemicals Limited / Mangalore Chemicals and Fertilizers Limited*, Combination Registration No. C-2014/06/181, Order under Section 43A of the Competition Act (10 February 2015) (*Zuari Fertilisers*).

¹⁹ *Zuari Fertilisers*, paragraph 12.

²⁰ *PI Opportunities Fund and Pioneer Investment Fund*, Order under Section 43A of the Competition Act, Ref. No. M&A/Q1/2018/18 (30 September 2022).

²¹ *Goldman Sachs*, Order under Section 43A of the Competition Act, Ref. No. M&A/10/2020/01/CD (14 January 2025).

²² *ITC / Johnson & Johnson*, Combination Registration No.C-2017/02/485, Order under Section 43A of the Competition Act (11 December 2017).

²³ The De Minimis Clarification has been explained above.

²⁴ *ITC Limited v. Competition Commission of India*, Competition Appeal (AT) No. 11 of 2018 (27 April 2023).

²⁵ *Telenor ASA, Telenor (India) Communications Private Limited and Telenor South Asia Investments Pte Limited*, Order under Section 43A of the Competition Act (3 July 2018).

Practical Guidance

The exemptions under Schedule I of the 2011 Combination Regulations have been replaced by Competition (Criteria for Exemption of Combinations) Rules, 2024 (*Exemption Rules*). The Exemption Rules provide clearer guidance on the interpretation of certain terms, such as 'solely as investment' and 'ordinary course of business', which were contentious in past cases of gun jumping. That said, certain interpretational gaps in the new rules remain, and the regulator may deal with such questions in future cases, while ironing out the specifics.

An accurate assessment of the application of the exemptions is required to ensure that consummation of the transaction does not trigger gun-jumping concerns. Notably, the Combination FAQs provide guidance on the application of the new set of exemptions, including on key aspects such as the meaning of 'change in control'. The 'change in control' test is relevant to determine the applicability of various exemptions, including the exemption for intra-group transactions.

Further, more clarity will also evolve through pre-filing consultations and the CCI's orders in relation to the new set of exemptions.

Non-Notification Of Interconnected Steps

The Competition Act requires that interconnected steps or series of transactions be notified as a composite combination to the CCI (i.e., where any one step or transaction is notifiable to the CCI, the entire transaction or transactions must be notified to the CCI even if the other steps / transactions are exempt from the notification requirement). The meaning of interconnected steps or transactions has been set out in the 2011 Combination Regulations and Competition Commission of India (Combinations) Regulations, 2024 (*2024 Combination Regulations*), and is settled through case law.

The CCI has penalised parties where they fail to notify and seek approval for interconnected steps / transactions, and / or consummate such interconnected steps without prior approval.

In *Thomas Cook / Sterling Holiday Resorts (2014)*,²⁶ Thomas Cook entered into a series of share acquisitions in Sterling Holiday Resorts, through open market purchases and pursuant to certain agreements, an open offer announcement, and a merger scheme. While acquisitions pursuant to the scheme, the open offer announcement, and the agreements was notified to the CCI, the open market purchases had been consummated prior to notification. The CCI held that the open market purchases were interconnected to the other transactions, and therefore, could not have been consummated prior to CCI's approval of the entire composite transaction. The CCI imposed a penalty of INR 1 crore (approx. USD 115,035). Thomas Cook appealed the CCI's order before the Competition Appellate Tribunal (*COMPAT*), and in 2015, the COMPAT set aside the CCI's order and the penalty imposed. The CCI appealed the COMPAT's order before the

Supreme Court of India. In 2018, the Supreme Court set aside the COMPAT's order and reinstated the penalty imposed by the CCI, holding that the open market purchases were interconnected to the other acquisitions and could not have been consummated without CCI approval.

In *CPPIB / ReNew (2019)*,²⁷ the CCI found that the parties to the combination had contemplated and pursued their notified transaction to facilitate another follow-on investment by ReNew in Ostro. However, the parties had failed to disclose and seek the CCI's approval for the follow-on Ostro acquisition and had implemented the follow-on Ostro acquisition. The CCI took cognisance of the follow-on Ostro acquisition based on a press release made by ReNew. The CCI examined various materials, including public statements and the parties' internal correspondences, to arrive at the conclusion that the two acquisitions were interconnected and should have been disclosed as such. Notably, proceedings were not only initiated under Section 43A of the Competition Act, but also under Section 44 (for the suppression of information and omission to disclose the follow-on Ostro acquisition). The CCI imposed a penalty of INR 50 lakhs (approx. USD 57,517) on CPPIB.

More recently, in 2023, the CCI penalised Bharti Airtel Limited and Lion Meadow Investment Limited for non-notification of interconnected transactions and incorrectly applying the Item 2 exemption²⁸ under the 2011 Combination Regulations for one leg of the interconnected transaction.²⁹ The CCI imposed a penalty of INR 1 crore (approx. USD 115,035) on Bharti Airtel Limited. Notably, the CCI considered past instances of violation by Bharti Airtel Limited as an aggravating factor while determining the quantum of penalty to be imposed.

Practical Guidance

In addition to disclosing inter-connected steps / inter-connected transactions, parties must also assess whether the competition assessment of the proposed transaction will be impacted. When notifying inter-connected steps / transactions as a composite combination, parties must provide a competition assessment (in case of a Form I or Form II) or declare that no overlaps / relationships arise as a result of the parties involved in the inter-connected step / transaction. A thorough assessment of the transaction structure and an identification of the 'combination' (as defined under the Competition Act) with respect to each step / transaction is pertinent to ensure that accurate disclosures are made.

Closing Global Transactions Prior To CCI Approval

Further, in cases where a series of transactions are undertaken at the global level and at the local level in multiple jurisdictions, steps of the transaction at the global level are seen as interconnected to the steps at the local level, and as such, the global steps cannot be closed without the CCI's approval for the composite transaction. In *Baxalta Incorporated (2016)*,³⁰ the CCI held that the global change in ownership prior to CCI's

²⁶ Thomas Cook / Sterling Holiday Resorts, order under Section 43A of the Competition Act (21 May 2014).

²⁷ CPPIB / ReNew, Order under Section 43A and Section 44 of the Competition Act (21 November 2019).

²⁸ Item 2 of Schedule 1 of the 2011 Combination Regulations exempted acquisitions where the acquirer, prior to the acquisition, held 50% or more of the shares or voting rights in the target, except in cases where the transaction resulted in a transfer from joint to sole control.

²⁹ Bharti Airtel Limited and Lion Meadow Investment Limited, Order under Section 43A of the Competition Act (23 August 2023).

³⁰ Baxalta Incorporated, Order under Section 43A of the Competition Act (8 March 2016).

approval of the transaction amounted to consummation and imposed a penalty of INR 1 crore (approx. USD 115,035) on the acquirer. In *Schulke & Myr / Johnson & Johnson (2017)*,³¹ the CCI imposed a penalty of INR 25 lakhs (approx. USD 28,759) on the acquirer, as the global acquisition of a global business of Johnson & Johnson was not notified to the CCI.

Filings Incorrectly Made Under The Green Channel Route

Under the Competition Act, a transaction filed under the 'green channel route' (under Section 6(4) of the Competition Act) is deemed to be approved on the day of filing, however, such an approval can be revoked if the CCI finds that the parties falsely submitted that they exhibit no horizontal overlaps or vertical or complementary linkages. The Combination FAQs have clarified the scope of the entities to be considered, from the perspective of the acquirer and the target, while assessing whether the parties exhibit any overlaps.

For instance, in *Platinum Jasmine / TPG Upswing (2023)*,³² the CCI initiated proceedings under Section 43A and Section 44 of the Competition Act, as the parties had incorrectly filed a green channel notice and made materially false statements. The CCI imposed a penalty of INR 5 lakhs under Section 43A of the Competition Act, and a further penalty of INR 50 lakhs under Section 44 of the Competition Act – the total penalty amounting to INR 55 lakhs (approx. USD 63,269).

More recently, in *IBEF / VVDN (2024)*,³³ the CCI imposed a penalty of INR 10 lakhs (approx. USD 11,503) on India Business Excellence Fund, for filing a green channel notice for its acquisition of a stake in VVDN Technologies, despite the parties exhibiting a vertical relationship (although the relationship was argued to be a miniscule, ad-hoc supply relationship with no long term supply arrangements).

Practical Guidance

The CCI has, in the past, issued notices / passed orders directing parties who obtained a green channel approval to furnish additional information / clarify public statements, etc. to verify whether the transaction was actually eligible for the green channel approval. The CCI may seek such information to form an opinion on the veracity of disclosures in the green channel notification in relation to presence in India, absence of overlaps / relationships, the entities considered by the parties for the purpose of mapping overlaps, the impact of inter-connected steps / transactions, etc.

Notably, under the newly amended Section 43A of the Competition Act, if the deemed approval for a notice filed under the green channel route is declared to be *void ab initio* because the parties do not meet the conditions for a green channel approval, they may re-file a Form I or Form II notice (as the case may be) within 30 days. During this 30-day period, the CCI shall not initiate any action under Section 43A.

Typically, prior to filing under the green channel route, parties engage in a substantive PFC with the CCI. Therefore, the newly introduced safeguard may benefit parties who *bona fide* believe that they are eligible to file under the green channel route (especially after a substantive PFC). However, in cases where the parties have already consummated the transaction before the green channel approval is revoked (and before the 30-day refiling period kicks in), gun jumping proceedings are still likely to be initiated. Interestingly, no such safeguard has been introduced under Section 44 (under which the CCI may impose a penalty for suppression of information / disclosure of false information, etc.).

Suppression / Omission Of Material Information

The highest penalty ever imposed under Sections 43A and 44 of the Competition Act has been the INR 202 crore (approx. USD 23.24 million) penalty on Amazon, in relation to its investment in Future Retail.³⁴ The penalty was for a failure to notify all interconnected transactions, as well as for the suppression and omission to disclose relevant information.

Amazon had notified its investment in Future Retail, however, the CCI held that in its notification, Amazon failed to identify and notify all of the interconnected steps of the transaction. The CCI also held that Amazon had concealed its strategic interest over Future Retail Limited, and Amazon made false and incorrect representations and concealed / suppressed material facts in relation to the transaction, to obtain CCI approval. Notably, this was the first case where the CCI directed that the approval granted pursuant to Amazon's earlier notification of the transaction would be placed in abeyance. The CCI exercised its power under Section 43A of the Competition Act to impose a penalty of INR 200 crore (approx. USD 23 million) on Amazon for failing to notify the actual transaction, and a penalty of INR 2 crores (approx. USD 230,071) for suppressing the actual scope and purpose of the transaction. Amazon appealed the CCI's decision before the NCLAT, which upheld the CCI's order. An appeal against the NCLAT's decision is currently pending before the Supreme Court.³⁵

Penalties Imposed By The CCI In Substantive Gun-Jumping Cases

Violation Of Standstill Obligations

The objective of standstill obligations is to ensure that when the proposed transaction is pending the CCI's review, the parties remain independent and compete in the market. Activities, actions or arrangements which may reduce or have the potential to reduce the degree of independence of the parties or impact the parties' incentive to compete as they were prior to the combination constitutes a violation of standstill obligations.³⁶ Violation of standstill obligations is a substantive violation of the Competition Act. The CCI has imposed penalties ranging from INR 5 lakhs (approx. USD 5,752) to INR 2 crores (approx. USD 230,071), for the violation of standstill obligations.

31 *Schulke & Myr / Johnson & Johnson*, Order under Section 43A of the Competition Act (13 January 2017).

32 *Platinum Jasmine A 2018 Trust*, acting through its trustee Platinum Owl C 2018 RSC Limited, and *TPG Upswing Ltd.*, Order under Section 43A and 44 of the Competition Act (18 August 2023).

33 *India Business Excellence Fund – IV*, Order under Section 43A of the Competition Act (16 August 2024).

34 *Amazon.com NV Investment Holdings LLC*, Order under Sections 43A, 44 and 45 of the Competition Act (17 December 2021).

35 *Amazon.com NV Investment Holdings LLC v. Competition Commission of India & Ors.*, Supreme Court, Civil Appeal No. 4974 / 2022.

36 Combination FAQs, response to Q143 at page 62.

Full Or Part Payment Of Consideration

The part or full payment of consideration for the transaction prior to the receipt of the CCI's approval has been viewed as a violation of the standstill obligations under the Competition Act. In such cases, the CCI has imposed a penalty ranging from INR 5 lakhs (approx. USD 5,752)³⁷ – 10 lakhs (approx. USD 11,504),³⁸ depending on the facts and circumstances of the case.

Maintenance Of Shares In An Escrow Account

Further, even the creation of an escrow account to hold the shares to be acquired, in the interim, has been seen as a violation of standstill obligations.

In *SCM Soilfert/ Deepak Fertilizers (2015)*,³⁹ the CCI imposed a penalty of INR 2 crores (approx. USD 230,071), as the parties had jumped the gun by failing to notify interconnected transactions, and had also created an escrow account to maintain the shares to be acquired, until receipt of the CCI's approval. The parties had submitted that while the shares were placed in escrow, the acquirer did not exercise any rights / beneficial interest in the shares prior to CCI approval. The CCI held that the decision to keep the acquired shares in an escrow account and not exercise any beneficial interest, is that of the acquirer, and not due to any statutory requirements (i.e., the acquirer could have at any time gone ahead and exercised these rights). The CCI noted that Section 43A of the Competition Act does not exempt from its purview a situation wherein a buyer acquires shares but decides not to exercise legal / beneficial rights in them. The penalty imposed by the CCI was also upheld by the Competition Appellate Tribunal and the Supreme Court of India.

In *SABIC International Holdings (2022)*,⁴⁰ the CCI imposed a penalty of INR 5 lakhs (approx. USD 5,752) for the violation of standstill obligations due to the creation of an escrow account to hold shares prior to receipt of the CCI's approval, relying on its decision on the issue in *SCM Soilfert*.

Exchange Of Commercially Sensitive And Interference In Target's Operations

The CCI has also dealt with cases where the acquirer undertakes any action / has the ability to influence or interfere with the target's activities or operations, prior to receiving CCI approval. In *Adani Green Energy (2022)*,⁴¹ the parties had inserted a clause in their transaction agreements allowing: (a) parties to discuss ongoing business and operations of the target and its subsidiaries; (b) the acquirer to provide inputs on the business of the target; (c) the target to take such inputs into account. The CCI approved the parties' proposed transaction, however, separately considered whether the above clause in the agreements was a violation of standstill obligations. The CCI observed that even if the acquirer's inputs to the target were non-binding and clean team protocols were in place, since the acquirer and target

were competitors, the clause could eventually result in coordinated outcomes. The CCI also opined that the clause facilitated exchange of commercially sensitive information between the parties. Further, the CCI held that merely creating clean teams was insufficient, and the rules of clean team engagements also need to be laid down and complied with, in both letter and spirit. The CCI imposed a penalty of INR 5 lakhs (approx. USD 5,752) on the acquirer.

Based on the CCI's decisional practice, enterprises have developed better ways of structuring their transactions, such that there is no pre-payment of consideration (partially or fully), and parties observe a standard set of standstill obligations (preventing steps which have been viewed as gun jumping). These standstill obligations include, prior to CCI approval: (a) conducting business in the ordinary course, and in good faith consistent with past practices and in compliance with applicable law; (b) preventing the exchange of any commercially sensitive information between the parties during the negotiation and transaction process; (c) developing strict clean team protocols and ensuring rules of engagement laid down in clean team agreements; and (d) preventing the acquisition of any operational or managerial control over the target prior to CCI approval, among others. The standstill obligations must also extend to any interconnected steps / transactions.

Future Expectations: Regime To Be More Streamlined

Overall, the general range of penalties imposed for gun jumping has been between INR 5 lakhs (approx. USD 5,752) to INR 5 crore (approx. USD 575,177), with certain outlier cases where penalties imposed were as low as INR 1-2 lakhs (approx. USD 1,150-2,301)⁴² or as high as INR 200 crore (approx. USD 23 million). Notably, higher penalties were imposed in cases involving gun jumping as well as suppression of information / submission of false information (under Section 44 of the Competition Act).

Critically, the introduction of the CCI (Determination of Monetary Penalty) Guidelines, 2024 (*Penalty Guidelines*) can also go a long way in streamlining the penalty regime for gun jumping. The Penalty Guidelines provide a list of factors for the CCI to consider while determining the quantum of penalty, including: (a) consummation or part consummation of the combination without giving notice; (b) violation of standstill obligations (substantive or procedural) prior to or after filing notice with the CCI; (c) non-furnishing of information during an inquiry under Section 20(1) of the Competition Act; (d) voluntarily filing a notice with the CCI; (e) conduct of the parties including making voluntary disclosures; and (f) cooperation during the inquiry, furnishing all requisite material or documents in response to the information sought. These factors have also been considered by the CCI in its decisional practice so far, and a streamlined approach to penalties will be crucial in bringing in the new regime smoothly, while prioritising goals of ease of doing business and encouraging investment activity in India.

37 For example, *Hindustan Colas Private Limited / Shell India Markets Private Limited*, Order under Section 43A of the Competition Act (14 September 2016).

38 For example, *Adani Transmission Limited / Reliance Infrastructure Limited*, Order under Section 43A of the Competition Act (30 July 2018).

39 *SCM Soilfert / Deepak Fertilisers*, Order under Section 43A of the Competition Act (10 February 2015).

40 *SABIC International Holdings / Clariant*, Order under Section 43A of the Competition Act (19 July 2022).

41 *Adani Green Energy*, Order under Section 43A of the Competition Act (9 March 2022).

42 *Diasys Diagnostics Systems GmbH, Germany / Piramal Enterprises Limited*, Order under Section 43A of the Competition Act (31 August 2016) – In this case, the CCI imposed a penalty of INR 2 lakhs (approx. USD 2,378). In *Lanxess India Private Limited/ Clariant Chemicals India Limited*, order under Section 43A (16 August 2016) – In this case, the CCI imposed a penalty of INR 1 lakh (approx. USD 1,189).

Rebates, Loyalty and Parity: Indian AntiTrust Assessment

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Economic Importance Of Discounts And Rebates

Discounts and rebates are core commercial tools that sit at the heart of modern commerce. They lower prices for consumers, reward and incentivise performance, brand loyalty and, enable scale efficiencies. Yet in specific market settings, the same practices can foreclose rivals, raise entry barriers, restrain intra-brand competition and ultimately impair consumer welfare.

Indian competition law therefore considers discounting, rebates and parity clause as a two-sided coin: presumptively legitimate commercial behaviour but conduct that can become exclusionary or discriminatory when deployed by a dominant enterprise or orchestrated through agreements that have an appreciable adverse effect on competition (AAEC).

The Competition Commission of India (CCI) has, over the past decade, developed an increasingly sophisticated, effects-based framework to assess these practices – balancing objective commercial justifications and pro-competitive rationales against the AAEC standard of harm prescribed under the Competition Act, 2002 (*Competition Act*).

This article evaluates how Indian antitrust law assesses three common pricing practices: rebates, loyalty incentives, and price parity clauses. It attempts to offer practical guidance for individuals and businesses on structuring compliant programs that seek efficiencies without creating risks of foreclosure or resale price maintenance (RPM). The analysis synthesizes recent jurisprudence of the CCI, the National Company Law Appellate Tribunal (NCLAT), and the Supreme Court of India, with a focus on effects-based assessment, objective justifications, and evidence-led enforcement.

Treatment Of Discounts Under Indian Competition Jurisprudence

The CCI, in its jurisprudence, now recognises various categories of discounts, including volume-based rebates, functional (or performance-linked) rebates, loyalty-inducing arrangements, minimum resale price restrictions, discount control mechanisms, and the recent headline-grabbing deep-discount strategies of digital platforms. Each of these practices engages distinct analytical tools under Sections 3(4) and/ or 4 of the Competition Act.

As An Abuse Of Dominance – Discriminatory Or Exclusionary Pricing By Dominant Enterprises

Section 4(2)(a) of the Competition Act prohibits a dominant undertaking from “directly or indirectly, imposing unfair or discriminatory conditions or prices,” while Section 4(2)(b) deems it abusive for such an enterprise to engage in conduct that “limits or restricts production of goods or provision of services,” a prohibition that the CCI has consistently interpreted as encompassing exclusionary or predatory pricing strategies.

The CCI has previously recognised that allegations of excessive commissions and deep discounts could potentially constitute abuse of dominance under Section 4 of the Competition Act. The CCI noted that the imposition of price parity, as well as the alleged use of predatory pricing and discriminatory discounting practices by the dominant enterprises, warranted detailed investigation to assess their anti-competitive effects.²

The CCI has also held that dominant firms that collect data under the guise of determining eligibility for discounts may be treated as acting in an abusive manner by attempting to control the entire market in their favour and interfering with smaller players’ freedom of trade.³

As A Vertical Restraint – Exclusivity And Resale Price Maintenance Leading To An AAEC

Section 3(4) of the Competition Act deals with vertical agreements. Vertical agreements are agreements between enterprises at different levels of the production chain, including: (i) tie-in arrangements; (ii) exclusive dealing and distribution agreements; (iii) refusal to deal; and (iv) resale price maintenance. Such agreements violate the Competition Act if they cause an AAEC within India. Unlike horizontal agreements, vertical agreements do not carry the presumption of an AAEC.

Section 3(4)(e) of the Competition Act scrutinises RPM and, by extension, a supplier’s ability to dictate or influence downstream pricing. Although classic RPM cases involve explicit minimum or fixed resale prices, the provision also captures discounting structures that indirectly achieve the same result, for example by penalising retailers who undercut recommended prices or by tying rebates to compliance with prescribed margins.

Categories Of Discounts, Rebates And Parity Clauses That Can Be Called Into Question

Volume-Based Rebates (Target Rebates)

Target rebates reward higher purchase volumes across thresholds and can legitimately transmit scale economies and stabilise capacity utilisation. The commercial logic of target rebates is straightforward: a buyer receives progressively larger discounts as its cumulative purchases cross pre-defined thresholds. By bundling current and future demand, suppliers can ensure smooth capacity utilisation, plan inventories and signal long-term commitment to the buyer.

Here, antitrust risks emerge when a dominant supplier sets thresholds so high, or structures the rebate in a “roll-back” or “all-units” form, that a buyer is effectively locked in, finding it unviable to split volumes with alternative suppliers.

1 Aman Singh Sethi and Radhika Seth, Partners, Satvik Mohanty, Senior Associate, Natalia Bilimoria, Knowledge Associate and Saachi Kale, Associate Shardul Amarchand Mangaldas & Co. The views expressed here are personal.

2 *Federation of Hotels & Restaurant Associations of India and Ors v. MakeMyTrip India Pvt. Ltd & Ors.*, CCI, Case No. 14 of 2019 (19 October 2022) (MMT-Go Case).

3 *In Re: Grasim Industries Limited*, CCI, Case No. 51, 54 and 56 of 2017 (6 August 2021).

The *Schott Glass* sheds light on how the CCI looks at volume-based rebates.⁴ Operating in a market for pharmaceutical glass vials, Schott Glass enjoyed a significant market share and superior technology. The CCI initially held that Schott Glass' tiered rebates, coupled with minimum offtake requirements, incentivised purchasers to concentrate their requirements with Schott Glass, thereby marginalising fledgling rivals.

However, on appeal, the erstwhile Competition Appellate Tribunal (COMPAT) subjected the rebate to a stricter effects-based test, emphasising the absence of evidence that competitors were in fact foreclosed and acknowledging purchasers' countervailing power. The Supreme Court, when the matter eventually reached it, however endorsed the need for a nuanced analysis – a dominant firm may lawfully pass on scale economies through target rebates, provided: (i) the thresholds reflect genuine efficiency considerations; (ii) the structure permits buyers to source a meaningful proportion of their needs elsewhere; and (iii) the cumulative effect does not eliminate equally efficient rivals.

The Schott Glass Case thus crystallises two doctrinal principles: (i) volume rebates are not *per se* anti-competitive, if they are uniform, transparent and similarly placed; and (ii) a structured review, which includes efficiency gains and objective justifications against foreclosure concerns, outweighs anti-competitive risks.

Functional Rebates

Functional or performance linked rebates are typically granted in return for complementary services performed by the buyer such as in marketing support, after-sales service, inventory management or, controversially, exclusivity undertakings such as the “no-Chinese” clause once employed by Schott Glass.⁵

The CCI has signalled tolerance for functional rebates where the underlying service is real, measurable and cost-saving for the supplier. The investigative yardstick is therefore evidentiary: Can the supplier demonstrate that the rebate roughly corresponds to verifiable efficiencies? Conversely, when a rebate's primary purpose is to dissuade the buyer from engaging competing suppliers, the CCI will characterise it as a disguised loyalty discount falling within Section 4(2)(b) of the Competition Act.

In the Schott Glass Case, the CCI accepted that certain invoice-level discounts were objectively linked to quality assurance and handling requirements, but held that the incremental rebate for not using Chinese vials lacked any cost justification, directly curtailed purchasers' ability to multi-source and, in the CCI's view, crossed the line into exclusionary conduct.

However, the Supreme Court, on appeal, recognised that functional rebates, when structured so that all eligible converters who are willing to undertake the same traceability and quality assurance obligations receive identical economic benefits, do not inherently violate competition law. In the context of the “no-Chinese Scheme” in the Schott Glass Case, the Court emphasised that ancillary conditions attached to such rebates are objectively justified, provided they serve legitimate quality and traceability objectives rather than exclusionary purposes.

The evidence in this case demonstrated that the scheme did not result in the foreclosure of competitors or a reduction in market output. Accordingly, the Supreme Court found that both the functional rebate and its successor agreements were compliant with Sections 4(2)(a) and 4(2)(b)(i) of the Competition Act, as they did not amount to anti-competitive conduct or abuse of dominance.

Loyalty Rebates

Unlike target schemes that are quantitatively related to purchase volumes, “loyalty” rebates typically hinge on qualitative factors, such as the duration of the buyer-supplier relationship.

In *Kalpita Sultania v. IREL (India) Ltd. (Kalpita Sultania Case)*, the informant alleged that IREL granted preferential discounts to purchasers with whom it shared several years of commercial engagement, allegedly penalising newer entrants.⁶ The CCI dismissed the case at the *prima facie* stage, distinguishing between legitimate relationship-based incentives and discriminatory pricing.

The CCI considered two main factors: (i) the policy was transparent, published and applied uniformly based on objective tenure criteria, and (ii) evidence suggested that new buyers could, over time, migrate into the higher discount bracket by maintaining a consistent supply relationship.

The CCI, yet again, reiterated that volume based discounts can be competition neutral (and even efficiency enhancing) where they are grounded in objective commercial justifications such as assured bulk purchases that help the seller dispose of the byproduct needed to keep operations running smoothly and where comparable customers can access the same route/terms on non-discriminatory criteria.

Minimum Resale Price Restrictions And Discount Control Policies

The CCI has treated minimum resale price obligations and discount control policies that limit dealer pricing freedom as RPM under Section 3(4)(e) of the Competition Act, even when implemented indirectly through monitoring, penalties, or incentives. Such restraints

⁴ *Competition Commission of India v. Schott Glass India Pvt. Ltd.*, Supreme Court, Civil Appeal No. 5843 of 2014 (13 May 2025) and *Kapoor Glass India Pvt. Ltd. v. Schott Glass India Pvt. Ltd.*, Supreme Court, Civil Appeal No. 9998 of 2014 (13 May 2025) (*Schott Glass*).

⁵ Schott India, at the commencement of FY 2007-08, introduced a uniform “functional rebate” scheme. For each of the three financial years of 2007-08, 2008-09 and 2009-10, a converter that (i) met its annual purchase plan, (ii) refrained from processing Chinese tubing, and (iii) complied with traceability-cum-“fair-pricing” obligations, became entitled to a flat rebate of 8% on the invoiced value of NGC, NGA and Fiolax tubes. With effect from 1 April 2010, the quantum of the allowance remained unchanged, but the qualifying conditions were restated in a Trade-mark Licence Agreement (TMLA) paired with a Marketing-Support Agreement. Execution of the TMLA conferred a royalty-free right to emboss the “SCHOTT” mark on finished containers, and, in exchange, the converter accepted limited inspection rights and furnished a bank guarantee of INR 70 lakh to guard against misuse. Only one converter chose to execute the TMLA, all others continued on list price plus the ordinary target-rebate ladder.

⁶ *Kalpita Sultania v. IREL (India) Ltd.*, CCI, Case No. 22 of 2021 (8 October 2024).

can suppress intra-brand competition, yield uniform pricing, and harm consumers, warranting a rule-of-reason inquiry anchored in documentary and testimonial evidence of agreement, enforcement, and market effects.

The CCI has also emphasized that RPM can reduce both intra-brand and inter-brand price competition, leading to supra-competitive pricing.

Quality control, free-rider mitigation, and brand integrity can justify targeted restraints, provided the measures are not broader than necessary and yield demonstrable consumer benefits. The CCI has accepted tie-in obligations or minimum service standards that safeguard product integrity yet has rejected discount-control regimes that unduly suppress price competition without quantitative proof of indispensable efficiency gains.

The CCI, in cases such as *In Re: Alleged anti-competitive conduct by Maruti Suzuki India Limited in implementing discount control policy vis-à-vis dealers (Maruti Suzuki Case)*⁷ and *FX Enterprises v. Hyundai Motor India Limited (Hyundai Motor Case)*,⁸ has clarified that RPM is not limited to explicit price-fixing, but extends to any policy or practice that restricts the freedom of dealers to determine their own resale prices, including the control of discounts.

An illustrative list of practices scrutinised under RPM includes:

- imposition of minimum resale price restrictions, where manufacturers or suppliers dictate the minimum price at which dealers or distributors may resell products;
- implementation of discount control policies, which restrict the ability of dealers to offer discounts beyond a prescribed limit or require prior approval for any deviation;
- monitoring and penalising dealers for offering unauthorised discounts, including through the use of mystery shopping, audits, or direct reporting mechanisms; and
- incentivising compliance with discount restrictions through rewards or penalising non-compliance by withholding incentives, supplies, or imposing other commercial disadvantages.

These practices have been typically observed in sectors such as automobiles and consumer goods, where manufacturers seek to maintain uniformity in retail pricing across their dealer networks.

For instance, in the Hyundai Motor Case, the CCI found that Hyundai's discount control policy, which involved monitoring and penalising dealers for offering discounts beyond prescribed limits, amounted to RPM. The CCI emphasised that such practices, even if implemented indirectly, are prohibited if they have the effect of restricting intra-brand price competition. While the NCLAT overturned the CCI's decision, albeit on evidentiary grounds, it did not pass any ruling on the substantive aspects of the CCI's findings on RPM.

As briefly discussed above, the CCI's theory of harm in RPM cases is predominantly grounded in the potential for such practices to reduce intra-brand competition, leading to higher prices for consumers and stifling innovation among dealers. The CCI has adopted a rule of reason approach, requiring a detailed assessment of the actual or likely AAEC in the relevant market.

The evidentiary standard applied involves: (i) demonstrating the existence of an agreement or understanding (formal or informal) between the manufacturer and dealers regarding price restrictions, (ii) establishing the implementation of such policies through monitoring, enforcement, or penalisation mechanisms, and (iii) assessing the impact of these practices on market competition, including evidence of reduced price competition, uniform pricing, or complaints from dealers. To this end, the CCI has relied on documentary evidence, dealer testimonies, and internal communications to establish the existence and enforcement of discount control policies.

Price Parity Clauses And Deep Discounting On Platforms

Price parity, or Most Favoured Nation (MFN), clauses in platform agreements require suppliers to provide a platform with prices, discounts, and availability that are at least as favorable as those offered on competing platforms. When adopted by platforms with significant market power, such clauses can weaken inter-platform competition by limiting suppliers' ability to differentiate prices or terms across platforms. These competitive concerns are heightened when MFN obligations operate alongside deep discounting strategies, as rival platforms may be unable to match discounts or attract suppliers and consumers, thereby reinforcing market concentration.

The CCI has closely scrutinised the discounting practices of digital platforms in *Federation of Hotel & Restaurant Associations of India & Ors. v. MakeMyTrip India Pvt. Ltd. & Ors. (MMT-Go Case)*,⁹ particularly in the context of their use of parity clauses and the potential for market foreclosure. In the MMT-Go Case, the CCI noted that the imposition of price parity obligations, where hotels and other accommodation providers were required to offer their lowest rates and best inventory to MMT-Go and not to rival platforms, could have the effect of foreclosing competition.

The CCI treats deep discounting as potentially efficiency-enhancing competitive conduct, while predatory pricing requires proof of below-cost pricing and the ability to recover losses. Predatory pricing involves setting prices below cost with the specific intent to eliminate competitors, after which the dominant firm may recoup its losses by raising prices once competition has been weakened or eliminated. Deep discounting, on the other hand, refers to aggressive price reductions that may be motivated by legitimate commercial objectives, such as increasing consumer welfare, achieving scale efficiencies, or stimulating demand.

⁷ CCI, Suo Motu Case No. 01 of 2019 (23 August 2021).

⁸ CCI, Case Nos. 36 & 82 of 2014 (14 June 2017). While the COMPAT subsequently set aside the CCI's order in the Hyundai Motor Case (albeit on procedural grounds), this case nonetheless paved the way for Indian competition law jurisprudence on RPM. It provides helpful guidance on the likely position the CCI may take in future RPM cases involving resale restrictions, including discount control mechanisms.

⁹ CCI, Case No. 14 of 2019 (19 October 2022).

The CCI has consistently clarified that deep discounting is not *per se* anti-competitive. Discounts and incentives are recognised as essential commercial tools that can drive efficiencies, enhance consumer welfare, and foster innovation. However, scrutiny is heightened when such practices are deployed by dominant enterprises or in a manner that may foreclose equally efficient competitors, raise entry barriers, or distort market dynamics.

In cases involving ride-hailing platforms such as Uber and Ola, the CCI has considered the role of user-side incentives and the impact of network effects.¹⁰ These platforms often deploy aggressive discounting and incentive schemes to attract both riders and drivers, thereby accelerating network growth. The CCI found that while the platforms' discounting and incentive schemes were aggressive, there was insufficient evidence to conclude that these practices had resulted in the foreclosure of equally efficient competitors or had created entry barriers. The CCI also found that the pricing strategy deployed by Uber and Ola was a pro-competitive business strategy to develop the network and not conduct motivated by an intention to exclude competitors. Further, both Uber and Ola continued to compete vigorously, and consumers benefited from lower prices and improved service quality.

Effects Based Assessment: Evidence, Tests And Justifications

Both the CCI and the Supreme Court have consistently recognised that rebates, allowances and other forms of price reductions can enhance consumer welfare by lowering costs, rewarding efficiencies, and stimulating inter-brand rivalry. Accordingly, the CCI generally accepts an "effects-based" approach, under which the onus eventually shifts to the enterprise under investigation to furnish an "objective justification" capable of demonstrating that the impugned conduct either produces pro-competitive gains that outweigh any exclusionary impact or, at the very least, is competitively neutral.

Measurable Effects-Based Approach – Price-Cost Tests (Predatory Pricing) And Market Wide Effects

In assessing whether discounting practices by a dominant enterprise could amount to predatory pricing resulting in an AAEC, the CCI applies price-cost benchmarks, including average avoidable cost and long-run average incremental cost. A central inquiry is whether equally efficient competitors could replicate the discount scheme without pricing below cost.

Beyond Cost Tests, The CCI Evaluates Market-Wide Effects, Including:

- The extent of foreclosure relative to the total addressable market;
- Whether discount structures impair innovation or reduce product variety; and
- The impact on intra-brand and inter-brand price competition.

Discounts that can be matched by efficient rivals and do not materially restrict competitive constraints are less likely to be found abusive. The CCI in *Kalpiti Sultania Case* and *Fast Track Call Cab Pvt. Ltd. v. ANI Technologies Pvt. Ltd.*¹¹ used price cost benchmarks to determine whether the enterprises indulged in predatory pricing.

Objective Justification And Non-Discrimination

Indian competition law permits differential pricing where it is supported by legitimate commercial justifications. Volume-based rebates, non-exclusive loyalty incentives, and functional or "trade" discounts have been upheld where they reflect genuine efficiencies and do not distort competition.

Section 4(2)(a)(i) of the Competition Act prohibits unjustifiable price discrimination, but the CCI evaluates whether buyers are "similarly placed" by reference to objective economic parameters, such as purchase volume, creditworthiness, delivery schedules, and the cost-to-serve. Where a dominant enterprise can substantiate that divergent prices correspond to demonstrable cost differentials or legitimate commercial considerations, for instance, bulk purchases, off-take commitments, or warehousing functions, the conduct will generally not be considered anti-competitive.

Further, the CCI evaluates discount schemes to check for efficiency. The touchstone is whether the incentives are linked to demonstrable cost reductions, logistics optimisation, inventory management, or other verifiable productivity gains that ultimately benefit consumers in the form of lower prices, better quality, or enhanced innovation. Volume-based rebates that reward genuine economies of scale, or incentive programs that induce distributors to improve sales efforts, have repeatedly been upheld where the underlying economic analysis substantiates a causal nexus between the rebate / differential pricing and the claimed efficiency.

Other Non-Price Considerations

Quality assurance also constitutes a pro-competitive justification. Tie-in obligations or minimum service standards that accompany a discount, such as a requirement that automobile dealers procure spare parts or diagnostic tools from approved sources, have been accepted where they safeguard product integrity and protect the manufacturer's brand reputation, so long as the restraint is no broader than necessary to achieve that objective. In the *Hyundai Motor Case*, the CCI emphasised that the legitimate pursuit of quality control can be more important than intra-brand price competition.

Preventing free riding is another rationale the CCI may accept, particularly in sectors where retailers incur significant pre and post-sale investment such automobile distribution and consumer electronics. RPM or discount restrictions may be defensible if they stop low-service sellers from undercutting full-service dealers who provide expensive customer support. However, the CCI looks closely at these rules and

¹⁰ In Re: *Meru Travel Solutions Private Limited*, CCI, Case No. 81 of 2015 (22 December 2015) and Case No. 96 of 2015 (14 July 2021); *Meru Travel Solutions Private Limited & Another v. ANI Technologies Private Limited*, CCI, Case No. 6 and 74 of 2015 (19 July 2017). This was subsequently upheld by the NCLAT in *Meru Travel Solutions Private Limited v. Competition Commission of India, NCLAT*, Competition Appeal No. 19 and 20 of 2017 (7 January 2022).

¹¹ CCI, Case No. 6 & 74 of 2015 (19 July 2017).

requires strong proof that they really improve service quality and that there is still enough competition between brands. In the Maruti Suzuki Case, even though the CCI saw a risk of free riding, it found the discount control policy excessive because it reduced price competition between car brands and ultimately harmed consumers.

Practical Guidance For Compliant Design

Set out below are practical, compliance-oriented principles for designing discounting, rebate, parity, and pricing policies in a manner consistent with Indian competition law. They translate the CCI's effects-based jurisprudence into operational guidance, focusing on aligning commercial incentives with verifiable efficiencies, preserving buyer choice and market contestability, and minimising foreclosure risks. Taken together, they are intended to help firms, particularly those with market power, structure pricing and incentive mechanisms that deliver consumer benefits while reducing exposure to scrutiny under Sections 3 and 4 of the Competition Act.

Align Incentives With Verifiable Efficiencies

Rebate and loyalty schemes should be structured around clearly measurable, transaction-specific efficiencies such as economies of scale, logistics streamlining, inventory optimization, and service quality and should maintain contemporaneous documentation demonstrating a causal link to consumer benefits. Programs that verifiably lower onboarding costs or reward bona fide performance are more likely to be viewed as falling within a pro-competitive safe harbor.

Preserve Contestability And Buyer Choice

It is important to (i) steer clear of "all-units" rebate designs or threshold mechanisms that effectively induce exclusivity or make multi-sourcing commercially unviable for buyers, particularly in the presence of market power; (ii) ensure that buyers retain the ability to procure a meaningful portion of their requirements from competing suppliers; and (iii) apply consistent criteria to similarly situated customers and avoid bespoke thresholds that simply replicate historical purchasing patterns without a defensible efficiency rationale.

Use Disciplined Parity Terms

Where price parity clauses are employed, competition concerns are less likely to arise if their scope and duration remain narrowly defined, non-comparable sales channels are excluded, and they are not combined with financial support that reinforces platform-specific advantages. Periodic assessment of their effects on rival access and market entry can further assist in identifying potential foreclosure risks. In appropriate cases, evidence demonstrating supplier-side efficiencies, reduced search costs, or fraud-prevention benefits, together with an absence of exclusionary effects may help support the competitive neutrality of such arrangements.

Calibrate RPM Risk Management

RPM risks tend to be lower where discount policies do not restrict dealers' freedom to set resale prices or impose penalties for unauthorized discounting. Where minimum service standards or quality-related obligations are relied upon, documenting the existence of a free-rider problem and explaining why less restrictive alternatives would not achieve the same objectives can be relevant. Patterns such as uniform pricing outcomes or recurring dealer complaints may serve as early indicators of heightened competitive risk.

Document Price-Cost Discipline And Market Effects

Similarly, the likelihood of competitive harm is reduced where firms undertake *ex ante* and periodic price-cost analysis demonstrating that equally efficient competitors could replicate effective prices without pricing below cost, and where market-level evidence points to sustained innovation, product variety, and entry. In digital markets that rely on deep discounting to achieve scale, indicators such as ongoing rivalry, multi-homing behaviour, and gains in consumer surplus may reinforce the pro-competitive character of such strategies.

Best practices include maintaining robust evidence of efficiencies, such as cost savings, quality improvements, or consumer benefits, that arise from the discount scheme. Businesses should be prepared to demonstrate that their practices enhance competition rather than restrict it, for example, by showing that discounts are available on a non-discriminatory basis and are linked to genuine efficiencies. Regular legal review and benchmarking against international standards can further mitigate risk and support a defensible, pro-competitive rationale for discount practices.

Conclusion

Indian antitrust enforcement recognises rebates, loyalty incentives, and price parity clauses as commercially legitimate instruments, while remaining alert to their potential exclusionary effects. Accordingly, the analytical focus rests on an effects-based assessment grounded in objective justification, the ability of equally efficient rivals to replicate the conduct, and demonstrable consumer benefit. Volume-based and functional rebates that reflect verifiable efficiencies, apply transparent and non-discriminatory criteria, and preserve market contestability have generally been viewed as permissible. By contrast, discount control mechanisms and expansive parity obligations that dampen price rivalry or impede rival access have attracted closer scrutiny and, in some cases, liability. Ultimately, the decisive compliance task is evidentiary: articulate the efficiency purpose *ex ante*, constrain scope to what is indispensable, and continuously demonstrate competitive vitality on price, entry, and innovation so that pro-competitive effects clearly outweigh any risk of AAEC.

Driving Fair Play: The Competition Commission of India's Impact on the Pharmaceutical Sector

By Rohan Arora, Atreyee Sarkar, Radhika Seth
and Arjav Kulshreshtha¹

India is known as the “pharmacy of the world” due to the low cost and high quality of its medicines, cementing its important position in the global pharmaceutical industry. The Indian pharmaceutical sector supplies over 60% of global demand for various vaccines, with Indian pharmaceuticals contributing ~40% of generic demand in the United States of America (USA) and ~25% of all medicine in the United Kingdom (UK).² In fact, the pharmaceutical industry in India is the 3rd largest in the world in terms of volume and 14th largest in terms of value.³

The Indian pharmaceutical industry is expected to rapidly grow to US\$ 450 billion (i.e., approx. INR 39,09,139.03 crore) by 2047⁴ and is an important contributor to India's growth as it currently constitutes around 1.72% of the country's GDP.⁵

As the sector evolves, regulatory bodies such as the Competition Commission of India (CCI), bear the responsibility to ensure fair competition and safeguard consumer interests. Through a series of orders and a market study, the CCI has addressed issues in the pharmaceutical sector that range from alleged cartelization and

¹ Rohan Arora, Atreyee Sarkar and Radhika Seth, Partners and Arjav Kulshreshtha, Associate, Shardul Amarchand Mangaldas & Co. The views expressed here are personal.

² Invest India, *Sector Overview of Pharmaceuticals*.

³ Indian Brand Equity Foundation, *Indian Pharmaceutical Industry*.

⁴ *ibid.*

⁵ *ibid.*

abuse of dominance to mergers and acquisitions that may stifle competition.

The evolving nature of the pharmaceutical sector demands a keen understanding of the intricacies involved, as market players navigate challenges related to intellectual property rights, pricing strategies, and entry barriers. This article aims to assess whether the CCI's actions promote fair competition, foster innovation, and ensure affordable access to life-saving drugs. Further, this article will highlight the delicate balance the CCI must strike between the promotion of industry growth and to prevent the occurrence and continuation of anticompetitive behaviour. As the pharmaceutical sector continues to push technological boundaries, react to regulatory change, and respond to the new challenges, the CCI's approach will be a crucial factor in shaping the industry's trajectory.

CCI's Decisional Practice In The Pharmaceutical Sector

CCI's Assessment Of Trade Association Practices

In India, the All India Organization of Chemists and Druggists (AIOCD) and its various member associations at the state and district levels play a significant role in the supply of pharmaceutical products across the country.⁶ The AIOCD and its state and district level members are not statutory bodies but professional bodies that have been established to protect and advocate for the interests of their members (i.e., stockists and druggists).⁷

However, while the AIOCD and its members do not play any statutory role, they entered into memoranda of understanding with organizations such as the Indian Drug Manufacturers' Association (IDMA) and Organisation of Pharmaceutical Producers of India (OPPI).⁸ In this context, the AIOCD and its members exercise a great deal of influence on the stockist or wholesaler who is appointed by a pharmaceutical company.

With this factual matrix in mind, one of the earliest cases brought against the stockists and druggists involved allegations that through the guidelines and policies imposed by the Chemists and Druggists Association of Goa (CDAG), there was a restriction on the number of stockists who could operate, which impacted the bidding involved in the supply of goods by the wholesaler to the government.⁹

The impugned guidelines and policies of the CDAG included: (i) requiring a no-objection certificate (NOC) from the CDAG to be appointed as a stockist, distributor or wholesaler; (ii) preventing participation in Government tenders unless they were an "authorised

stockist", as determined by the CDAG; (iii) obtaining an NOC from the CDAG before becoming a stockist or wholesaler of that company; and (iv) payment of a fee known as the Product Information Service (PIS) as a condition for introducing pharmaceutical products in the market.

In addition to the above requirements, the CDAG also introduced policies and guidelines that had the effect of fixing the trade margins for wholesalers and retailers, which impacted the sale price of drugs in the market. Failure to adhere to these guidelines and policy resulted in sanctions being imposed in the form of boycotts from the members of the CDAG or fines on the stockist or wholesaler.

Therefore, through the CDAG's policies and guidelines, mandatory conditions were imposed on pharmaceutical companies to introduce new pharmaceutical products, and the CDAG fixed the price of drugs in the market. As a result, the CDAG was restricting the supply of pharmaceutical products and fixing the price of the products in the market. Accordingly, the CCI held that the CDAG had violated Sections 3(3)(a) and (b) of the Competition Act, 2002 (Act).

Shortly after this decision, in 2013, the CCI examined similar allegations against the AIOCD itself. In particular, the CCI examined allegations that the AIOCD required a stockist / wholesaler / distributor to obtain an NOC from the state and district level associations, affiliated with the AIOCD, as a mandatory pre-condition to be appointed as a stockist / wholesaler / distributor of a pharmaceutical company.¹⁰

The AIOCD also required the payment of PIS for the introduction of new products. If an NOC was not obtained or PIS was not paid, then the state / district level association would boycott the pharmaceutical companies. As was the case with the CDAG, such guidelines and policies of the AIOCD were found to violate Sections 3(3)(a) and (b) of the Act.

In addition to the above cases, the CCI has investigated and taken action against several state and district level chemist and druggist associations. This includes those chemist and druggist associations of Baroda, Ferozepur, Assam, among others.¹¹ In fact, in 2014, the CCI published a public notice that the compulsory payment of PIS charges by pharmaceutical firms / manufacturers to associations for the release of a new drug / new formulation is anti-competitive (2014 Public Notice).¹² On the other hand, the voluntary payment of PIS charges would not be anti-competitive.

This approach was followed in 2022 where the imposition of PIS was not a mandatory pre-condition for the distribution of pharmaceutical products, and the introduction of new products was not hindered by

⁶ AIOCD, *Vision and Mission*.

⁷ *ibid.*

⁸ *Santuka Associates Pvt. Ltd. v. AIOCD & Ors.*, CCI, Case No. 20 of 2011 (19 February 2013) (*Santuka Associates*).

⁹ *Varca Druggist & Chemist & Ors. v. Chemists and Druggists Association*, Goa, MRTP C-127/2009/DGIR4/28 (11 June 2012).

¹⁰ *Santuka Associates*; see also, *Peevar Medical Agencies, Kerala v. AIOCD & Ors.*, CCI, Case No. 30 of 2011 (9 December 2013).

¹¹ See *Vedant Bio Sciences v. Chemists & Druggists Association of Baroda*, MRTP C-87/2009/DGIR (5 September 2012); *M/s Arora Medical Hall, Ferozepur v. Chemists & Druggists Association, Ferozepur & Ors.*, CCI, Case No. 60 of 2012 (5 February 2014); *M/s Sandhya Drug Agency v. Assam Drug Dealers Association & Ors.*, CCI, Case No. 41 of 2011 (9 December 2013).

¹² *Alleged anti-competitive practices by the Chhattisgarh Chemist and Druggist Association in limiting supply of drugs / medicines in the State of Chhattisgarh*, CCI, *Suo Moto* Case No. 04 of 2020 (5 July 2022).

the voluntary imposition of PIS. In line with the 2014 Public Notice, the CCI held that there was no contravention of Section 3, as the PIS charges were voluntary in nature.¹³ Therefore, the key decisive factor is whether or not the PIS charge is mandatory in nature.

However, despite such progress, the CCI has recently penalised trade associations in the context of boycotts. In 2023, the Chemists Association, Raisingh Nagar and Sri Ganganagar Chemists Association (City) would boycott pharmaceutical companies who failed to offer higher margins and incentives to them.¹⁴ As a result, the pharmaceutical companies were, under the threat of boycott, compelled to offer higher margins and incentive schemes to these associations.

Therefore, the CCI has taken action where conduct has adversely affected the distribution of pharmaceutical products to the detriment of the end consumer. The difference in the conduct identified in earlier cases and the more recent cases are a useful indicator of the effectiveness of the CCI's past intervention.

CCI's Definition And Assessment Of The Relevant Market In This Sector

Another important aspect of the assessment of the pharmaceutical sector is the manner in which the CCI has defined the relevant market. Proper identification and definition of the relevant market is crucial to identify the competitors of the undertaking in question and for understanding the degree of competitive constraint exercised on them. Without a proper definition of the relevant market, competition authorities may erroneously identify a narrower market in which the concerned undertaking appears to have more market power than they do in reality. Similarly, competition authorities may fail to correctly understand which products and / or services compete with those products / services of the concerned undertaking. For instance, a narrow market definition may result in the exclusion of relevant bio-similars that would exercise competitive constraint on the concerned pharmaceutical product and a wide market definition would erroneously include other products that do not exercise any competitive constraints on the concerned pharmaceutical product.

The pharmaceutical sector poses interesting questions in relation to market definition due to the presence of bio-similars (i.e., drugs that are found to be very similar to the reference biological drug and may have different characteristics than the reference biological drug).¹⁵

Further, pharmaceutical products are classified at 5 different levels by the World Health Organization. This classification system is referred

to as the Anatomical Therapeutic Chemical (ATC) classification.¹⁶ Under the ATC classification, the active substances are divided into different groups according to the organ or system on which they act and their therapeutic, pharmacological and chemical properties. Helpful guidance on the CCI's approach to market definition in this industry can primarily be found in the CCI's assessment of combinations.

In this context, and given the unique characteristics of pharmaceutical products, market definition is extremely important in the pharmaceutical industry.

Market Definition In Merger Control

In *Sun / Ranbaxy*, the CCI examined the presence of the notifying parties at the ATC-4 level.¹⁷ The CCI observed that the ATC-4 level is the most suitable for assessment of the combination as the various generic brands of a given molecule are chemical equivalents and are therefore considered to be substitutable.

The CCI considered defining the market at the therapeutic group level only. However, the CCI held that this would not be appropriate, as drugs within a group may not be substitutable because of differences in the intended use, mechanism of action of the underlying molecule, mode of administration, contra-indications, side effects etc. It further observed that, in generics markets, competition primarily takes place between different brands based on the same molecule. Therefore, in this case, the CCI held that the definition of the market at the ATC-4 level would be most appropriate.

In subsequent cases, however, the CCI has defined the market at the ATC-3 level as well as the ATC-4 level and has assessed the markets accordingly. Therefore, it is clear that any analysis of the horizontal overlaps that may exist must be done at the ATC-3 and ATC-4 levels.¹⁸

In the context of transactions involving vertical relationships, the CCI has considered and assessed the supply chain that exists in the pharmaceutical industry. Broadly, the key aspects of the pharmaceutical supply chain are: (i) pharmaceutical intermediates; (ii) active pharmaceutical ingredients (APIs); (iii) final dose formulations (FDs); and (iv) contract development and manufacturing operations (CDMO).¹⁹

Pharmaceutical intermediates are chemical compounds which serve as the building block for APIs. APIs can be manufactured by the enterprise itself or can be purchased from third parties. APIs are then used to manufacture FDs for consumption by the end

¹³ *ibid.*

¹⁴ *Solar Life Sciences Medicare Private Limited And Chemist Association, Raisingh Nagar & Ors.*, CCI, Case No. 20 of 2020 (23 August 2023).

¹⁵ *ibid.*

¹⁶ World Health Organization, *Anatomical Therapeutic Chemical (ATC) Classification*.

¹⁷ *Sun Pharmaceutical Industries Limited / Ranbaxy Laboratories Limited*, CCI, Combination Registration No. C-2014/05/170 (5 December 2014).

¹⁸ *Sanofi / Boehringer Ingelheim International GmbH*, CCI, Combination Registration No. C-2016/07/413 (21 September 2016); see also, *Platinum Jasmine A 2018 Trust / Intas Pharmaceuticals Limited*, CCI, Combination Registration No. C-2022/09/965 (10 October 2022); *GlaxoSmithKline plc / Pfizer Inc.*, CCI, Combination Registration No. C-2019/03/654 (22 May 2019).

¹⁹ *Mankind Pharma / Bharat Serums and Vaccines Limited*, CCI, Combination Registration No. C-2024/08/1171 (1 October 2024); and *Berhyanda / ADIA*, CCI, Combination Registration No. C-2024/05/1147 (18 July 2024).

consumers. CDMOs are third parties who manufacture APIs or FDFs for pharmaceutical companies, under their brand names.²⁰

In its decisional practice, the CCI has examined the presence of the notifying parties who are active in manufacturing of the above-mentioned pharmaceutical products and the provision of CDMO services to third parties.²¹ Within the broader markets for manufacturing and provision of CDMO services and segmentation of pharmaceutical intermediates, the API and FDF level has been considered as well. Therefore, the CCI has taken a proactive stance in examining the structure of the pharmaceutical industry, as well as the competitive dynamics at the appropriate level.

Market Definition And Market Dynamics In Enforcement Cases

In the assessment of combinations, the CCI's manner of defining the market seems to focus primarily on the manufacturing capability of the transacting parties. Whether it be pharmaceutical intermediates, APIs, FDFs or CDMOs, the CCI's focus is on the presence of the transacting parties and their ability to foreclose competition at the different levels of the supply chain through their combined manufacturing capacity. This approach is consistent with the forward-looking approach in merger control and the emphasis on the future impact on the market, especially in R&D heavy industries such as the pharmaceutical industry.

On the other hand, in the context of enforcement cases (albeit limited in number), the CCI's approach appears to be different. Generally, in enforcement cases, the CCI will adopt a retrospective approach to determine whether certain conduct has already affected the competitive dynamics of that particular market.

In *Biocon Limited v. F. Hoffman-La Roche (Biocon)*, the CCI examined allegations that Hoffman-La Roche, through its dominant position, was engaging in several actions to prevent the entry of the informant's low-cost generic drug that was designed to treat HER-2 positive breast cancer as a cost-effective alternative to Hoffman-La Roche's drug, Trastuzumab.²² Although only a *prima facie* order, Biocon provides important insight into the approach of the CCI to allegations of abuse of dominance in the pharmaceutical sector.

In this context, the CCI observed that in this industry, the end-consumer i.e., the patient, is not the final decision maker.²³ With respect to specific diseases (such as, breast cancer), the course of treatment is determined by the doctor. As such, the CCI observed that the demand for drugs / medicines / therapy prescription is induced by the course of treatment chosen by a doctor, which is often viewed as sacrosanct by consumers.²⁴ Due to this, the price sensitivity of consumers is also more limited in nature. As the health of the patient is of utmost importance, the intended use of the drug

in question is more relevant, which, for purposes of substitutability, is governed by its quality, safety and efficacy.

While there are several different treatment methods for HER-2 positive breast cancer, such as surgery, radiotherapy, chemotherapy, targeted therapy etc. These treatment methods were not considered to be substitutable with each other as they may be used in conjunction with one another (rather than as substitutes to each other), have different side effects and levels of effectiveness. As such, the market was not defined to include other such treatments for HER-2 positive breast cancer.

Within the definition of the relevant market, the CCI also did not include drugs that were used in conjunction with Trastuzumab or as a follow up to Trastuzumab. As a result of their non-substitutability, the CCI did not consider these as part of the same relevant market.

Finally, the CCI examined Trastuzumab at the molecular level (i.e., the ATC-5 level) and observed that drugs based on Trastuzumab, i.e., the reference biological drug as well as its bio-similars, would also form part of the same relevant product market due to their substitutability. Accordingly, the CCI observed that despite not being identical to the reference biological product, a bio-similar is highly analogous to an already approved biological product and may not have any meaningful differences from the reference product. Further, the CCI noted that bio-similars also serve the same intended use as that of the reference biological drug and can be said to be posing a competitive constraint to it.

The market was defined very narrowly as the "market for biological drugs based on Trastuzumab, including its bio-similars". The CCI then examined Hoffman La-Roche's position in the market and found that Hoffman La-Roche had high market shares of more than 61% in 2014 and 2015 (both in terms of value and volume).

Hoffman La-Roche's position was also strengthened by the fact that it had the first mover advantage in this market and that there was limited countervailing buyer power given the nature of the disease and treatment. The significant cost, time and expertise involved in the development of biosimilar Trastuzumab also formed barriers to entry, which contributed to Hoffman La-Roche's position in the market.

After establishing that Hoffman La-Roche held a dominant position in the relevant market, the CCI carefully examined the conduct and held that a *prima facie* case exists. Accordingly, an investigation was directed to be conducted. It will be interesting to see how the DG and the CCI consider the theories of harm in the pharmaceutical industry and the assessment of the abuse, if any, as well as the impact on

²⁰ *ibid.*

²¹ *ibid.*

²² *Biocon Limited v. F. Hoffman-La Roche AG & Ors.*, CCI, Case No. 68 of 2016 (21 April 2017).

²³ *ibid.*

²⁴ *ibid.*

competition in the markets identified. This case will be especially important as, in its previous decisional practice, the CCI has not found that a *prima facie* case has been established.²⁵

In 2023, the Division Bench of the High Court of Delhi held that the jurisdiction of the CCI is ousted because the Controller of Patents under the Patents Act, 1970 (*Patents Act*) has sufficient powers to address any competition concerns from patent licensing and alleged abuse of patent rights.²⁶ It also held that, as a settlement was entered into between the informant and the patent holder, there was no requirement for an investigation under the Act. The Supreme Court of India chose not to interfere with the Division Bench's judgment as the original informants had settled their dispute; however, it left the questions of law open to be reassessed in an appropriate case.²⁷ The National Company Law Appellate Tribunal followed the Delhi High Court's judgment in a subsequent decision, stating that the CCI lacked the jurisdiction to examine allegations made in relation to a patent dispute.²⁸ Therefore, cases relating to patents would not fall under the CCI's purview at this stage. However, it is yet to be seen if this position will be challenged in the future.

CCI's Market Study On The Pharmaceutical Sector

As part of its continuing advocacy efforts, the CCI also conducted and published a market study in 2021. In its market study, the CCI broadly examined: (i) the prevalence of branded generic drugs in India and its implications on competition; and (ii) pharmaceutical distribution and the role of trade associations, trade margins and drug pricing. The study had the overarching objective of understanding the factors that influence price competition in the pharmaceutical sector.

Broadly speaking, the CCI made the following observations:

- Competition among brands of generic drugs is more important for consumers than competition on the price of the generic drugs. The CCI reviewed the prices of various generic drugs and branded drugs and concluded that there is a significant markup across brands, with markups reaching even >100%. This large disparity in the prices across brands is despite the effect that generic drugs have on drug prices.
- The importance of brand competition over price competition is evidenced by the fact that the market leaders for some drugs would price their drugs significantly higher than manufacturers of generic drugs. As such, from the perspective of consumers, the brand recognition and perception seemed to be more important than the price of the drug.
- With respect to trade association practices, the CCI acknowledged the impact of the CCI's intervention on competition as well as prices of drugs. The CCI recommended an increase in price competition among retailers through price discounts and margins that are fixed.

- The CCI recognised the emergence of online pharmacies and the impact they can have on price competition in the pharmaceutical industry. However, the CCI maintained that Indian competition law is sufficient for any competition law concerns that may arise in the future.
- The CCI also recommended that all trade associations introduce the necessary measures to ensure compliance with the Act.

Positives And Negatives Of The CCI's Assessment So Far

Efficacy Of The CCI's Market Study

The CCI's market study is a step in the right direction, with broad recommendations on how different players should conduct themselves to ensure compliance with the Act. However, the CCI also recognises that any assessment of the theories of harm and / or competition concerns arising from the conduct of various players in the pharmaceutical industry should be addressed on a case-to-case basis.

Impact Of The CCI's Decisions In Relation To Trade Association Practices

Through its decisions on the conduct of AIOCD and the state and district level chemists' and druggists' associations, the CCI has ensured that conduct that would prevent the entry of goods or reduce consumer access to drugs, is discontinued. In fact, in its market study on the pharmaceutical sector, the CCI has noted that the stakeholder feedback suggested a significant positive impact of the CCI's orders and advocacy initiatives, in terms of discontinuation of the NOC and mandatory PIS norms.²⁹ Therefore, the CCI, through its decisions, has ensured healthy competition in the pharmaceutical industry.

CCI's Approach To Market Definition In The Pharmaceutical Industry

In its various orders, particularly in enforcement and merger control decisions, the CCI has taken a prudent and practical approach to the market definition. This is a crucial step for assessment of competition concerns, if any, and to properly understand the competitive dynamics of the concerned markets. A market definition which is too wide would not be practical in the pharmaceutical industry, given that different APIs and FDFs have different biological effects and are designed for different purposes.

While it can be argued that from a supply side perspective there is minimal switching cost in the manufacture of different pharmaceutical products, the CCI has correctly given more weightage on the end use and demand side perspective when delineating the market. This has helped ensure that for each API and FDF, there is an appropriate assessment of the competitive dynamics.

This balanced approach has not only preserved the competitive

²⁵ *Mr. Ambalal V. Patel v. Central Medical Service Society & Ors.*, CCI, Case No. 02 of 2020 (10 February 2020). See also *Manoj Hirasingh Pardeshi v. Gilead Sciences Inc.*, CCI, Case No. 41 of 2012 (5 March 2013).

²⁶ *Telefonaktiebolaget LM Ericsson (Publ) and Ors. v. CCI & Anr.*, Delhi High Court, LPA 150/2020 (13 July 2023).

²⁷ *Competition Commission of India v. Monsanto Holdings Private Limited*, Supreme Court, Special Leave to Appeal (c) No 25026/23 (2 September 2025).

²⁸ *Swapan Dey v. Competition Commission of India and Vifor International (AG)*, NCLAT, Competition Appeal (AT) No. 05 of 2023 (30 October 2025).

²⁹ Competition Commission of India, *Market Study on the Pharmaceutical Sector in India* (18 November 2021).

landscape but also instilled confidence among stakeholders, fostering an environment where businesses can thrive, and consumers can benefit from choice and quality. This approach is underscored by the CCI's emphasis on evidence-based decision-making, where thorough examination of market dynamics informs regulatory actions. By avoiding unnecessary intervention, the CCI has effectively balanced the need to prevent anti-competitive behaviour with the imperative of allowing market forces to operate freely.

CCI's Lack Of Decisional Practice In Abuse Of Dominance Cases

The CCI has very limited decisional practice on the adjudication of allegations under Section 4 (i.e., on the abuse of a dominant position). In fact, the CCI's *prima facie* order in Biocon is seemingly the most detailed guidance provided on how the dominance of a pharmaceutical product manufacturer is to be assessed. However, this provides very limited guidance for other players in the market.

In other cases, the CCI has found that there are no concerns of abuse dominance because in those markets, the parties in question did not hold a position of dominance. These markets include the markets for anti-TB drugs in India,³⁰ and the market for anti-retroviral drugs in India.³¹ Therefore, for players in the pharmaceutical industry to assess their conduct under Sections 3(4) and 4 there is very limited guidance. Players in this industry would be constrained to rely on other enforcement cases and apply those principles to their own facts and circumstances. However, these cases are unlikely to adequately capture and account for the nuances of the pharmaceutical industry and as such, would provide imperfect guidance to assess the conduct of players in this industry.

The absence of proper guidance will reduce certainty for players in this industry and makes it trickier to assess whether their conduct runs afoul of the Act.

To remedy the lack of guidance in the form of judicial precedents, the CCI could consider using the powers conferred on it under Section 64B of the Act, which was introduced under the Competition (Amendment) Act, 2023. Under Section 64B, the CCI has the power to publish guidelines on the provisions of the Act. Accordingly, the CCI should combine its experience and knowledge of the pharmaceutical industry with this new power to provide clear, detailed guidance for competition issues specific to this industry.

Conclusion

Moving forward, continued diligence and adaptability will be key in upholding the integrity of India's markets and promoting a thriving ecosystem where competition persists and consumers benefit. While the CCI's decisional practice with respect to trade association practices is commendable, there are several opportunities for the CCI to provide clearer and more concrete guidance to businesses in the pharmaceutical industry. The lack of proper guidance and intervention may inadvertently hamper growth in this industry (as was identified in the trade association practices cases).

With so many different aspects of the pharmaceutical industry, the CCI has many opportunities to intervene to ensure that fair and healthy competition is taking place at various stages and in different segments of the pharmaceutical industry. Therefore, it is strongly recommended that the CCI be more proactive in the enforcement of competition laws in this industry to achieve the objectives set out in the preamble of the Act: "...to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India...".

30 *Mr. Ambalal V. Patel v. Central Medical Service Society & Ors.*, CCI, Case No. 02 of 2020 (10 February 2020).

31 *Manoj Hirasingh Pardeshi v. Gilead Sciences Inc.*, CCI, Case No. 41 of 2012 (5 March 2013).



India's Merger Remedies: The Dealmaker's Playbook For The Next Decade

By Shweta Shroff Chopra and Ritwik Bhattacharya¹

India's merger control regime is entering its decisive decade. Over the past few years, the Competition Commission of India (CCI) has gained considerable experience in tackling complex merger cases by formulating bespoke and effective remedies / modifications.² The result is a regime that prefers to fix rather than block,³ listens but does not hesitate to lead, and increasingly uses global coordination without surrendering Indian priorities. The message to dealmakers is clear: anticipate remedies early, design for India-specific risks, and bring a credible 'Plan B'. The next wave of mergers - especially in media, mobility, tech, healthcare, manufacturing, and AI-enabled ecosystems, will be cleared not on rhetoric but on remedy architecture that actually works in the Indian market.

In this article, we seek to examine the current law / precedents, crystal ball gaze into where remedies are heading, why structural remedies still often win but behavioural remedies are no longer a consolation prize, and what parties must do differently to manage risk going forward.

The Current State Of Play: Flexible, Business-Minded, Increasingly Sophisticated

India's merger control regime has processed more than a thousand filings since 2011 without prohibiting a single deal. This statistic is not a coincidence - it is policy execution through remedies. Roughly 45 cases have involved modifications, with a material number featuring divestitures, an increasing number relying on behavioural constraints

¹ Shweta Shroff Chopra and Ritwik Bhattacharya, Partners, Shardul Amarchand Mangaldas & Co. The views expressed here are personal.

² Remedies / modifications are conditions imposed / accepted by competition authorities to fix / resolve anti-competitive concerns / harms from mergers. It allows the deal to proceed with some conditions imposed, rather than altogether blocking the deal. Remedies can be structural (like divestments) or behavioural (like firewalls, non-discrimination, price-caps, non-exclusivity, etc.) or a mix of both.

³ Not a single deal has been blocked since the inception of the merger control regime in India.

and many adopting hybrid remedies.⁴ The trendline is unmistakable: the CCI prefers solutions that preserve rivalry, protect distribution access, guard against information spillovers, and ensure that short-term market power does not harden into long-term foreclosure.⁵

The CCI is comfortable borrowing remedy logic from Brussels or Washington where it fits, but it will not back down from India-only fixes where domestic conditions drive the risk profile, as in *Metso / Outotec* where India was the sole remedy jurisdiction (owing to evidence of close bidding competition and innovation risks in a concentrated industrial segment).⁶ That posture - globally informed, locally anchored - now defines Indian merger control practice.

Structural Still Sets The Baseline - But “Quasi-Structural” And Targeted Behaviourals Are Rising

Divestiture remains the workhorse of Indian remedies when horizontal overlaps are high and rivals are distant. The design has matured: clean carve-outs, credible stand-alone businesses, robust ring-fencing, hold-separate management, go-to-market continuity, and strict purchaser suitability criteria. The CCI has largely moved from fix-it-first to fix-it-later in most cases, balancing transaction certainty with enforceability through monitoring trustees and well-defined divestiture periods, but it will escalate to a divestiture agency at “no minimum price” if timelines are blown.⁷ That is a strong signal: execution risk belongs to the parties, not the regulator.

The CCI has also accepted quasi-structural technology transfers and exclusive, irrevocable licences that effectively create a new competitor without forcing a full asset sale, as in *Metso / Outotec's*⁸ iron ore pelletising technology remedy. Where dynamic capabilities and IP access are central to rivalry, these constructs can outperform traditional divestitures in both speed and effect.

Behavioural remedies are no longer an afterthought. In *Schneider*

Electric the CCI cleared a Phase II case solely on behavioural - white labelling to strengthen third-party brands, FRAND licensing of technology, changes to distribution contracts to break de facto exclusivity, pricing guardrails tied to historic averages, and non-rationalisation commitments to avoid discontinuity.⁹ In *Air India / SIA* targeted capacity obligations on specific routes addressed the risk of price increases without uprooting network efficiencies.¹⁰ In *Reliance / Disney* the CCI accepted a tailored suite - no bundling of ad slot sales, FRAND ad-space access, pricing commitments for marquee sports events, and subscription pricing guardrails calibrated to market comparables - designed to neutralise short-term exclusivity without warping long-term innovation incentives.¹¹ These are not “light touch” remedies; they are meticulously designed guardrails backed by monitoring.

Hybrid packages continue to do heavy lifting where pure structure or pure behaviour misses the mark. *PVR / DT* illustrates the craft: behavioural freezes on expansion in some geographies, asset carve-outs in others, and dismantling of potentially exclusionary cooperation agreements - all mapped to granular local competition dynamics and new entry timing.¹² The through-line is proportionality with precision.

The Next Frontier: Common Ownership, Data Walls, Algorithms, And Portfolio Leverage

The CCI's remedy lens now focuses sharply on risks that sat at the margins of merger control just a few years ago. Common ownership across close competitors - especially through minority or non-controlling stakes by financial and strategic investors - invites ring-fencing commitments, board and veto right constraints, and robust “rules of information control.”¹³ Parties should expect these to intensify as capital structures become more networked across adjacent plays, and as India's private equity and sovereign wealth flows deepen.

4 Some important ones include: *Sun / Ranbaxy*, CCI, Combination Registration No. C-2014/05/170 (5 December 2014) (and see continuation order of 17 March 2015), *Holcim / Lafarge*, CCI, Combination Registration No. C-2014/07/190 (30 March 2015) (and see supplementary order of 2 February 2016), *ZF Friedrichshafen*, CCI, Combination Registration No. C-2014/10/215 (24 February 2015), *Dow / DuPont*, CCI, Combination Registration No. C-2016/05/400 (8 June 2017), *Abbott Laboratories*, CCI, Combination Registration No. C-2016/08/418 (13 December 2016), *China National Agrochemical Corporation*, CCI, Combination Registration No. C-2016/08/424 (16 May 2017), *Agrium / PotashCorp*, CCI, Combination Registration No. C-2016/10/443 (27 October 2017), *FMC*, CCI, Combination Registration No. C-2017/06/519 (18 September 2017), *Bayer / Monsanto*, CCI, Combination Registration No. C-2017/08/523 (14 June 2018), *Linde / Praxair*, CCI, Combination Registration No. C-2018/01/545 (6 September 2018), *ZF Friedrichshafen*, CCI, Combination Registration No. C-2019/11/703 (14 February 2020) (and further order of 4 January 2021), *Canary / Intas*, CCI, Combination Registration No. C-2020/04/741 (30 April 2020), *Metso / Outotec*, CCI, Combination Registration No. C-2020/03/735 (18 June 2020), *Sony / Zee*, CCI, Combination Registration No. C-2022/04/923 (4 October 2022), *Umang Commercial Company / Aditya Marketing and Manufacturing*, CCI, Combination Registration No. C-2022/07/952 (30 August 2022), *AGI Greenpac / HNG*, CCI, Combination Registration No. C-2022/11/983 (15 March 2023), *Reliance / Disney*, CCI, Combination Registration No. C-2024/05/1155 (27 August 2024); *Schneider Electric*, CCI, Combination Registration No. C-2018/07/586 (18 April 2019), *Air India / SIA*, CCI, Combination Registration No. C-2023/04/1022 (1 September 2023), *Ruby / Singtel*, CCI, Combination Registration No. C-2024/07/1168 (5 November 2024) and *Bharat Forge / AAMCPL*, CCI, Combination Registration No. C-2024/10/1197 (22 April 2025).

5 *GSPC Distribution Networks*, CCI, Combination Registration No. C-2012/11/88 (8 January 2013), *Mumbai International Airport*, CCI, Combination Registration No. C-2014/04/164 (29 September 2014), *Bayer / Monsanto* (see footnote 4, above), *TRIL Urban Transport*, CCI, Combination Registration No. C-2019/07/676 (1 October 2019), *Ruby / Singtel* (see footnote 4, above), *Air India / SIA* (see footnote 4, above), *Ipca / Unichem*, CCI, Combination Registration No. Case C-2023/05/1028 (26 July 2023), *Nippon Yusen Kabushiki*, CCI, Combination Registration No. Cases C-2016/11/459 (29 June 2017), *Northern TK Venture*, CCI, Combination Registration No. C-2018/09/601 (29 October 2018), *Hyundai Motor Company and Kia Motors Corporation*, CCI, Combination Registration No. Case C-2019/09/682 (30 October 2019), *Reliance / Disney* (see footnote 4, above), *Cases Canary / Intas* (see footnote 4, above), *Google / Bharti Airtel*, CCI, Combination Registration No. C-2022/03/913 (30 June 2022), *General Atlantic / Acko Tech*, CCI, Combination Registration No. C-2023/04/1017 (6 June 2023), *Dish TV / Videocon*, CCI, Combination Registration No. C-2016/12/463 (4 May 2017), and *Jio*, CCI, Combination Registration No. C-2018/10/609 and C-2018/10/610 (21 January 2019).

6 See footnote 4, above.

7 *Sun / Ranbaxy* (see footnote 4, above).

8 *ibid.*

9 *ibid.*

10 *ibid.*

11 *ibid.*

12 *PVR*, CCI, Combination Registration No. C-2015/07/288 (4 May 2016).

13 *Canary / Intas* (see footnote 5, above), *Northern TK Venture* (see footnote 5, above) and C-2022/03/913 *Google / Bharti Airtel* (see footnote 5, above).

Information firewalls are also now a standard feature to control information leaks between competitors. The CCI's recent orders detail who can sit on which board, how observers must be separated, what information can flow, and how dual representation in overlapping assets is to be prohibited or controlled. The regulator is increasingly specific about implementation mechanics - compliance affidavits, conflict management protocols, and third-party monitoring. For digital and data-rich businesses, parties should expect scrutiny to extend to technical architecture, access logs, role-based permissions, and auditability.

Algorithmic neutrality is also now on the table. In the *Hyundai / Kia-OLA* the CCI demanded assurances that the matching algorithm would not preference drivers by a particular OEM brand, translating a theory of digital discrimination into a remedy that speaks the language of code.¹⁴ This is a template for platform-adjacent transactions across ride-hailing, delivery, local services, travel, and marketplaces. Parties should expect these obligations to become more granular - covering ranking parameters, feature access, default settings, and self-preferencing triggers.

Portfolio effects and cross-market leverage in "ecosystem" deals are also triggering forward-looking constraints. *Bayer / Monsanto's* remedy package is a case in point: broad FRAND licensing of traits and herbicides, anti-bundling commitments, non-exclusivity undertakings in distribution, and mandated access to digital farming platforms and datasets, including free access for public institutions.¹⁵ This package targeted the blend of innovation disincentives and foreclosure risks across an interconnected stack - traits, seeds, chemicals, distribution, digital platforms, and data. Parties should expect this multi-layered remedy logic to feature prominently in deals combining content, distribution, ad-tech, cloud, payments, and mobility layers.

The New Procedural Calculus: More Touchpoints, Faster Lanes, And A "Grey Zone" That Matters

Recent legislative and regulatory changes have made the remedies process more fluid. The CCI and the parties can now propose fixes at every stage - i.e., in Phase I, in the "grey zone" (after a show-cause notice but before Phase II), and throughout Phase II. This increases strategic optionality, accelerates resolution where appropriate, and rewards parties who arrive with credible, proportionate offers that map cleanly to the CCI's theory of harms. The "grey zone" has become a tactical moment to pivot: a well-aimed remedy can avoid a protracted investigation and the reputational drag that comes with it. The Phase II procedure itself is now more structured and time-bound, but the CCI has not given up its ability to turn the screws with "take-it-or-leave-it" proposals where parties dither or underreach. Nonetheless, the CCI itself is keen to approve remedies without progressing the investigation to Phase II.¹⁶

¹⁴ Hyundai Motor Company / Kia Motors Corporation (see footnote 5, above).

¹⁵ Bayer / Monsanto (see footnote 4, above).

¹⁶ Sony / Zee (see footnote 4, above), AGI Greenpac / HNG (see footnote 4, above), Reliance / Disney (see footnote 4, above) and Air India / SIA (see footnote 4, above) are all indicative of this trend.

¹⁷ See footnote 4, above.

¹⁸ See footnote 4, above.

Market testing in India remains relatively informal compared to Europe. However, the CCI is increasingly relying on third-party intelligence in Phase I and on public comments and targeted information requests in Phase II. As mentioned above, in *Metso / Outotec* India was the only jurisdiction where remedies were required because of the substantial concerns raised by customers in the concerned market.¹⁷ Such third-party concerns were also duly considered in other deals such as *PVR / DT, Schnieder / L&T, ZF / WABCO*, amongst others. In select sectors, the CCI has gone beyond the dossier - undertaking plant visits, interrogating tender data, and examining channel-level pricing dynamics. Going forward, parties should expect more of this fact-forward inquiry in critical markets such as digital platforms, energy infrastructure, and industrials where customer voice and switching economics are decisive.

The procedural opening created by the "grey zone" only matters if parties arrive with remedy narratives that map cleanly to the CCI's articulated theory of harm and can be verified in operation. The CCI has consistently rewarded proposals that are proportionate, measurable and capable of thirdparty monitoring, and it has shown a preference for commitments that can be interpreted purposively rather than gamed via formal compliance. Put simply, the architecture must be designed to bite: define the conduct, specify the data, and hardwire the governance so that compliance is observable without ambiguity. This is the thread that runs through India's most instructive remedy packages, whether structural, behavioural, or quasistructural in design.

In practical terms, a CCI facing term sheet that lands well in the "grey zone" reads less like advocacy and more like a compliance blueprint. It defines scope narrowly around the identified harms, articulates the target effect in market terms, embeds verifiable metrics and default benchmarks, locks in governance and ringfencing with durable specificity, and marries flexibility on implementation with certainty on outcomes through trustee empowerment and calibrated penalties. When parties present remedies at that level of engineering - whether a divestiture with credible standalone viability, a licence that truly enables a rival to compete, or behavioural guardrails that neutralise short term foreclosure risks without chilling innovation - the CCI has proven willing to move quickly and decisively. That is the core shift underway in India: clearance is increasingly a function of design quality, not rhetoric.

Charting The Way Ahead

Where Will The CCI Push Next?

First, as in *Metso / Outotec*, India-specific fixes in global deals will increase.¹⁸ As India's markets scale and digitise, the CCI will demand bespoke solutions even where the EU or US clearance is

unconditional. Parties should assume that India may be the only jurisdiction requiring a remedy (where there are competition concerns arising in India) and plan accordingly - especially where local demand patterns, procurement structures, or regulatory frameworks amplify effects.

Second, quasi-structural remedies will proliferate. Parties should expect more exclusive licences, source code and API access packages, mandatory data portability, and interoperability obligations calibrated to maintain rivalry where asset separation is impractical or value is embedded in intangibles.¹⁹ These tools will be particularly attractive in software, industrial tech, media distribution, and cloud-based ecosystems.

Third, time-bound rights will draw time-bound guardrails. The CCI's approach to sports broadcasting will spill over into premium live entertainment, gaming, and event streaming.²⁰ Remedies will aim to prevent transient exclusivity from yielding durable market power - no anti-competitive bundling, FRAND access to ad inventory or platform rails, and pricing expectations benchmarked to market norms.

Fourth, common-ownership controls will harden.²¹ PE, financial and strategic investors with overlapping minority stakes should anticipate prescriptive governance and information remedies as the default. Where overlaps are deep and rivalry is close, divesting an interest - or committing not to exercise veto rights in defined strategy areas - may be the price of clearance. As common ownership proliferates - particularly through minority and non-controlling stakes across adjacent plays - the CCI's remedy lens is focusing on information flows and governance rights. Parties should expect increasingly prescriptive solutions: board and observer restrictions, veto right constraints in defined strategy areas, and robust information walls with rolebased access, technical architecture controls, and auditability. These protections are no longer limited to traditional rivals; they now extend across portfolios and ecosystems where subtle crossmarket leverage or information spillovers could distort competition.

Fifth, remedy monitoring will become more intrusive and data driven. The CCI already uses monitoring agencies²² broadly and has required narrative, market-facing compliance reporting. Expect next-wave orders to specify metrics, data fields, audit rights, and independent verification modalities - and to integrate consequences for non-performance into the remedy itself.

Sixth, the CCI will leverage sectoral interfaces. Where sector regulators impose access, neutrality, and quality obligations,²³ the

CCI's remedies will increasingly "stack" on top of these frameworks - aligning competition outcomes with regulatory design in telecoms, airports, energy pipelines, and payments. Parties should expect combined remedy/alignment commitments, plus cross-references to ensure coherent oversight.

Seventh, consumer-facing continuity remains non-negotiable. Commitments to absorb technical realignment costs, preserve service optionality, and avoid forced equipment changes are now standard in cable, DTH and broadband clusters.²⁴ This consumer protection strand is likely to expand in bundled digital services and connected devices.

The Strategy Shift Dealmakers Need To Make

Dealmakers must stop debating "structural versus behavioural" as a mantra and start designing remedy packages that are proportionate, implementable, and mapped line-by-line to the identified harms. In concentrated overlaps, a divestiture buyer with the right assets, people, and channel access remains king. However, if the market's competitive intensity depends on IP or data access, distribution neutrality, or innovation cadence, a cleverly structured behavioural or quasi-structural fix can go further, faster - provided it is monitorable, measurable, and tied to credible penalties for breach.

The best remedy packages share the following key traits:

- *Precision:* They track the CCI's theory of harm and offer case-specific solutions: e.g., FRAND access to ad inventory for time-bound sports rights; white-labelling and technology licensing where brand strength or product continuity anchors competition; capacity obligations on at-risk routes rather than generic price promises;²⁵
- *Verifiability:* They define data points, baselines, and audit rights, enabling monitoring agents to assess performance without guesswork. This could include average selling price anchors tied to historical nets, explicit non-exclusivity clauses with proof of rival access, and board/observer restrictions with disclosure undertakings;²⁶
- *Separation:* They ring-fence people, brands, systems, and rights with a specificity that survives personnel changes and integration pressures. That includes information control rules with sanctions, clear conflict management, and bans on dual representation in sensitive adjacencies;²⁷
- *Speed:* They favour fix-it-later where appropriate but anticipate execution risk with buyer pipelines, trustee mandates, and transitional service packages ready to deploy. The "no minimum price" backstop is a warning shot - don't let the clock run down; and

¹⁹ Bayer / Monsanto (see footnote 4, above).

²⁰ Reliance / Disney (see footnote 4, above).

²¹ Canary / Intas (see footnote 4, above).

²² Schneider Electric (see footnote 4, above), Reliance / Disney (see footnote 4, above) and Air India / SIA (see footnote 4, above).

²³ Mumbai International Airport (see footnote 5, above).

²⁴ Jio (see footnote 5, above).

²⁵ Reliance / Disney (see footnote 4, above), Air India / SIA (see footnote 4, above) and Schneider Electric (see footnote 4, above).

²⁶ Schneider Electric (see footnote 4, above).

²⁷ Nippon Yusen Kabushiki (see footnote 5, above) and Ruby / Singtel (see footnote 4, above).

- *Purpose:* They are drafted to be interpreted purposively - so they cannot be gamed by formal compliance with practical evasion. The CCI has said as much in several orders; parties should internalise this drafting norm in every remedy clause.

Implementation And Monitoring: Not To Be Treated Lightly

Remedy orders now routinely specify timelines, reporting obligations, and consequences of failure - up to voiding the combination or escalating penalties for non-compliance.²⁸ Parties must plan for remedy governance with the same seriousness as closing conditions: assign accountable executives, empower the monitoring trustee, build robust MIS, and run periodic internal audits. In complex behavioural, treat compliance as an ongoing change-management program, not a static checklist.

Where remedies intersect with third parties - licensees, distributors, airports, platforms - build contractual mechanisms that operationalise the commitments: FRAND clauses with transparent criteria, non-exclusivity with enforceable penalties, data access with SLAs, and algorithmic obligations with documentable parameter controls. This is how parties can turn clearance theory into market reality.

Sectors To Watch: Media, Mobility, Tech And Digital Infrastructure

Media and entertainment will remain remedy-heavy as convergence accelerates: channel portfolios, streaming platforms, ad-tech stacks, and sports rights will increasingly be viewed as one interlocking ecosystem. Expect the CCI to push for neutral access to ad inventory, guard against cross-platform self-preferencing, and demand credible divestiture buyers for channel overlaps, as seen in recent megadeals.²⁹

Mobility and logistics - where platforms, OEMs, and payments collide - will draw algorithmic and information-flow remedies, plus non-discrimination requirements across marketplace rails. The *Hyundai / Kia-OLA* framework is a harbinger; future deals will likely see granular experimentation transparency and audit hooks.³⁰

Industrial technology and manufacturing will continue to see quasi-structural and asset-based solutions where the locus of competition is engineering know-how, installed base compatibility, and tender rivalry. *Metso / Outotec*³¹ and *ZF Friedrichshafen*³² demonstrate the range - from technology licences to ring-fencing via divestment of

influence in joint ventures - paired with strict divestiture timelines and judicially nudged extensions only where justified.

Digital infrastructure - data centres, cloud, and connectivity - will be governed by robust information walls, restrictions on dual board roles, and ongoing certification of conflict-management protocols. Remedies will adapt to the interdependencies between hyperscalers, telcos, and neutral colocation providers.³³

Healthcare and life sciences will face continued attention to innovation incentives, portfolio leverage, and access to traits, datasets and platforms. FRAND-based access to IP and digital platforms, anti-bundling, and non-exclusivity in distribution will remain standard in transactions combining R&D and downstream commercialisation.³⁴

The Winning Remedy Playbook For India

Winning in India now requires a deal design mindset that treats remedies as integral architecture, not an after-the-fact patch. Parties should do four things exceptionally well:

First, pre-commit where credible. Parties should make Phase I offers that meaningfully narrow concerns without waiting for a show cause notice (SCN).³⁵ In media, that might mean channel divestitures identified with pre-vetted buyers; in industrials, a licensing framework with named technologies and defined territories; in digital, FRAND-based advertising or API access tied to objective benchmarks. Therefore, parties should plan for India-specific *Plan B* early - well before an SCN - so that a Phase I offer is credible on day one. Where overlaps are deep and asset separation is feasible, the CCI's baseline still favours divestitures that create or strengthen a standalone competitor, with trustee supervision and timebound execution. The CCI has migrated in most cases from fixitfirst to fixitlater, but it has paired that flexibility with hard backstops, including trustee sales at no minimum price if timelines slip. The practical message is unambiguous: execution risk remains with the parties, and the remedy clock is a real constraint that should be managed proactively through buyer pipelines, transitional services, and ringfencing that preserves competitive continuity pending close.

Second, provide evidence for everything. Parties should submit bid-level data, quantify switching frictions, capacity modelling, and provide third-party attestations to demonstrate why behavioural will bite. In markets with close tender rivalry, parties should

28 Dish TV / Videocon (see footnote 5, above), Jio (see footnote 5, above), Mumbai International Airport (see footnote 5, above), Nippon Yusen Kabushiki (see footnote 5, above), Northern TK Venture (see footnote 5, above), Sony / Zee (see footnote 4, above), AGI Greenpac / HNG (see footnote 4, above), Reliance / Disney (see footnote 4, above), Abbott Laboratories (see footnote 4, above), China National Agrochemical Corporation (see footnote 4, above), FMC (see footnote 4, above), Schneider Electric (see footnote 4, above) and Hyundai Motor Company and Kia Motors Corporation (see footnote 5, above).

29 Reliance / Disney (see footnote 4, above).

30 Hyundai Motor Company and Kia Motors Corporation (see footnote 5, above).

31 See footnote 4, above

32 See footnote 4, above

33 Ruby / Singtel (see footnote 4, above).

34 Bayer / Monsanto (see footnote 4, above).

35 Sony / Zee (see footnote 4, above), AGI Greenpac / HNG (see footnote 4, above), Reliance / Disney (see footnote 4, above), Abbott Laboratories (see footnote 4, above), China National Agrochemical Corporation (see footnote 4, above), FMC (see footnote 4, above), and ZF Friedrichshafen (see footnote 4, above).

demonstrate that IP transfer or white-labelling can preserve rivalry better than a messy asset sale. In platform markets, parties should make non-discrimination and algorithmic neutrality commitments testable.³⁶ In concentrated tender markets or innovation-driven segments, the CCI expects parties to show why the proposed remedy will preserve rivalry at the margin where competition actually happens. That means bid-level and customer-level evidence, switching cost analysis, capacity modelling, and where relevant, code-level or parameter-level demonstrations of algorithmic neutrality. Behavioural or quasi-structural commitments must therefore be drafted with testable baselines - historic price anchors, FRAND comparators, access metrics, and explicit non-exclusivity terms - so that monitoring agents can confirm impact without guesswork.

Third, operationalise governance. Hardwire board composition, veto right restrictions, and conflict protocols. Build ring-fences into corporate policy, not just transaction documents. Empower an internal remedies program lead with authority and budget to meet trustee and CCI expectations.³⁷ Monitoring, is not a formality. The CCI's use of monitoring agencies has expanded, with an emphasis on narrative reporting tied to concrete indicators and consequences for non-performance embedded in the order itself. Next-generation orders are likely to specify data fields, audit modalities, and independent verification protocols, reinforcing the principle that remedy credibility is inseparable from remedy measurability. Parties that volunteer strong monitoring mechanics - clear metrics, baseline definitions, audit rights, and reporting cadences - tend to gain procedural speed and substantive confidence from the regulator.

Fourth, draft commitments the way the CCI will read them: purposively. Avoid wiggle-room that invites a second round on

dispute. Volunteer monitoring mechanics that enhance credibility. Offer reporting that demonstrates market-level effects, not mere technical compliance.³⁸

The Bottom Line: India's Remedy Regime Rewards Those Who Design For It

India's merger remedies are not a barrier to scale; they are the design constraints that separate durable deals from those that unravel under their own weight. The CCI has shown it will cut with a scalpel - divest where rivalry demands it, license and unbundle where access unlocks competition, and police information flows where ownership webs create hidden risks. It will collaborate across borders but insist on Indian solutions.³⁹ It will rely on trustees and reporting, and, if pressed, enforce with teeth.

For dealmakers, this is good news. It means certainty on substance if you are prepared on process. It means fewer surprises if you understand where the risks live in your ecosystem. It also means clearance in Phase I is often achievable if you arrive with credible, proportionate, and monitorable fixes. The era of performative commitments is over. The age of engineered remedies has arrived. Parties should account for it rather than try to hide from it.

The essentials that any dealmaker must keep in mind going forward, are: (i) early engagement; (ii) evidence-backed proposals; (iii) strategic negotiations; (iv) credible buyers; (v) verifiable monitoring; and (vi) a keen sensitivity to common ownership, data flows and self-preferencing dynamics in multi-sided markets. This is the new script for clearance in India's most consequential deals.

³⁶ Hyundai Motor Company and Kia Motors Corporation (see footnote 5, above).

³⁷ Schneider Electric (see footnote 4, above).

³⁸ *ibid.*

³⁹ Dow / DuPont (see footnote 4, above), Linde / Praxair (see footnote 4, above) and Abbott Laboratories (see footnote 4, above).

Lip Service and Liability: The Collapse of Effects Analysis In Indian Competition Law

By Naval Satarawala Chopra and Manika Brar¹

'Effects analysis' is one of the most frequently invoked, and least understood, phrases in Indian competition law. Orders of the Competition Commission of India (CCI) and judgments of the National Company Law Appellate Tribunal (NCLAT) are replete with references to 'foreclosure', 'consumer harm', 'non-price parameters' and 'qualitative effects'.² Yet in many cases these labels are deployed

without a clear analytical framework, a coherent counterfactual, or rigorous analysis with economic evidence.

Until recently, even appellate courts tended to endorse the CCI's conclusions with only light-touch scrutiny of how 'effects' had actually been established. That trend has been partially arrested

¹ Naval Satarawala Chopra and Manika Brar, Partners, Shardul Amarchand Mangaldas & Co. The views express here are personal.

² See, for example: *Google LLC & Anr. v. Competition Commission of India*, Competition Appeal (AT) No. 01 of 2023 (29 March 2023); *Federation of Hotel & Restaurant Associations of India and Anr. v. MakeMyTrip India Pvt. Ltd. and Oravel Stays Pvt. Ltd.*, CCI, Case No. 14 of 2019 (19 October 2022); *Umar Javeed & Ors. v. Google LLC & Anr.*, CCI, Case No. 39 of 2018 (20 October 2022); *XYZ v. Alphabet Inc. & Ors.*, CCI, Case No. 07 of 2020 (25 October 2022); *National Restaurant Association of India v. Zomato Limited and Bundl Technologies Pvt. Ltd.*, CCI, Case No. 16 of 2021 (1 January 2022); *Vijay Gopal v. Big Tree Entertainment Pvt. Ltd.*, CCI, Case No. 46 of 2021 (16 June 2022); *Digital News Publishers Association v. Alphabet Inc. & Ors.*, CCI, Case No. 41 of 2021 (7 January 2022).



by the Supreme Court of India (*Supreme Court*) 2025 judgment in *Competition Commission of India v. Schott Glass India Pvt. Ltd. (Schott Glass)*,³ which explicitly mandates an effects-based approach for abuse of dominance cases under Section 4 of the Competition Act, 2002 (*Competition Act*).

Schott Glass, however, also exposes a deeper structural problem. Indian authorities and courts now recognise that effects analysis is required, but they are yet to articulate operational tests, evidentiary standards and structured reasoning comparable to those developed in the European Union (EU), the United Kingdom (UK) and the United States of America (US). The result is a system in which effects analysis is often honoured in rhetoric but thin in substance.

This article advances four related claims.

First, Indian law formally embraces effects-based reasoning in abuse of dominance cases, but CCI's practice remains heavily form-driven, relying on presumptions and assertions of harm.

Secondly, the NCLAT and, to some extent, the Supreme Court of India, have endorsed this 'lip-service' approach by upholding CCI's orders without insisting on a disciplined effects framework, although *Schott Glass* represents an important corrective.

Thirdly, compared with the EU, UK and US, India lacks a well-articulated analytical structure for effects analysis, such as 'an as-efficient competitor test', 'rule-of-reason style burden-shifting', or 'clear 'by object/by effect' distinctions'.

Finally, this deficit has real consequences: legal uncertainty, over- and under-enforcement, distortion of digital and innovation-intensive markets, and erosion of institutional credibility.

The article concludes by proposing a practical four-step effects analysis framework for Indian authorities, drawing on comparative experience but adapted to local institutional realities and constraints.

The Statutory Promise and Judicial Turn to Effects Analysis

Statutory Framework

The Competition Act, in both Sections 3 and 4, is drafted in effects-orientated terms. The statutory touchstone is conduct that causes, or is likely to cause, an 'appreciable adverse effect on competition' (AAEC). The Competition Act's text, the Competition Law Review Committee Report,⁴ and subsequent policy guidance

all proceed on the premise that antitrust liability is ultimately grounded in demonstrable competitive harm rather than formalistic categorisation of conduct.

Appellate bodies had hinted at this orientation even before the Supreme Court's judgment in *Schott Glass*. In the same case, the then Competition Appellate Tribunal (COMPAT) relied on the minority order of CCI member Geeta Gouri, who emphasised that "a comprehensive review and analysis of the quantitative and qualitative evidence" was necessary before concluding that a discount or rebate scheme was anticompetitive.⁵ Yet this language remained more aspirational than operational at the enforcement level.

Schott Glass: A Formal Mandate For Effects-Based Analysis

The Supreme Court's 2025 judgment in *Schott Glass* is now the leading authority on effects-based analysis in abuse cases in India. The Supreme Court upheld COMPAT's reversal of the CCI's findings of abuse and penalty. It held that Schott's volume and functional rebates were openly structured, objectively justified and not shown to foreclose equally efficient rivals. Crucially, the Supreme Court underscored that discount schemes and vertical arrangements cannot be condemned merely because they fall within the textual categories of Section 4(2); there must be visible and substantial harm to competition.⁶

Schott Glass mandates an effects-based analysis in abuse cases and clarifies that competition law targets the abuse of dominance, not its mere possession. The judgment is properly viewed as a doctrinal pivot away from form and towards effects.

However, *Schott Glass* leaves important questions unanswered. The Supreme Court does not lay down a structured, stepwise test, for example, in defining the counterfactual, specifying the nature and threshold of foreclosure, or allocating evidentiary burdens. The judgment draws heavily on EU jurisprudence, such as *British Airways*,⁷ and on general principles of competition economics, but stops short of translating these materials into a concrete analytical template for the CCI or NCLAT to follow.

Schott Glass is therefore both a vital course correction and an illustration of this article's central theme: effects analysis is now formally required, but its operational content remains under-specified.

CCI and NCLAT: Effects Analysis In Name, Form-Based Reasoning In Practice

The gap between statutory promise and enforcement practice is most visible in recent high-profile cases, particularly in digital markets, which are precisely the settings where robust effects analysis is most needed.

3 *Competition Commission of India v. Schott Glass India Pvt. Ltd.*, Supreme Court, Civil Appeal No. 5843 of 2014 (13 May 2025).

4 Ministry of Corporate Affairs, Report of Competition Law Review Committee, July 2019.

5 *Schott Glass India Pvt. Ltd v. Competition Commission of India*, COMPAT Appeal No. 91 of 2012 (2 April 2014); *Kapoor Glass (India) Private Limited v. Schott Glass India Private Limited*, Order as per Member Geeta Gouri, CCI Case No. 22/2010, paragraph 7.4.118 (29 March 2012).

6 *Competition Commission of India v. Schott Glass India Pvt. Ltd.*, Supreme Court, Civil Appeal No. 5843 of 2014 (13 May 2025).

7 *British Airways plc v. Commission*, Court of Justice of the European Union, Case C-95/04 P (15 March 2007).

Google Android: Qualitative Rhetoric, Limited Structured Inquiry

In its 2022 *Android* decision, the CCI held Google to be dominant in markets for licensable mobile operating systems and app stores and found several aspects of its licensing and pre-installation practices abusive.⁸ The order refers to foreclosure of rival app stores, reduced incentives to develop forked operating systems, and harm to innovation.⁹

However, the analysis leans heavily on structural inferences: dominance combined with contractual constraints is treated as sufficient to infer likely foreclosure. There is limited engagement with empirical evidence of actual foreclosure, switching behaviour or innovation effects. Economic analysis is deployed selectively, for example, to confirm dominance, but not to rigorously test alternative, pro-competitive explanations or to quantify harm.

On appeal, the NCLAT in 2023 largely upheld the CCI's findings, tempering certain behavioural remedies but not materially enhancing the underlying effects analysis.¹⁰ The NCLAT accepted that the conduct was capable of anticompetitive effects, yet mostly deferred to the CCI's characterisation of 'qualitative' evidence instead of insisting on a clearly articulated theory of harm tested against data.¹¹

In comparative perspective, this stands in marked contrast to the EU's *Intel* line of cases.¹² The Court of Justice has insisted that, even for exclusivity rebates, authorities must examine whether the conduct is in fact capable of restricting competition, considering factors such as coverage, duration, market conditions and, where relevant, as-efficient competitor (AEC) tests submitted by the dominant undertaking.

The Indian *Android* decisions adopt the vocabulary of effects, but not its discipline.

WhatsApp's 2021 Privacy Policy: Privacy As A 'Non-Price Factor'

The CCI's order of 18 November 2024 on WhatsApp's 2021 privacy policy found that Meta/WhatsApp had abused its dominance by imposing unfair terms, i.e., by requiring mandatory acceptance of updated data-sharing arrangements, and by leveraging dominance in messaging to strengthen Meta's position in online display advertising.¹³ The CCI imposed a penalty of ₹213.14 crore and, significantly, a five-year ban on data-sharing between WhatsApp and other Meta entities for advertising purposes.

The CCI framed privacy as a 'non-price factor of competition' and concluded that compelled acceptance of data-sharing reduced consumer choice and distorted competition.¹⁴ Yet the reasoning

displays several hallmarks of lip-service effects analysis. The CCI did not clearly model the counterfactual: it did not explain how the competitive landscape would likely have evolved absent the impugned policy, taking into account multi-homing and the presence of competing messaging apps. Any degradation of privacy was effectively treated as a competitive harm, without an effort to quantify or even qualitatively calibrate the magnitude of that harm, or to assess switching constraints on users.

The leveraging finding rested on broad assumptions that greater data access automatically enhances Meta's competitive advantage in advertising markets, with limited concrete evidence of foreclosure of rival ad intermediaries or demonstrable changes in market structure. On appeal, the NCLAT substantially reshaped the outcome.¹⁵ In November 2025, the Tribunal set aside the five-year data-sharing ban and the leveraging finding under Section 4(2)(e), calling into question the adequacy of the CCI's reasoning on cross-market effects. It nevertheless upheld the abuse finding and the penalty, affirming that the privacy policy imposed unfair terms and that privacy can be a relevant non-price parameter in competition analysis.

Some commentary has welcomed NCLAT's recognition of privacy as a competition-relevant factor.¹⁶ However, the NCLAT, like the CCI, does not meaningfully operationalise how to measure and balance such non-price harms. The appellate review thus reinforces rather than corrects the core deficit: both bodies speak the language of effects, such as consumer choice, non-price parameters, leveraging, but largely avoid a structured examination of evidence, counterfactuals and the magnitude of harm.

Settlement In Android TV: Effects Assumed, Not Demonstrated

In 2025, the CCI accepted a settlement with Google in the *Android TV* case concerning alleged foreclosure arising from licensing conditions and app pre-installation on smart television operating systems.¹⁷ While settlement decisions inevitably reflect compromise, the underlying investigation appears again to have proceeded on the assumption that contractual tying and exclusivity by a dominant firm necessarily produce anticompetitive effects, without a transparent and published effects analysis.

Across these matters a consistent pattern emerges. Effects language is ubiquitous, but genuine effects analysis, which is grounded in clearly articulated theories of harm, careful attention to counterfactuals and disciplined use of evidence, is often missing.

8 *Umer Javed v. Google LLC*, CCI, Case No. 39 of 2018 (20 October 2022).

9 *Umer Javed v. Google LLC*, CCI, Case No. 39 of 2018, Paragraphs 492, 573 (20 October 2022).

10 *Google LLC & Anr v. Competition Commission of India*, NCLAT, Competition Appeal (AT) No.01 of 2023 (29 March 2023).

11 *Google LLC & Anr v. Competition Commission of India*, NCLAT, Competition Appeal (AT) No.01 of 2023, Paragraph 88 (29 March 2023).

12 *Intel Corporation v. European Commission*, Court of Justice of the European Union, Case COMP/C-3/37.990 (13 May 2009).

13 *In Re: Updated Terms of Service and Privacy Policy for WhatsApp users*, CCI, Suo Motu Case No. 01 of 2021 (18 November 2024).

14 *In Re: Updated Terms of Service and Privacy Policy for WhatsApp users*, CCI, Suo Motu Case No. 01 of 2021, Paragraph 182.11 (18 November 2024).

15 *WhatsApp LLC v. Competition Commission of India*, NCLAT, Competition Appeal No. 1 of 2025 (4 November 2025).

16 AM Legal, *Privacy as a "Non-Price Factor" – Decoding the NCLAT's Findings in the WhatsApp Case*, 19 November 2025.

17 *Kshitiz Arya v. Google LLC*, CCI, Case No. 19 of 2020 (21 April 2025).

Comparative Lessons: How Other Jurisdictions Structure Effects Analysis

India need not imitate foreign doctrines wholesale, but comparative experience illustrates what it means to treat effects analysis as a genuine analytical discipline rather than a rhetorical flourish.

EU: From Form To Effects In Abuse Of Dominance Cases

The EU's evolution from form-based to effects-based analysis, particularly under Article 102 of the Treaty on the Functioning of the European Union (TFEU), offers a useful reference point. Two strands of case law are especially relevant.

First, in *Intel* the Court of Justice of the European Union (CJEU) held that where a dominant firm produces evidence that its rebates are not capable of excluding as-efficient competitors, the European Commission must engage with that evidence, including AEC tests and the factual context (coverage, duration, conditions).¹⁸ The CJEU thereby constrained the use of formal presumptions of illegality and required an assessment of capability to harm competition.

Secondly, in *Groupeement des Cartes Bancaires (Cartes Bancaires)* the CJEU narrowed the category of 'by object' restrictions under Article 101 of the TFEU, holding that only conduct revealing a 'sufficient degree of harm to competition' by its very nature can be treated as such.¹⁹ Other restraints must be examined for their actual or likely effects.

Taken together, these decisions limit strong presumptions of harm and require competition authorities to engage with economic evidence, to articulate a coherent theory of harm and to examine market conditions when assessing whether conduct is capable of producing exclusionary or exploitative effects.

Indian decisions frequently cite EU jurisprudence, including *Intel* and *Cartes Bancaires*, and *Schott Glass* draws explicitly on this line of authority.²⁰ Yet Indian practice has not yet internalised the level of analytical discipline that those cases demand.

UK: Guidance, CAT Scrutiny And Economic Tests

The UK experience demonstrates the value of detailed administrative guidance combined with robust appellate scrutiny. Legacy Office of Fair Trading (OFT) and current Competition and Markets Authority (CMA) guidance on abuse of dominance emphasise that a finding of abuse will be made only after a "detailed examination of the market concerned and the effects of the undertaking's conduct".²¹ That commitment is reinforced by Competition Appeal Tribunal (CAT) case

law in which regulators' theories of harm are subjected to careful testing against the economic record.²²

In matters such as *Royal Mail v. Ofcom*, the CAT has engaged deeply with expert evidence and AEC analyses, scrutinising the regulator's foreclosure theories rather than simply deferring to them.²³ More recently, in 2024, the CAT is reported to have rejected a large class action alleging excessive pricing by BT in fixed-line telephony, concluding that although prices were high, they had not been shown to be unfair or abusive in light of evidence on customer switching and value received.²⁴ The point is not whether every outcome is uncontroversial, but that effects analysis is treated as a structured evidentiary inquiry, not an afterthought.

US: Rule Of Reason As A Disciplined Effects Framework

In US antitrust law, the rule of reason functions as an embedded effects analysis for most non-per se restraints.²⁵ Courts typically follow a three- or four-step burden-shifting framework.²⁶ The plaintiff must first demonstrate a substantial anticompetitive effect, such as reduced output, higher prices or diminished innovation. The defendant may then offer pro-competitive justifications. The burden may finally shift back to the plaintiff to show that these justifications are pretextual, that less restrictive alternatives exist, or that the harm outweigh any benefits.

In *Ohio v. American Express*, the Supreme Court held that plaintiffs challenging conduct in a two-sided platform market must show net anticompetitive effects on the market as a whole, not merely on one side.²⁷ The decision is contested, but it underscores two features central to an effects-based regime. First, effects analysis is expressed as a structured legal test rather than a loose appeal to 'foreclosure' or 'consumer harm'. Secondly, courts make trade-offs explicit, confronting how benefits on one side of a platform may interact with harms on the other.

India's competition regime lacks this kind of jurisprudential scaffolding. The CCI and NCLAT therefore operate with wide discretion but few analytical guardrails. The temptation to infer harm from form – dominance plus contested terms – is correspondingly strong.

Why Lip-Service Effects Analysis Is Harmful

The failure to operationalise effects analysis systematically is not a merely doctrinal or academic concern. It generates concrete welfare and institutional costs.

First, it produces both over- and under-enforcement. Where

¹⁸ *Intel Corporation v. European Commission*, Court of Justice of the European Union, Case C413/14 P (6 September 2017).

¹⁹ *Groupeement des Cartes Bancaires (CB) v. European Commission*, Court of Justice of the European Union, Case C-67/13 P (11 September 2014).

²⁰ *Competition Commission of India v. Schott Glass India Pvt. Ltd.*, Supreme Court, Civil Appeal No. 5843 of 2014, para 62 (13 May 2025).

²¹ Abuse of a dominant position: OFT402, 1 December 2004.

²² *Dr Rachael Kent v. Apple Inc. and Apple Distribution International Ltd*, UK CAT, [2025] CAT 67 (23 October 2025).

²³ *Royal Mail plc v. Office of Communications*, UK CAT, [2019] CAT 27 (12 November 2019).

²⁴ *Justin Le Patourel v. BT Group Plc and British Telecommunications Plc*, UK CAT, [2024] CAT 76 (19 December 2024).

²⁵ 'The Four-Step Rule of Reason', Michael A. Carrier, American Bar Association, Antitrust, Vol. 33, No. 2, Spring 2019.

²⁶ *Ohio v. American Express Co.*, US Supreme Court, 585 U.S. 529 (2018) (25 June 2018).

²⁷ *Ohio v. American Express Co.*, US Supreme Court, 585 U.S. 529 (2018) (25 June 2018).

dominance combined with 'unfair' terms suffices to infer harm, as in early readings of WhatsApp's privacy policy, there is a serious risk of condemning conduct that is competitively benign or even efficiency-enhancing (for example, integrating data to improve ad relevance or cross-platform services). Conversely, without a structured analysis of entry barriers, switching costs and dynamic competition, genuinely exclusionary strategies may escape effective scrutiny because their effects are assumed rather than demonstrated.

Secondly, it invites regulatory overreach and chilling effects. Remedies, such as blanket data-sharing bans or intrusive behavioural prescriptions, adopted without proportionate effects analysis, risks deterring investment and innovation, particularly in fast-moving digital markets. The subsequent partial rollback of the CCI's WhatsApp remedies by NCLAT illustrates how remedies grounded in weak effects analysis are vulnerable on appeal, creating uncertainty for both regulators and firms.

Thirdly, it generates legal uncertainty and elevated compliance costs. Firms operating at scale, especially in technology, telecommunications and infrastructure, face unclear *ex ante* standards. Open-textured terms such as 'unfair', 'discriminatory' or 'leveraging' are applied without predictable metrics or thresholds. The rational response is defensive, risk-averse decision-making and increased compliance spending as undertakings attempt to anticipate how regulators might characterise common commercial practices.

Fourthly, it degrades the quality of precedent and institutional credibility. Orders that invoke effects concepts without robust evidence generate weak precedents, which lower courts, sector regulators and businesses must nonetheless navigate. Over time, this corrodes confidence in the technical quality of CCI investigations and NCLAT review, making competition enforcement appear more discretionary than principled. For an authority that aspires to technocratic legitimacy, this is a serious cost.

Finally, it contributes to misalignment with global best practices. India seeks to be a leading jurisdiction in the governance of global digital platforms. Yet decisions that rely on lip-service effects analysis are difficult to defend in comparative discourse and are less likely to shape international thinking. The absence of a credible, transparent effects framework thus diminishes India's influence in the very debates in which it wishes to participate.

In short, the lack of a robust effects framework is itself a source of harm – to markets, to legal certainty and to the legitimacy of the competition regime.

Towards A Structured Effects Analysis Framework For India

Moving beyond lip service does not require India to import foreign doctrines as is. It does, however, require a simple, workable template for effects analysis under the Competition Act. Drawing on EU, UK and US experience, a practical framework could involve four steps.

Define The Theory Of Harm And The Counterfactual

The starting point should be a precise theory of harm. The CCI should clearly specify how the impugned conduct is alleged to harm competition. Is the concern exclusion of as-efficient competitors, exploitation of consumers (through price, quality, privacy or other dimensions), raising rivals' costs, or leveraging dominance into adjacent markets?

The authority should then describe the relevant counterfactual: what the market would likely look like absent the challenged conduct. This need not be econometrically sophisticated in every case, but it should be explicit and plausible. Articulating a counterfactual forces the CCI to move beyond generic statements about 'foreclosure' or 'distortion' and to anchor its reasoning in a coherent competitive narrative.

Assess Market Power And Conditions In Light Of The Theory Of Harm

Market definition and dominance analysis should be tailored to the theory of harm. In two-sided or multi-sided markets, for example, the analysis must reflect cross-platform network effects, data-driven feedback loops and multi-homing behaviour. In more traditional infrastructure sectors, the focus may be on sunk costs, regulatory barriers and capacity constraints.

The assessment should consider factors such as entry barriers, switching costs, network effects and the ability of rivals to reposition. This step borrows from the contextual analysis emphasised in *Intel*²⁸ and from the two-sided market reasoning in *American Express*,²⁹ but does not require India to adopt their more controversial elements. Its function is to ensure that any finding of likely harm is grounded in a realistic account of market structure and dynamics.

Examine Actual And Potential Effects With Evidence

The third step is to test the theory of harm against evidence. Where available, the CCI should identify and evaluate direct evidence of harm: changes in prices, output, quality, innovation, privacy levels or other competitive parameters relative to the counterfactual. Where direct evidence is limited, as in prospective or early-stage digital cases, the CCI should rely on structured indirect evidence, including: the coverage and duration of the conduct; the ability and incentives of rivals to respond; internal documents concerning business strategy and intent; and proportionate economic modelling, such as AEC tests or foreclosure simulations.

²⁸ *Intel Corporation v. European Commission*, Court of Justice of the European Union, Case C413/14 P, paras 133-144 (6 September 2017).

²⁹ *Ohio v. American Express Co.*, US Supreme Court, 585 U.S. 529 (2018), Part II.A and II.B (25 June 2018).

The objective is not to demand econometric perfection in every case, but to distinguish speculative harms from those that are reasonably likely and substantial. A finding of abuse should not rest on untested assumptions or mere assertions that conduct is 'capable' of harm without a reasoned explanation of how and to what extent.

Weigh Efficiencies, Justifications And Proportionality Of Remedies

Finally, a disciplined effects framework must incorporate efficiencies and proportionality. Dominant undertakings should be required to articulate objective justifications and efficiencies, such as security improvements, product integration benefits or quality enhancements. The CCI should evaluate whether these benefits are real, verifiable and causally linked to the conduct, and whether less restrictive alternatives could achieve them.

Remedies should then be proportionate to the demonstrated harm. This principle is already familiar from Supreme Court guidance in *Excel Crop Care* on penalties and is reinforced in *Schott Glass*.³⁰ Proportionality in both liability findings and remedy design helps ensure that enforcement protects the competitive process rather than punishing dominance as such or chilling legitimate innovation.

This four-step structure need not be written into the Competition Act to exert real influence. It could be embedded through revised CCI regulations or guidelines on Section 4 investigations, policy notes that distil lessons from *Schott Glass*, *Android*, *WhatsApp*, and the NCLAT

and Supreme Court judgments that insist that authorities walk through these steps explicitly in their reasoning.

Conclusion

India stands at an inflection point in its competition law journey. The Supreme Court's decision in *Schott Glass* is a welcome affirmation that abuse of dominance cannot be established without a genuine effects-based analysis. Yet unless that principle is translated into a clear operational framework at the level of CCI investigations and NCLAT review, 'effects analysis' will remain a slogan rather than a safeguard.

Recent digital cases, such as *Google Android*, *Android TV* and *WhatsApp*, highlight both the urgency and the opportunity. These are precisely the markets in which poorly structured interventions can chill innovation, distort incentives and undermine India's attractiveness as a predictable regulatory environment.

By drawing on EU, UK and US practice while developing a simple but disciplined template for effects analysis suited to Indian conditions, the CCI and the courts can move beyond lip service to liability grounded in evidence. Doing so would not merely improve individual case outcomes. It would strengthen the long-term health of Indian markets and reinforce the legitimacy of competition enforcement as a genuinely technocratic project, rather than a primarily rhetorical enterprise.

³⁰ *Excel Crop Care Ltd v. Competition Commission of India & Ors.*, Supreme Court, Civil Appeal No. 2480 of 2014 (8 May 2017).

Unwitting And Unwilling Accomplices: Cartel Facilitators And The Indian Competition Act

By Naval Satarawala Chopra, Ritwik Bhattacharya and Vasudha Verma¹

Section 3 of the Indian Competition Act, 2002 (*Competition Act*) prohibits agreements that cause or are likely to cause an appreciable adverse effect on competition in India (AAEC). Section 3(1) generally prohibits all persons from entering such an agreement. Section 3(3) additionally presumes that certain “horizontal” agreements between

competitors (including cartels) – such as to determine prices, limit supply, or share markets – cause an AAEC. Once an agreement under Section 3(3) is proven, a finding of breach may only be avoided if the parties rebut the presumption of an AAEC either by proving that the agreement did not take effect, or through the factors under Section

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19(3), such as by proving that the agreement benefits consumers, improves production or distribution, or promotes technical, scientific, and economic development.

In contrast, all other agreements may only be regarded as anti-competitive after the Competition Commission of India (CCI) establishes both (i) the existence of the agreement and (ii) its ability to cause an AAEC.

In 2023, the Indian Competition (Amendment) Act, 2023 (*Amendment Act*) included a deeming presumption as a proviso to Section 3(3), expanding the scope beyond an agreement between competitors. Under the proviso, a non-competitor (i.e., an enterprise that does not itself supply identical or similar goods/services) will be presumed to be part of the Section 3(3) agreement if it “*participates or intends to participate in [its] furtherance*”. The presumption appears to cover those facilitating a cartel through a hub-and-spoke arrangement, such as manufacturers that help distributors fix prices or allocate markets.

Arguably, this deeming presumption has limited use. It neither exposes facilitators to the penalties attached to prohibited horizontal agreements nor extends to them to the benefit of the whistleblowing mechanism of the leniency regime. Further, its broad scope sets a low bar for liability and may inadvertently include situations where a facilitator’s involvement is marginal, unintentional, or coerced.

For instance, the CCI has examined several allegations that regional chemist associations coerced pharmaceutical companies into denying supplies to non-member chemists, often at peril of a boycott. Illustrated below are the conditions in which even an unwilling participant (such as the pharmaceutical company, in this example) may be penalised as a ‘facilitator’, and the options open to it under the current regime.

Cartels Under The Competition Act

The Competition Act defines cartels to include “*an association of producers, sellers, distributors, traders or service providers*” who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or trade in goods or provision of services. This definition, as envisaged by the 93rd Report of the Parliamentary Standing Committee on Home Affairs is concerned with “*competitors [who agree] to stop competing with each other by controlling production, distribution, [or] sale*”. Over more than 15 years of enforcement, the CCI has consistently characterised only associations of competitors as cartels. The CCI’s advocacy materials also echo this position (i.e., “*An important dimension in the definition of a cartel is that it requires an agreement between competing enterprises not to compete or to restrict competition.*”²)

Section 3(3) sets out prohibited conduct. The provision applies to

four categories of agreements or arrangements entered into between “*enterprises or persons including cartels, engaged in identical or similar trade of goods or provision of services*”. Thus, while cartels, being associations of competitors, may enter a horizontal anti-competitive agreement within the scope of Section 3(3), the provision is not limited to them. It extends to all agreements among enterprises or persons operating in the same or a similar market, whether or not the parties constitute a cartel.

The proviso to Section 3(3) extends this approach by presuming that even where a person or enterprise is not engaged in identical or similar trade, it is a part of a Section 3(3) agreement if it participates or intends to participate in its furtherance.

Shift In Burden Of Proof

Previously, where a facilitator furthered a horizontal agreement, the CCI examined it under Section 3(1), which broadly covers all anti-competitive agreements. For instance, in *Madhya Pradesh Chemists and Druggist Association*,³ the CCI found the association of chemists liable under Section 3(3) for limiting / restricting the supply of drugs. The association had done so by compelling pharmaceutical companies to refuse supply to non-association chemists at peril of boycott. Because Section 3(3) is limited to those offering “*similar or identical*” products or services, the CCI held the chemist association liable under Section 3(3) and pharmaceutical companies liable under Section 3(1). This also reflects the CCI’s practice in similar cases.⁴

Therefore, Section 3(1) has a broader scope than Section 3(3), which only covers certain categories of agreements between competitors. However, to establish a contravention under Section 3(1), the CCI must independently conclude that such an agreement “*causes or is likely to cause*” an AAEC, resulting in a higher burden of proof.

The new deeming presumption allows the CCI to examine cartel facilitators under Section 3(3)’s reversed burden of proof as regards as AAEC, with two important caveats.

First, the deeming presumption only deems the facilitator to be a part of the agreement, not a member of the cartel. In the chemist example, a pharmaceutical company would now be subject to the reversed burden of proof under Section 3(3) in finding an AAEC. However, where the Competition Act includes specific provisions for cartels, they do not appear to presently include cartel facilitators. For instance, as described further below, a facilitator may not face the alternative cartel penalty of treble profits.

Second, the deeming presumption does not require that the facilitator be a party to the agreement. The Competition Appellate Tribunal has previously set aside CCI penalties against pharmaceutical companies

² CCI, *Advocacy Booklet, “Provisions Relating to Cartels”*.

³ *Madhya Pradesh Chemists and Distributors Federation v. Madhya Pradesh Chemists and Druggist Association*, CCI, Case 64 of 2014 (3 June 2019).

⁴ See, for instance: *Rohit Medical Store v. Macleods Pharmaceutical Ltd & Ors.*, CCI, Case No. 78 of 2012 (29 January 2015); *Sankuta Associates Pvt. Ltd. v. All India Organization of Chemists & Druggists & Ors.*, CCI, Case No. 20 of 2011 (19 February 2013); *Shri Suprabhat Roy, Proprietor, M/s Suman Distributors v. Shri Saiful Islam Biswas, District Secretary of Murshidabad District Committee of Bengal Chemists and Druggists Association*, CCI, Case No. 36 of 2015; Case No. 31 of 2016; Case No. 58 of 2016 (12 March 2020).

in cases such as the above, recognising that where a pharmaceutical company's conduct is coerced, it cannot be said to be in "agreement" or "concurrence" with the anti-competitive agreement.⁵ The deeming presumption may circumvent this defence in practice. It ropes all 'facilitators' into liability under the Competition Act by sidestepping the requirement that they be a party to the anti-competitive agreement in the first instance, implicitly presuming that all parties 'participating in' or 'intending to participate' in an anti-competitive agreement have agreed to its terms.

An instructive precedent for the amendment appears to be a 2008 ruling in the European Union,⁶ where the Court of First Instance upheld a penalty against organic peroxide manufacturers and consultancy firm AC-Treuhand. The cartel was founded by a written agreement between the manufacturers entered into in 1971 and amended in 1975. AC-Treuhand, which had used the guise of agency agreements to facilitate coordination, store secret documents on its premises, and conceal the existence and activities of the cartel,⁷ argued that since it was not a contracting party to the agreements, its involvement was limited to non-punishable complicity. However, finding that AC-Treuhand had "actively contributed to the implementation of the cartel" and that its activity bore "a sufficiently definite and decisive causal link" with the restriction of competition on the organic peroxide market, the Court found it irrelevant whether AC-Treuhand was a contracting party to the agreement, given that it acted in collusion, and its conduct proceeded from tacit agreement.

Arguably, this outcome was limited to instances where a facilitator was an "active" contributor, and therefore, could be considered to be in tacit agreement with the underlying anti-competitive horizontal agreement. In contrast, the Indian deeming presumption's broad wording risks including companies that participate under duress, potentially punishing victims alongside perpetrators and undermining the Competition Act's fairness and deterrent goals.

In our earlier example, a pharmaceutical company caught by the proviso may not be able to escape liability on the ground that it was not a party to the agreement. It must now join the coercing cartel in proving either that (i) the cartel members were not party to an agreement covered by Section 3(3) or (ii) that if such an agreement existed, it was not implemented or (iii) did not result in an AAEC. Unfortunately for such unwilling facilitators, the CCI's leniency programme may also be unavailable in practice, since the Competition Act only empowers the CCI to grant lesser penalties to "members of a cartel". The impact of the deeming presumption on unwilling facilitators and non-cartel facilitators is discussed further below.

Facilitators And Cartel Penalties

Despite expanded liability, facilitators are not subject to the same severe penalties as cartel members, potentially stemming from a recognition of their lesser culpability. Section 27 of the Competition Act provides for an alternative heightened penalty where an anti-competitive agreement has been "entered into by a cartel". In such cases, the CCI may impose on "each producer, seller, distributor, trader or service provider included in that cartel", a penalty of up to treble profit or 10% of its turnover/income, for each year of the infringement, whichever is higher.

Section 27(b) was amended by the same Amendment Act that included the deeming presumption but was not broadened to include non-cartel members covered by the deeming presumption. As a result, facilitators may not face the same penalties as cartel members. This approach is consistent with the widely held position that cartels pose the risk of the "most serious anti-competitive behaviour and are often a priority for competition authorities".⁸ In our example, a pharmaceutical company coerced into participation may incur liability but would be shielded from the more severe penalties reserved for cartel members.

Although the deeming presumption seeks to extend liability to such facilitators, their exclusion from the penalty provision is noteworthy. This may suggest an acknowledgement that the deeming presumption casts an unduly wide net. The initial provision, as in the Competition (Amendment) Bill, only provided for liability where a facilitator "actively participated" in the furtherance of an agreement,⁹ as opposed to merely "participated" or "intended to participate". This distinction may also reflect a policy choice to reserve the harshest penalties for core cartel participants.

The Ministry of Corporate Affairs (*Ministry*) received feedback that if "active participation" was not specified, the provision might include those unwittingly facilitating anti-competitive horizontal agreements (such as industry forums that provide a platform for competitors to meet). The Ministry justified the language of the provision on the basis that, in order to establish liability,

*"The Commission shall have to establish that there was active participation in furtherance of anticompetitive agreements, otherwise many parties which were even not aware of anti-competitive agreements would come under the rule of presumption. For example, a Trade Association may not have provided a platform knowingly to its members which have entered into anti-competitive agreements on the side-lines during meeting of association. In such cases, that Trade Association may not be considered as part of that anti-competitive agreement."*¹⁰

⁵ *Alkem Laboratories Limited & Ors. v. CCI & Ors.*, COMPAT Appeal Nos. 09, 14 and 15 of 2016, paragraph 56 (10 May 2016).

⁶ *AC-Treuhand AG v. Commission of the European Communities*, Court of Justice of the European Union, Case T-99/04 (8 July 2008).

⁷ *AC-Treuhand AG v. Commission of the European Communities*, Court of Justice of the European Union, Case T-99/04 (8 July 2008).

⁸ OECD, Report of October 2024, "OECD Roundtables on Competition Policy Papers: Detecting Cartels for Ex Officio Investigations", page 5 (19 September 2024).

⁹ Indian Competition (Amendment) Bill, 2022 (5 August 2022).

¹⁰ Ministry of Corporate Affairs, 52nd Report of the Standing Committee on Finance on the Competition (Amendment) Bill, 2022, paragraph 3.57(iv) (13 December 2022).

In the 52nd report of the Standing Committee on Finance (*Committee*), the Committee also examined criticisms that an over-broad provision may inadvertently include (i) digital intermediaries that provided online communication channels, and (ii) consortiums, industry association and trade unions that merely organize meetings without an agenda to share sensitive information.¹¹ It recommended that the provision be revised to only include facilitators “if it is proved that such person intended to actively participate in the furtherance of such agreement”.¹²

The active participation requirement is essential to filter those genuinely contributing to an anti-competitive horizontal agreement from unwitting or unwitting facilitators. Importantly, it would continue to capture genuine malfeasance and meet the spirit of the amended provision. For instance, in the European Union, Article 81(1) of the Treaty establishing the European Community (*TEC*)¹³ covers anti-competitive agreements between all enterprises, not just competitors. In another 2015 ruling also concerning *AC-Treuhand*,¹⁴ the Court of Justice of the European Union (*CJEU*) upheld a penalty against *AC-Treuhand* for organizing, attending, and actively participating in meetings between heat stabilizer companies, collecting and supplying sales data between competing producers, and acting as a moderator between participants and fostered compromises.¹⁵

The CJEU held that Article 81(1) TEC included (i) all enterprises that (ii) intended to contribute by their own conduct to the common objectives pursued by the participants of an anti-competitive agreement and (iii) were either aware of or could reasonably have foreseen the conduct of the other participants and were prepared to take the risk. The CJEU described *AC-Treuhand*'s contribution as “active”.

The revised Competition (Amendment) Bill (which ultimately became the *Amendment Act*) omitted the active participation requirement, resulting in a provision with even broader scope. The legislature may have sought to mitigate this expanded scope by imposing less severe consequences. It is possible that lawmakers considered it disproportionate to impose cartel penalties on an unintentional facilitator, such as an industry association that may have unwittingly provided a platform for an anti-competitive horizontal agreement to form and allowed avenues for competitors to contact each other to effect the agreement.

As a result, under the Competition Act, despite being roped into liability along with the underlying cartel, facilitators would only face penalties of up to 10% of their average turnover or income over the last three preceding financial years, whereas cartel members would a penalty of up to treble profit or 10% of its turnover/income, for each year of the infringement, whichever is higher.

Facilitators And Cartel Leniency

Facilitators may possess valuable evidence but are excluded from leniency programs, potentially undermining enforcement. Section 46 of the Competition Act, which provides for the CCI's lesser penalty programme, limits eligibility to a “producer, seller, distributor, trader or service provider included in any cartel which is alleged to have violated Section 3”. Similar to Section 27, Section 46 was also amended by the Amendment Act to include leniency plus applicants, i.e., a leniency applicant who also discloses the existence of another cartel in which it has violated Section 3. The Amendment Act, however, did not expand Section 46 to enable the CCI to award lesser penalty to non-cartel members.

The legislature's exclusion of facilitators is curious, since a facilitator may hold valuable evidence – such as meeting records, pricing data, or communications. If the aim of leniency is to incentivise disclosure, making it unavailable to a facilitator reduces its effectiveness. On the other hand, by excluding facilitators, the provision ensures that only members of a cartel with first-hand information about market conduct and the implementation of anti-competitive agreements may benefit from the leniency scheme. This aligns with the goal of leniency programmes to incentivise market participants to admit to cartel conduct and implicate their co-conspirators, providing first-hand, direct “insider” information or evidence of conduct.¹⁶ Leniency programmes allow competition authorities to expend fewer investigative resources in uncovering and proving allegations against cartels.¹⁷ These objectives are advanced where a leniency applicant provides not only evidence of information exchange, but an admission of cartel conduct that contravenes Section 3 of the Act and implicates co-participants.

Recent developments confirm the evidentiary importance of securing admissions that self-incriminate as opposed to merely incriminating other parties. In 2022, the National Company Law Appellate Tribunal (*NCLAT*) confirmed the CCI's finding that a leniency applicant who had disclosed its role in a cartel to benefit from lesser penalty may no longer challenge its involvement in the cartel's anti-competitive horizontal agreement. This ruling, while presently subject to appellate challenge before the Supreme Court, confirms the role of leniency applications in establishing a party's liability, as opposed to awarding a party the benefit of penalty reduction and additionally expending investigative resources in concluding its role in an anti-competitive horizontal agreement that caused an AAEC.

Delegated legislation attempting to bridge this gap may exceed the statutory authority of Section 46 and create legal uncertainty. The newly introduced Competition Commission of India (Lesser Penalty) Regulations, 2024 (*Lesser Penalty Regulations*) define a leniency applicant to include both a cartel member and an enterprise, person, or association that would be included in the deeming presumption under

¹¹ *ibid*, paragraph 3.59.

¹² *ibid*.

¹³ Now Article 101(1) of the Treaty on the functioning of the European Union (*TFEU*).

¹⁴ *AC Treuhand v. Commission*, Court of Justice of the European Union, Case C-194/14 P (22 October 2015).

¹⁵ *ibid*.

¹⁶ International Competition Network, *Anti-Cartel Enforcement Manual of April 2014*, “Chapter 2 Drafting and implementing an effective leniency policy” (April 2014).

¹⁷ *ibid*.

Section 3(3) of the Competition Act. By doing so, the Lesser Penalty Regulations attempt to expand the CCI's power beyond the purview of the governing statute. However, where delegated legislation is outside the scope of authorizing legislation, it may be read down to cure its *ultra vires* scope.¹⁸

The Lesser Penalty Regulations envisage the grant of lesser penalty to the first three applicants, who are then serially awarded a 'marker' status. In an instance where one of these three applicants is a facilitator and not a member of a cartel, denying it the right of whistleblower protection would limit the CCI's ability to collect evidence that might facilitate cartel prosecution and reduce the effectiveness of the program. Then, despite being poised to supply the CCI with high-quality information in expectation of a leniency grant, a facilitator may find itself ineligible for the benefit of the Lesser Penalty Regulations.

The Lesser Penalty Regulations may therefore leave facilitators vulnerable. The CCI and the Ministry will likely devise a mechanism to

remedy this gap. However, in the interim, the Competition Act provides an alternative mechanism to support facilitators: the CCI's discretion in awarding penalties.

Where a facilitator comes forward with information that allows the CCI to penalise a cartel, the Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024 allow the CCI to consider factors such as the role of the enterprise in orchestrating the contravening conduct and the extent of cooperation by the enterprise during the Director General's investigation and/ or proceedings.

Given the scheme of the Competition Act, a facilitator may be best placed in coming forward to the CCI, co-operating meaningfully, and ultimately relying on the CCI's discretion in shielding it from penalty rather than apply for lesser penalty. This might prove to be a bit of a gamble – but at present, it is the best path available, while the Ministry, the CCI, and the legislature look for more comprehensive solutions.

18 *Babaji Kondaji Garad v. The Nasik Merchants Co-Operative Bank*, Bombay High Court, 1984 SCR (1) 767 (31 October 1983).

Pivot To An Inventory Led Business Model: A Strategic Overhaul In Quick Commerce

By Manika Brar, Aman Singh Sethi, Nitika Dwivedi
and Raagini Agarwal¹

India's quick commerce sector is evolving at break-neck speed, propelled by consumer demand for hyper-local deliveries and intense investor interest. Against this backdrop, Blinkit, a prominent platform in the space, announced that starting September 2025, the company will complete its transition from a marketplace model - where it acted as an intermediary between sellers and buyers - to an inventory-led business, with Blinkit as the merchant of record. This shift is not just a matter of operational efficiency or customer experience but, it is deeply rooted in the nuances of India's foreign

direct investment (*FDI*) policy and the regulatory requirements for Indian-Owned and Controlled Company (*IOCC*) status. This article discusses regulatory and competitive ramifications of this pivot and distills key learning for similarly situated players.

IOCC Status: The Legal Key To Inventory-Led E-Commerce

At the heart of an inventory led e-commerce business transformation lies the IOCC requirement, a critical legal threshold for any e-commerce

¹ Manika Brar and Aman Singh Sethi and Nitika Dwivedi Partners and Raagini Agarwal, Associate, Shardul Amarchand Mangaldas & Co. The views expressed here are personal.

player seeking to operate an inventory-led model in India. The FDI regime for e-commerce in India draws a strict distinction between two models i.e., the *marketplace model* and the *inventory model*. While 100% FDI is permitted under the marketplace model (where the platform merely facilitates transactions between independent sellers and buyers), the inventory model (where the platform owns goods and sells them directly to consumers) is not open to foreign investment. This restriction seeks to prevent foreign-funded entities from engaging in retail trading that could displace domestic sellers through deep discounting or preferential treatment.

Over time, these bright-line categories blurred as marketplace operators began facing allegations of exercising indirect control over “preferred sellers” including equity participation, exclusive supply arrangements, or influence over pricing and logistics. To address the resulting regulatory ambiguity, Indian authorities developed the IOCC construct, allowing a platform with foreign shareholders to engage in limited inventory-led activity provided ultimate ownership and control remain Indian.

For Blinkit, which is transitioning towards a model involving direct sale of goods, IOCC status becomes relevant because it offers a compliant route to reconcile its FDI structure with the operational reality of holding and selling inventory. To navigate this, Blinkit’s parent, Eternal Limited (formerly Zomato), has capped foreign shareholding at 49.5%, thereby securing IOCC status. This move is not merely a compliance exercise, but it is a strategic enabler. As an IOCC, Blinkit is now legally empowered to hold and sell inventory. While this shifts the entity away from being a pure marketplace, it also has significant implications for how Blinkit is classified under India’s evolving competition and digital regulatory frameworks. In particular, the transition to an inventory-led model may affect Blinkit’s treatment under the 2025 Combination FAQs issued by the CCI (2025 FAQs), especially in relation to the deal value threshold (DVT) test, which determines when a transaction is notifiable based on the target’s business operations in India. The DVT test’s application hinges on whether Blinkit is considered a “digital service” provider or a direct retailer, which in turn impacts which financial and user-based thresholds are relevant for merger control assessment purposes. Furthermore, this business model shift also raises questions about Blinkit’s status under the draft Digital Competition Bill (DCB), specifically whether it would continue to be classified as providing a “core digital service” (CDS) subject to *ex-ante* obligations, or whether it would instead be treated as a conventional retailer outside the scope of these requirements. The following sections of this article examine these regulatory and competitive ramifications in detail.

Redefining Regulatory Classification: From Digital Service To Direct Sale

The 2025 FAQs clarify the scope of “digital services” for the purpose of assessing whether a target has substantial business operations (SBO) in India under the deal value threshold (DVT) test. A transaction is notifiable to the CCI under the DVT test if the transaction value exceeds INR 2000 crores and if the target has SBO in India which is

determined based on turnover or gross merchandise value (GMV) or user-based thresholds depending on whether its services can be classified as a “digital service”.

To clarify the scope of “digital services”, the 2025 FAQs distinguish between pure digital intermediaries (*marketplaces*) and inventory-led e-commerce models. Inventory-led models would generally not be considered “digital services” in the same sense as marketplaces, as they are engaged in direct sale of goods on their own behalf. Under the earlier marketplace model, Blinkit acted as an intermediary, connecting buyers and sellers, and was clearly classified as a digital service provider. With the shift to an inventory-led model, Blinkit will shift to becoming the principal seller (merchant of record), directly transacting with end consumers. Therefore, post this transition, Blinkit may no longer be classified as a “digital service” provider as per the 2025 FAQs, but rather as a multi-brand retailer utilising the internet merely as a distribution channel. Accordingly, for assessing SBO under the DVT test, only the India-turnover limb would be relevant for Blinkit. The “users in India” limb is reserved for digital services as defined under the 2025 FAQs and would fall away if Blinkit operates as an inventory-led retailer. Likewise, the GMV limb is calibrated for marketplace intermediaries that facilitate third-party transactions and would not apply where Blinkit is the merchant of record selling goods on its own account. However, any residual marketplace-like activities - such as facilitating third-party sales - could still be regulated as “digital services”. Accordingly, any intermediary functions should be clearly separated from inventory-led activities (both contractually and operationally), to treat the latter as a conventional retail activity for purposes of notification assessment under the evolving merger control regime.

Another key regulatory implication of Blinkit’s pivot to an inventory-led model is the potential shift in its characterization under the draft DCB. The DCB contemplates *ex-ante* restrictions for “Systemically Significant Digital Enterprises” (SSDEs). SSDEs are those companies which are considered to be “gatekeepers” of CDSs as defined under the DCB, owing to their size, reach, and ability to control access between business users and end-users. These *ex-ante* obligations are designed to address concerns around dependency, contestability, and fair competition in digital markets where such gatekeepers operate.

Under the draft framework, the definition of a “core digital service” in the context of online intermediation services broadly hinges on the platform’s role as an intermediary that enables business users or end-users to transact with each other. In a marketplace or aggregator model, Blinkit could arguably fall within this ambit, as it facilitated the sale of goods on behalf of third-party sellers to consumers. However, once Blinkit transitions into an inventory-led model, it ceases to operate primarily as an intermediary. Instead of enabling transactions between business users and end-users, it undertakes the activity of purchasing, holding, and selling goods in its own capacity. This fundamentally alters the nature of its operations as it is no longer a conduit but a direct seller. In such a

structure, Blinkit is effectively competing as a retailer rather than providing an intermediation service and therefore, may not squarely fall within the scope of a CDS as defined under the DCB.

This distinction is significant because the DCB's *ex-ante* obligations are targeted at large intermediaries whose position as unavoidable gateways between businesses and consumers creates concerns of dependency and contestability. By contrast, in an inventory-led model, Blinkit positions itself less as a gatekeeper and more as a retailer among others, even if it continues to benefit from scale and network advantages. The regulatory lens may thus shift away from intermediation-specific obligations and toward traditional competition law principles.

That said, it is worth noting that the Government is currently contemplating the withdrawal of the DCB, and it is unclear what form the legislation and the scope of CDS requirements may ultimately take. Any assessment of Blinkit's regulatory classification must therefore be caveated by this uncertainty as the contours of the

future digital competition framework may evolve in ways that either reinforce or undercut the significance of this business model pivot.

Navigating The New Regulatory Terrain

Blinkit's strategic overhaul from a marketplace to an inventory-led business model, facilitated by IOCC status, marks a pivotal moment in the evolution of Indian quick commerce sector. By aligning its operational reality with the legal and regulatory framework, Blinkit not only secures its position in the market but also sets a precedent for other players navigating the intersection of FDI policy, competition law, and digital commerce. As the regulatory landscape continues to evolve, the IOCC classification may serve as a useful mechanism for companies seeking to balance operational flexibility with compliance, transparency, and fair competition. Ultimately, the Blinkit example underscores that proactive alignment of business models with regulatory requirements – through mechanisms such as IOCC status and clear operational demarcation – can not only ensure compliance but also provide a competitive edge in a rapidly evolving sector.

The Price of Speed: Navigating the Challenges Of Quick Commerce In India

By Yaman Verma, Atreyee Sarkar, Natalia Bilimoria
and Kajal Jamdare¹



India's quick commerce sector has undergone major transformation in a short span of time. Quick commerce in India has evolved into an ultra-fast retail model, delivering groceries, essentials, household items, electronics and more within ten to thirty minutes. This model is now embedded in the everyday lives of urban Indian consumers. India's quick commerce market was valued at USD 3.05 billion in financial year (FY) 2024 and is forecast to reach USD 13.38 billion by FY 2032, implying a compound annual growth rate of %20.3 over FY 2032-2025.²

This rapid growth raises important questions for competition regulation. Quick commerce does not fit neatly into pre-existing regulatory categories. As discussed below, it resembles marketplace e-commerce in certain respects and inventory-based retail in others. This hybridity complicates competition analysis under India's existing legal framework.

This article examines potential competition concerns in the quick

commerce sector by highlighting the proliferation of quick commerce and its distinctive features; mapping the allegations raised before the Competition Commission of India (CCI); analysing the potential market definition under the Competition Act, 2002 (*Competition Act*), incorporating insights from international regulators; looking at the plausible analysis under Section 3(4) and Section 4 of the Competition Act, and evaluating how the CCI may look into the market and the associated implications. Finally, the article also highlights potential concerns under the EU's Digital Markets Act (*DMA*) and the now withdrawn Digital Competition Bill (*DCB*).

The Proliferation Of Quick Commerce In India

As noted in the report published by the 25th Standing Committee on Finance (*SCF Report*), the quick commerce boom in India is unique and "homegrown".³ This growth is driven by a combination of demographic, technological, and economic factors unique to the country's urban ecosystems.⁴ India's major metropolitan areas are characterised by extremely dense populations, high consumer

¹ Yaman Verma, Partner, Atreyee Sarkar, Partner, Natalia Bilimoria, Knowledge Associate, and Kajal Jamdare, Associate, Shardul Amarchand Mangaldas & Co. The views expressed here are personal.

² Markets & Data, *India's Quick Commerce Boom: The Rise, Race, and Reality of 10-Minute Delivery*, (July 2025).

³ Lok Sabha Secretariat (Standing Committee on Finance), *Report No 25 (18th Lok Sabha)*, (11 August 2025).

⁴ Boston Consulting Group, *Winning in Bharat & India: The Retail Kaleidoscope* (February 2025), Pages 22-33.

mobility, intense competition for convenience, and an increasingly digital-first approach to retail.⁵ In such environments, instant delivery has found receptive consumers who value the ability to procure necessities at short notice.

'Dark / ghost stores' are the operational backbone of quick commerce. These are localised distribution hubs optimised for speed rather than in-store customer experience.⁶ Swiggy, Instamart, Zepto and Blinkit together operate over 1,200 dark stores in India.⁷ These stores rely heavily on algorithmic inventory management and cater to narrowly defined hyperlocal clusters, generally within a two-kilometre radius. They also operate with far more compressed procurement cycles than traditional supermarkets, often restocking multiple times a day based on real-time analytics.⁸ These operational features create cost structures and competitive dynamics that arguably differ significantly from traditional retail stores and e-commerce marketplaces. The expansion of quick commerce has therefore raised several novel questions for competition authorities. The CCI will be required to conduct Section 3 and 4 analyses in a segment where cost structures are unique, and seller relationships are developing. As a result, quick commerce presents both a regulatory challenge as well as an opportunity to shape new precedent in India's competition law jurisprudence.

Allegations Raised In India

On 28 February 2025, the All-India Consumer Products Distributors Federation (AICPDF) filed a petition before the CCI against certain quick commerce players, alleging abuse of dominance in the form of deep discounting and predatory pricing practices (*Complaint*).⁹ AICPDF had previously also written a letter to the CCI in October 2024 on similar grounds.¹⁰

AICPDF contends that e-commerce and quick commerce platforms are selling core FMCG products at prices unsustainable for traditional distributors (at a discount of at least 50% on the price sold in traditional retail), thereby distorting the competitive landscape.¹¹ They argue that such pricing strategies are designed to build scale and behavioural dependence, which may ultimately dismantle traditional distribution channels.

In addition to pricing concerns, AICPDF also alleges that quick commerce platforms engage in preferential treatment of specific sellers or private-label products.¹² They argue that platforms may be using their extensive control over logistics and search visibility to favour certain sellers, thereby effectively exercising indirect

inventory control. This is a particularly sensitive issue in India, where Foreign Direct Investment (FDI) rules strictly differentiate between marketplace models and inventory-based e-commerce and explicitly prohibit foreign-backed marketplaces from controlling or holding inventory.¹³ It is argued that quick commerce platforms operate on an inventory-based model (by holding stock in dark stores) while claiming to be marketplaces, which is prohibited for foreign-funded entities. Therefore, any evidence suggesting that a platform influences pricing, procurement, and other inventory decisions could potentially be interpreted as indirect inventory control, triggering not only competition scrutiny but also FDI compliance issues.

Further, the Complaint also highlights adjacent concerns relating to consumer protection, food safety standards, and the localisation of dark stores.

Notably, the SCF Report also discusses the Complaint. In its response to the standing committee's questions regarding the Complaint, the CCI confirmed that recent allegations of deep discounting by quick commerce companies prompted it to seek substantiating evidence from the informant in order to form a *prima facie* view and, where warranted, move to inquiry. The CCI's response clarifies that complaints alleging below-cost pricing by large platforms are actionable in principle, but evidence on market power, cost structures and the design and funding of discounts is critical to trigger an investigation under the Competition Act.

Market Definition And The Challenge Of Characterising Quick Commerce

Defining the relevant market is the analytical foundation of any competition assessment. In the case of quick commerce, this task is unusually complex. As discussed above, its defining features, including hyperlocal dark-stores, algorithmic assortment, and rapid delivery, raise the question of whether it should be understood as a distinct market or as part of the broader e-commerce, retail or FMCG ecosystems.

Under Section 2(s) and 2(t) of the Competition Act, in determining the relevant market, the CCI examines both demand-side and supply-side substitutability. Over the years, the CCI has shifted from treating online and offline markets as distribution channels within a single relevant market to defining them as distinct markets.¹⁴ This shift was evident, for instance, in *Delhi Vyapar Mahasangh v. Flipkart*, where the CCI distinguished between the two channels and held that online marketplaces constitute a separate relevant market,

5 Rohan Goyal, *Modernization of Kirana Stores in India*, Invest India (1 April 2021).

6 Naini Thaker, *Dark stores, explained: The tech behind 10-min delivery*, Forbes India (9 October 2025).

7 Sobia Khan, *Shedding light on dark stores*, The Economic Times (4 September 2024).

8 *ibid.*

9 BRICS Competition Law and Policy Centre, *India FMCG distributors file petition with CCI against Blinkit, Zepto, Instamart* (6 March 2025).

10 BRICS Competition Law and Policy Centre, *Indian distributor body AICPDF writes to the CCI; urges probe into Blinkit, Instamart and Zepto* (21 October 2024).

11 *ibid.* n 8.

12 Akshara Srivastava, *Quick commerce platforms flouting FDI norms, competition law, alleges CAIT*, Business Standard (13 November 2024).

13 Ministry of Finance (India), Foreign Exchange Management (Non-debt Instruments) Rules 2019, Table to Schedule I, Item 15.2; and Ministry of Commerce and Industry, Guidelines for Foreign Direct Investment (FDI) on E-commerce, Press Note No. 3 (2016 Series), Para 2.2 (ii).

14 Unnati Agrawal, *Delineation of Relevant Market by the CCI: Change in Practice?*, Bar and Bench (25 May 2022).

distinct from traditional brick-and-mortar retail stores.¹⁵ However, from a functional perspective, quick commerce offers a different value proposition from both supermarkets as well as e-commerce. Its defining characteristic is speed. Therefore, the key question before the CCI is whether immediacy or speed constitutes a quality dimension significant enough to justify a separate product market under the Competition Act.

International jurisprudence offers some insight into the issue. The UK Competition and Markets Authority (CMA) has expressly recognised the distinctiveness of rapid delivery. In *Amazon / Deliveroo (2020)*, the CMA examined “online convenience groceries” which it defined as groceries ordered online for delivery within a few hours.¹⁶ Considering the demandside substitution between this rapid segment and slower, scheduled online grocery stores, it concluded that the latter is not a close substitute for online convenience grocery.¹⁷ The CMA further explained that brickandmortar convenience stores do not compete closely with ondemand delivery, although they may exert outofmarket constraints given consumers’ willingness to travel to stores.¹⁸ It further observed that online convenience grocery offerings meet different consumer needs than scheduled online delivery, with immediacy, smaller baskets, and different shopping missions.¹⁹ It also noted limited scope for supplierside substitution, because many grocers’ existing scheduled delivery operations are not suited to ondemand logistics without significant investment in capability, routing, courier networks, and fulfilment processes.²⁰

While the German Federal Cartel Office (*Bundeskartellamt*) looked at the rapid grocery delivery market in *Gorillas / Getir*, the case does not provide guidance on the issue of relevant market definition. However, the *Bundeskartellamt* assessed online beverage delivery in the *Dr. Oetker / Radeberger-Flaschenpost* merger, where it described *Flaschenpost* as an online beverage delivery service and discussed competitive constraints from both stationary food retail outlets and beverage cash-and-carry outlets.²¹ Similarly, in *Knuspr / Bringmeister*, it left open the question as to whether online food retail constitutes a separate market or is to be included in an overall food retail market.²²

Although not determinative, these insights may prove relevant for India, where quick commerce has evolved in ways that are both similar and distinct. Like many EU and UK operators, Indian platforms rely on dark-store networks and algorithmic pricing. However, Indian models are even more dependent on intensive discounting and high-order frequency, given the demographics of the country, arguably differentiating them further from supermarkets. *First*, India’s vast base of hyperlocal offline grocers (*kiranas*) already provide

non-scheduled, near-immediate deliveries. These neighbourhood stores operate within walking or short distances, extend informal credit, and often accept phone or messaging app orders. *Second*, the economics of the last mile are structurally more favourable in India. Dense urban clusters, ubiquitous two-wheelers, and a large pool of flexible delivery partners keep costs per delivery low. This lowers the marginal cost and complexity of fulfilment relative to many European markets with higher wages, stricter vehicle rules, and more dispersed demand. *Third*, mainstream e-commerce platforms like Amazon and Flipkart also offer relatively quick delivery, further shifting consumer expectations towards immediacy across categories, not just groceries.

The question therefore becomes whether, in the Indian context, there is sufficiently strong evidence that the immediacy of quick commerce is determinative, so as to offset the theoretical substitutability of offline and online retail, as well as substitutability within online retail. If the CCI adopts a broader market definition, encompassing offline supermarkets or even just traditional e-commerce, then dominance becomes less likely, given the intensity of competition across channels and the prevalence of consumer multi-homing.

However, if the CCI ultimately concludes that quick commerce comprises a separate relevant market, the implications for dominance analysis could be substantial (and dominance is a pre-condition to any finding of abuse of dominance). It is unlikely that any one quick commerce player will be found dominant in an India-wide quick commerce market given the intensity of competition, recent entries, and consumer multi-homing (similar to markets like e-commerce or food aggregation that the CCI has previously analysed). On the other hand, if the CCI takes a different view on geographic market and adopts a narrow market definition based on hyperlocal fulfilment, a platform could be considered dominant within a city or zone, even if it lacks national-level market power.

Thus, as international regulators continue to refine their understanding of rapid-delivery markets, India has the opportunity to align with emerging global standards while adapting them to its own retail and regulatory environment.

Dominance Analysis Under Section 4

Dominance under Section 4 of the Competition Act depends on whether an enterprise enjoys a position of strength enabling it to operate independently of competitive forces or affect the market in its favour, evaluated through the nonexhaustive factors in Section 19(4) of the Competition Act, including market shares, entry barriers, countervailing buyer power, network effects, and dependence of

15 *In Re: Delhi Vyapar Mahasangh v. Flipkart Internet Private Limited and its affiliated entities and Ors.*, CCI, Case No. 40 of 2019 (13 January 2020).

16 CMA, *Anticipated acquisition by Amazon of a minority shareholding and certain rights in Deliveroo*, Final report (4 August 2020) Page 89.

17 *ibid*, Page 90.

18 *ibid*, Page 90.

19 *ibid*, Page 98-99.

20 *ibid*, Page 194-195.

21 Press Release from the *Bundeskartellamt*, *Radeberger (Oetker) can acquire Flaschenpost – Bundeskartellamt clears merger* (2 December 2020).

22 Press Release from the *Bundeskartellamt*, *Kern & Fresh* (10 August 2023).

consumers or sellers. Quick commerce presents a mixed picture. As of Q1FY25, at the national level, Blinkit holds 46% market share in the quick commerce market, with Zepto and Instamart at 29% and 25% respectively, suggesting a national market that is not dominated by any one player.²³ Given the fact that quick commerce relies on hyperlocal networks, it is possible that the CCI will look at the market not at a national but at the city / neighbourhood level, where the competitive realities maybe different. Nevertheless, given the dynamic nature of the market, the market shares fluctuate, and consumers frequently multi-home between apps. In practice, most consumers have multiple quick commerce apps downloaded on their devices, and frequently compare product prices on various platforms before placing their order.

While it may be argued that entry barriers exist, rival platforms continue to invest aggressively, and competition remains intense. In the last few months itself, multiple new players have also entered the market, suggesting that the barriers to entry are surmountable and the market is getting more competitive day-by-day. Amazon launched its quick commerce service, 'Amazon Now', in India with a pilot program in December 2024, followed by an official, broader launch in Bengaluru in June 2025.²⁴ Flipkart also launched 'Flipkart Minutes' in August 2024, marking its entry into the market.²⁵ Overall, India tops the quick commerce landscape with approximately 50 quick commerce related enterprises, ahead of the United States with 15 and the United Kingdom with 13.²⁶

Additionally, even if the CCI ultimately concludes that dominance cannot be established, certain practices may still be vulnerable under Section 3(4) of the Competition Act, which addresses vertical restraints. This aspect is not covered by the allegations levied by AICPDF, but remains a potential area of concern, as noted in the SCF Report. For example, actions like exclusive arrangements with sellers could all fall within the ambit of Section 3(4) even in the absence of dominance under the Competition Act, considering positions that the CCI has taken previously. Having said that, any analysis under Section 3(4) would require a clear demonstration of appreciable adverse effect on competition (AAEC), which would include balancing the pro-competitive and pro-consumer benefits of these quick commerce platforms with their alleged anti-competitive outcomes. As noted by the Supreme Court in *CCI v. Schott Glass*, net competitive harm must be shown before liability can attach.²⁷ This requires the CCI to undertake a balancing exercise of the conduct's likely anti-competitive impact against any demonstrated efficiencies that accrue to consumers.

Finally, consolidation in rapid delivery could also attract scrutiny under the merger control regime in light of introduction of the Deal Value Thresholds (DVT) by the Competition (Amendment)

Act, 2023 (2023 Amendment Act), which captures high value digital combinations even where traditional financial thresholds are not met, facilitating review of acquisitions that could potentially entrench market power in dark store networks.

Concerns Under The DMA And Erstwhile DCB

While competition law provides a case-specific, ex-post framework, many of the concerns in quick commerce overlap with issues addressed by emerging ex-ante regulation. India's now withdrawn DCB and the EU's DMA offer forward-looking models for regulating the structural power of digital platforms. These frameworks become relevant if large quick commerce platforms are designated as 'systemically significant digital enterprises' under the DCB or 'gatekeepers' under the DMA. The following concerns can arise in the context of quick commerce players:

- **Self-preferencing:** One of the most significant concerns for ex-ante regulation is self-preferencing. Quick commerce platforms, by virtue of controlling both the marketplace interface and the fulfilment infrastructure, may have the ability and incentive to favour private-label products or affiliated sellers. The DMA specifically prohibits such conduct under Article 6(5).
- **Data-use:** Another area of concern is data use. Quick commerce platforms generate data relating to consumer behaviour, hyper-local demand patterns, pricing sensitivity and seller performance. If dominant platforms use any non-public data generated by independent sellers to design competing private-labels or to optimise/prioritise their own inventory, this may raise questions of unfair leveraging and self-preferencing. The DMA addresses this explicitly, under Article 5(2)(a)-(d) and Article 6(2). Article 5(2)(a)-(d) prohibits gatekeepers from using non-public data generated by business users or their customers to compete against those business users, including for the development or positioning of private-label products. Article 6(2) further requires gatekeepers to ensure effective technical and organisational separation between data collected from third-party business users and data used for their own commercial activities, unless such data use is strictly necessary and appropriately safeguarded.
- **Logistics and delivery:** Control over logistics and delivery infrastructure is also central to the quick commerce model. Platforms may be able to determine which sellers receive faster delivery slots or more reliable logistics allocation. Such control could influence competition among brands and create obstacles for sellers who do not align with the platform's commercial priorities. The DMA requires gatekeepers to offer business users fair, reasonable, and nondiscriminatory conditions of access to key services, creating a nondiscrimination baseline for how access affects distribution and visibility under Article 6(12). It also prevents tying of gatekeeper IDs, browser engines, or payment

²³ Motilal Oswal Financial Services, *Swiggy* (Report, 18 November 2024), Page 11.

²⁴ HT News Desk, *Amazon enters quick commerce race with 'Now' service in Bengaluru, targets rapid expansion: Report*, The Hindustan Times (14 June 2025).

²⁵ TOI Tech Desk, *'Flipkart Minutes' is here to take on Blinkit, Swiggy Instamart and BB Now; here's the city its available in*, The Times of India (6 August 2024).

²⁶ Mansi Jaiswal, *Quick commerce boom: India's fastest-growing market attracts big players, new entrants*, Storyboard 18 (17 March 2025).

²⁷ *Competition Commission of India v. Schott Glass India Private Limited*, Supreme Court, Civil Appeal No. 5843 and 9998 of 2014, Para 60-67 (13 May 2025).

rails, reducing leverage over related infrastructure under Article 5(7).

- *Algorithmic pricing:* Algorithmic pricing presents yet another dimension of concern. Quick commerce platforms frequently engage in personalised or dynamic pricing based on behavioural insights, such as purchase history, location, time of day or inferred willingness to pay. While such pricing can improve efficiency, it raises concerns around transparency, potential discrimination, and the use of behavioural nudges that may distort consumer choice. International regulators have begun to scrutinise such practices more closely, and ex-ante regimes seek to impose disclosure, auditability and fairness obligations on the use of algorithmic pricing. The DMA adds transparency by requiring an independent audit and description of the profiling techniques used across core services: what data is used, how and why it is processed, how long it is kept and how user consent is obtained. This helps scrutinise personalised and dynamic pricing under Article 15. In parallel, the DMA also targets the design-based manipulation that can accompany algorithmic pricing. Articles 13(3)-(7) prohibit gatekeepers from undermining user choice through design/interface tricks or behavioural techniques (commonly referred to as dark patterns) and forbids lowering of quality when users exercise their legal rights. Together, these provisions aim to ensure that algorithmic pricing does not operate in a manner that covertly steers consumer behaviour or penalises informed choice.

The DCB framework mirrored the above concerns in the DMA. In light of concerns raised by global tech majors, domestic platforms, and other parts of the government during inter-ministerial consultations, the Government of India withdrew the DCB in August 2025.²⁸ However, the Ministry of Corporate Affairs has already commissioned a comprehensive market study, involving consultations with other ministries and extensive engagement with industry stakeholders, before coming up with a new legislation.²⁹ The request for proposal identifies e-commerce platforms, but not specifically quick commerce platforms, as one of the stakeholders in the market study.³⁰

Concurrently, the 2023 Amendment Act has enhanced the CCI's toolkit with settlements and commitments, enabling timely, proportionate remedies for digital conduct, and introduced the DVT to capture strategic combinations. The CCI has also established a Digital Markets Division to develop specialist capacity for complex platform cases.³¹

Therefore, taken together, these concerns and the ongoing market study suggest that quick commerce is likely become a significant focus of India's digital regulation efforts, especially as platforms grow and consolidate.

Conclusion

Quick commerce represents a transformative shift in India's retail economy. Its appeal lies in its efficiency and convenience, but its operation raises complex questions for competition law. The CCI will likely need to address several novel issues, including whether quick commerce constitutes a distinct relevant market, how dominance should be assessed in hyperlocal delivery ecosystems, how platform-seller relationships should be evaluated, and how any potential anti-competitive effects must be weighed against the pro-competitive, pro-consumer benefits that a new market segment brings.

The regulatory landscape for quick commerce in India is also evolving rapidly, and stakeholders across the ecosystem including platforms, brands, sellers, investors, and policymakers, must prepare for heightened scrutiny under both competition law and digital regulation.

For platforms, the most immediate challenge is to anticipate the direction of market definition analysis. If the CCI adopts an approach aligned with the practices of CMA, it may conclude that quick commerce forms a distinct market characterised by the immediacy of service, the reliance on dark stores, and the behavioural patterns of consumers. Platforms may therefore need to gather extensive economic evidence demonstrating substitutability with offline retail or traditional e-commerce in order to avoid being categorised as dominant within narrowly defined quick commerce markets. They must also prepare for increased scrutiny of their seller relationships, especially any arrangements that could be interpreted as granting preferential visibility or logistic prioritisation to certain sellers or private labels. Seller-facing transparency on search ranking, discounting rules, and contract changes – areas highlighted in the CCI's ecommerce market study – can mitigate risk under both Sections 3 and 4 of the Competition Act.

Further, in line with the CCI's market studies on e-commerce and artificial intelligence, the CCI should consider whether a focused study on the quick commerce market, highlighting concerns, best-practices and self-regulation guidelines, will prove beneficial for all the stakeholders involved. The CCI has an opportunity to be a first-mover in this regard, considering the widespread growth of the market in India and the lack of guidance from foreign regulators.

Ultimately, the sustainability of the quick commerce ecosystem will depend on coordinated regulatory oversight. Competition authorities, consumer protection bodies, food safety regulators, labour regulators, and agencies involved in digital infrastructure such as Open Network for Digital Commerce (i.e., ONDC) must collaborate to ensure that innovation is not stifled while maintaining safeguards for fair competition and consumer welfare. By embracing a proactive compliance culture and transparent operational practices, industry stakeholders can ensure that quick commerce continues to deliver value without sacrificing fairness or accountability.

²⁸ Manu Kaushik, *Govt to withdraw draft Digital Competition Bill*, Financial Express (10 August 2025).

²⁹ *ibid.*

³⁰ Ministry of Corporate Affairs, *Request for Proposal (RFP) to undertake a Market Study on Qualitative and Quantitative thresholds for Big Tech Companies and Core Digital Services (CDS)* (3 November 2025), Page 9.

³¹ PRS Legislative Research, *Standing Committee Report Summary* (29 August 2025).

Glossary

Abbreviation	Terms
AAEC	Appreciable Adverse Effect on Competition
AdC	Portuguese Competition Authority
AEC	As-efficient competitor
AI	Artificial Intelligence
AIF	Alternative Investment Fund
AI Market Study	Competition Commission of India's market study on Artificial Intelligence and Competition in India
Amendment Act	Competition (Amendment) Act, 2023
CCI	Competition Commission of India
CJEU	Court of Justice of the European Union
CLRC	Competition Law Review Committee
CMA	Competition and Markets Authority
COC	Committee of Creditors
Combination FAQs	Competition Commission of India's FAQs on Combinations, 2025
Combination Regulations	Competition Commission of India (Procedure in regard to the Transaction of Business relating to Combinations) Regulations, 2024
COMPAT	Competition Appellate Tribunal
Competition Act	Competition Act, 2002
Contract Act	Indian Contract Act, 1872
DCB	Digital Competition Bill
DG	Director General, Competition Commission of India
DMA	Digital Markets Act, 2022
DOJ	Department of Justice
DVT	Deal Value Threshold
EC	European Commission
EEA	European Economic Area
EU	European Union

Abbreviation	Terms
Exemption Rules	Competition (Criteria for Exemption of Combinations) Rules, 2024
FCA	French Competition Authority
FDI	Foreign Direct Investment
FTC	Federal Trade Commission
GMV	Gross Merchandise Value
GoI	Government of India
IBC	Insolvency and Bankruptcy Code, 2016
IP	Intellectual Property
JV	Joint Venture
Lesser Penalty Regulations	Competition Commission of India (Lesser Penalty) Regulations, 2024
MCA	Ministry of Corporate Affairs
MFN	Most Favoured Nation
NCLAT	National Company Law Appellate Tribunal
OECD	Organisation for Economic Cooperation and Development
OFT	Office of Fair Trading
Penalty Guidelines	Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024
PFC	Pre-filing consultation
RPM	Resale Price Maintenance
SBO	Substantial Business Operations
SEBI	Securities and Exchange Board of India
SSDE	Systemically Significant Digital Enterprise
Supreme Court	Supreme Court of India
TFEU	Treaty on the Functioning of the European Union
TRAI	Telecom Regulatory Authority of India
UCP	Ultimate Controlling Person



Pallavi Shroff, *Managing Partner*

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Pallavi Shroff is the Managing Partner of Shardul Amarchand Mangaldas and National Practice Head of the Dispute Resolution Practice. With more than 43 years of extensive experience, her broad and varied representation of public and private corporations and other entities before various national courts, tribunals and legal institutions has earned her national and international acclaim.

Pallavi mentors the Competition Law practice at the Firm bringing her unparalleled commercial judgement to complex cases. She regularly argues competition law cases before the Competition Commission of India (CCI) and the National Company Law Appellate Tribunal (NCLAT). In 2024, she played a strategic role in securing a conditional clearance for the merger of the digital and linear entertainment businesses of Viacom18 (part of Reliance Industries) with Star India (wholly owned by the Walt Disney Company).

Pallavi was a key member of the high-powered SVS Raghavan Committee, which contributed to formulating the legal framework for the new competition law and a draft of the Competition Act. She was also a member of the Competition Law Review Committee and the Committee on Digital Competition Law, which evaluated the need for a separate competition law on digital markets and drafted a Digital Competition Bill.

Alongside her legal practice, she serves on the boards of InterGlobe Aviation Limited, Artemis Hospitals Limited and Juniper Hotels Limited. While her work has earned wide recognition, she is equally respected as a trusted advisor, mentor and principled leader.

Pallavi has been ranked as an Eminent Practitioner for Competition Law by Chambers and Partners 2025. She is acknowledged as “a stalwart in the field of competition laws,” best known for her handling of cartel, abuse of dominance and other contentious issues, but increasingly active in providing strategic oversight on very large-scale, multi-jurisdictional merger control mandates. One client, who identifies her as “a main reason for going to the firm,” speaks of a “great sense of comfort that she was handling the matter - always there to step in at a critical juncture”.

Pallavi was conferred the ‘Lifetime Achievement Award’ at the Chambers India Awards - 2019. She has also been recognised as a ‘Thought Leader’ for Competition and Commercial Litigation by Lexology Index Rankings 2025, and one of India’s ‘Most Powerful Women in Business’ by Business Today Magazine 2025.



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Naval Satarawala Chopra is a Partner in the Firm’s Competition Law Practice and is a member of the Firm’s Management Board. He focuses on both contentious and non-contentious matters before the CCI and appellate forums. His prominent clients include Microsoft, Meta, Bayer, National Stock Exchange, Uber, VeriFone, DLF, PVR and Abbott. Naval is focused on disruptive industries and issues arising from the confluence of technology, intellectual property and competition law. He is best known for strategic antitrust litigation especially on complex abuse of dominance and merger control proceedings.

On the enforcement front, Naval has successfully represented several clients in separate abuse of dominance cases against Google relating to search, Android and payments, where the CCI has fined Google nearly USD 350 million in aggregate. He also successfully defended WhatsApp in relation to its 2016 privacy policy and allegations of tying and is currently representing Meta and WhatsApp in their appeal to the Supreme Court in relation to the CCI’s order on WhatsApp’s 2021 privacy update and related NCLAT judgment. He has also acted for Microsoft in relation to licensing terms and Uber in relation to alleged predatory pricing.

On merger control, Naval has advised Facebook on its investment in Jio Platforms (the largest foreign direct investment in the technology sector in India), Think and Learn on its acquisition of Aakash Educational Services (India’s largest ever education sector transaction), Air India’s merger with Vistara and Bayer AG’s acquisition of Monsanto. He also advised PVR in successfully defending a challenge to its acquisition of a competitor. In the past year, he has been involved in other major mergers and acquisitions, including Abu Dhabi National Oil Company’s acquisition of Covestro, Bunge Global’s acquisition of Viterra and Saint Gobain’s acquisition of subsidiaries of Fosroc Group Holdings.

Naval was the first Indian lawyer to be ranked in Global Competition Review among the top “40 under 40” competition lawyers in the world (2016). Naval is ranked as Band 1 by Chambers where referees say he is “one of the best lawyers I have ever worked with” and note that “he has the best mind for competition law in India”. Naval has also been recognised as a Distinguished Practitioner by Asialaw for 2024-2025 and as a Global Elite Thought Leader for Competition Law by Lexology 2025.

Naval is qualified to practise in New York, England & Wales and India.

**Shweta Shroff Chopra**, PartnerE-mail: shweta.shroff@AMSShardul.com | Phone: +91 98100 98335

Shweta Shroff Chopra is a Partner in the Firm's Competition Law Practice and a member of the Firm's Management Board. She has been a pivotal figure in the evolution of merger control in India, involved in some of the most-high profile and complex cartel and merger control cases in India.

In relation to merger control, Shweta has advised on many complex mergers. She advised Reliance Retail Ventures in its acquisition of stores of the Future Group together with its wholesale, logistics and warehousing businesses and Flipkart (a subsidiary of Walmart) in its acquisition of a minority stake in Aditya Birla Fashion & Retail. She acted for Delhivery in the notification of its arrangements with FedEx, steered PVR Cinemas in its merger with INOX Leisure and advised MetroAG's sale of its wholesale business in India. Most recently, she was part of the team that secured approval for Reliance Industries Limited and Viacom18 Private Limited's USD 8.5 billion JV with The Walt Disney Company.

On the enforcement front, Shweta has advised Jai Polypan in the Protective Tubes cartel case, and Flipkart against allegations of preferential treatment and discrimination. She has acted for Carlsberg in cartel proceedings and for car manufacturer Maruti Suzuki in an investigation into allegations of resale price maintenance. She also advised Mitsui O.S.K. Lines and Nissan Motor Car Carrier Co. in relation to their successful applications for leniency in a cartel involving the transport of motor vehicles. She was involved in the successful challenge before the NCLAT of the CCI's order in the Tyre Cartel case.

Shweta is a Non-Governmental Advisor in the ICN, participating in annual conferences and workshops. She also worked with Mrs. Pallavi Shroff in preparing proposals for reform of the Competition Act for consideration by the Competition Law Review Committee. Shweta was recognised in Global Competition Review's 'Women in Antitrust' 2021. She is regarded as a Leading Partner for Antitrust and Competition by Legal 500 2025-26, and as a Global Elite Thought Leader for Competition Law by Lexology 2025. According to interviewees by Chambers, where she enjoys a Band 2 Ranking, she "is superb to work with" and "brings thoughtfulness and perspective into clients' engagements".

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Harman Singh Sandhu is a Partner in the firm's Competition Law Practice, with extensive experience in Indian competition law since its inception. He advises Indian and foreign companies on a range of competition issues across various sectors, and represents them before the CCI, the NCLAT, the High Courts, and the Supreme Court.

He has successfully defended clients in several cartelisation and abuse of dominance cases, such as CCI v. SAIL, Apollo Tyres, Tata Chemicals, Monsanto, Visaka Industries, ONGC, Asian Paints, and OYO. He continues to represent Coal India in relation to abuse of dominance allegations in NCLAT and Supreme Court. He has also acted for clients in complex merger control matters, obtaining unconditional or conditional CCI approval for transactions such as Siemens Healthineers' acquisition of Varian Medical Systems, Baring Private Equity Asia's investments in Hinduja Global Solutions and Global Content Alpha Partners, DuPont's merger with Dow Chemical, Saudi Aramco's acquisition of SABIC, Alstom's acquisition of Bombardier Transportation, Fiat's merger with Peugeot, and Metso Minerals' merger with Outotec. More recently, he acted for J. B. Chemicals in its merger with Torrent Pharmaceuticals, Delhivery in its acquisition of Ecom Express, the Bajaj Group in its acquisition of Bajaj Allianz Life Insurance and Bajaj Allianz General Insurance, Toyota Motor Corporation in its internal restructuring and consolidation of Toyota Industries within the TMC Group, Saudi Aramco in its acquisition of the global products business of Valvoline., for e& (Etisalat) in its minority acquisition in Vodafone Group and for the Ontario Teachers' Pension Plan Board in its minority acquisition in BusyBees Logistics. In 2024, he secured conditional clearance for the merger of the entertainment businesses of Viacom 18 (part of Reliance Industries) with Star India (owned by The Walt Disney Company) and unconditional clearance for Bunge's acquisition of Viterra.

Harman has been acknowledged as a 'Distinguished Practitioner' for Competition / Antitrust by Asialaw 2024-2025 and a 'Leading Partner' for Antitrust and Competition by legal 500 2025-26. Harman is ranked as Band 1 by Chambers and as a Global Elite Thought Leader for Competition Law by Lexology 2025. He has received high praise from interviewees for his legal advice, commercial sense, calmness, solution-oriented approach, and industry-specific knowledge. He has also been recognised as 'Litigation star for Competition/antitrust' by Benchmark Litigation 2023-2025 and among IBLJ's A-List of India's Top 100 Lawyers from 2023-2026.

He has co-authored leading guides on the law of Dominance, Merger Control and Cartels in India, in the Getting the Deal Through series.



Manika Brar, Partner

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Manika Brar is a Partner in the Firm's Competition Law Practice. She has carved her niche in enforcement and merger control cases and is regarded as a well-seasoned and experienced abuse of dominance and cartel specialist.

On the cartel enforcement front, Manika acted for Indo National Limited in successfully overturning a finding of cartelisation. She also represented Carlsberg India on the proceedings initiated by the CCI against beer companies in India for price fixing and cartelisation (winning the GCR award for Behavioural Matter of the Year, Asia-Pacific, Middle East and Africa). Manika has been involved in numerous domestic and global cartel investigations, including in the auto parts sector.

Manika also successfully defended the National Stock Exchange before the CCI against allegations that the provision of colocation services was anti-competitive. She is also acting for the National Stock Exchange on its appeal before the Supreme Court of India and in compensation claims filed before the NCLAT in a predatory pricing case. She recently successfully represented PVR-INOX against a complaint challenging their merger under the enforcement provisions of the Competition Act, 2002.

On the merger control front, Manika has advised various international and domestic companies. She has worked on Reliance's acquisition of the Retail & Wholesale Business and the Logistics & Warehousing Business of the Future Group, EQT Fund Management and the Goldman Sachs Group's acquisition of Parexel International Corporation, UBS's acquisition of Credit Suisse and Titan's acquisition of Caratlane. In 2024, she secured unconditional clearance for Bunge's acquisition of Viterra, which won the GCR Award for Merger Control Matter of the Year – Americas, 2025.

Manika comes 'Recommended' for Competition Law by Lexology, and was 'Recognised' as one of the top Women in Antitrust 2025 by Global Competition Review. She was also classified as one of the 'Future Stars' for Competition by Benchmark Litigation Asia-Pacific 2024 and comes 'Recommended' for Competition by Who's Who Legal India 2024 Report.



Yaman Verma, Partner

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Yaman Verma is a Partner in the Firm's Competition Law Practice with nearly 15 years' experience. He advises on complex multi-jurisdictional mergers, abuse of dominance and cartel cases, with a special focus on technology and e-commerce markets. He works with a wide range of clients including Microsoft, Meta Platforms, Coal India, Walmart, WhatsApp, Temasek and Zomato.

On the enforcement front, Yaman has acted for a confidential complainant and third parties in obtaining CCI orders against Google for abuse of dominance with respect to Android Mobile Device Ecosystem and the Google Play Store Billing System. He also represented clients in the NCLAT and Supreme Court in successfully opposing Google's pleas to suspend behavioural remedies imposed by the CCI. Other recent highlights include acting for Meta Platforms (formerly Facebook), and WhatsApp in the CCI's investigation into WhatsApp's 2021 Update to its privacy policy and their subsequent appeals to the NCLAT and Supreme Court. He was also successful in defending Microsoft, Coal India and online food aggregator Zomato against allegations of abuse of dominance. He is currently defending the Flipkart group before the CCI against allegations of preferential treatment, exclusivity and deep discounting

In relation to merger control, Yaman has advised on Indian competition clearance for complex global mergers, including the Fiat/Peugeot, Linde/Praxair, Dow/Dupont and Agrium/PotashCorp transactions. Previously, Yaman helped secure unconditional approval for Facebook's acquisition of a minority stake in Jio Platforms Limited, Walmart's acquisition of a majority stake in Flipkart, and the Vodafone/Idea merger. He also regularly advises private equity investors in relation to CCI approvals for their acquisitions.

Yaman is recognised by Chambers and Partners as a Band 4 practitioner, with clients commenting on his "keen attention to detail, responsiveness and clear communication". He has been recognised among "40 under 40" by Global Competition Review 2024 and is also recommended by Who's Who Legal. He is also listed by Legal 500 as a "Leading Partner".

He regularly contributes to competition law publications. He also conducts an elective course on competition law and a foundations of legal education course at the National Law School of India University, Bangalore and frequently lectures in various universities and on online learning platforms across India.

**Rohan Arora**, Partner

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Rohan Arora is a Partner in the Firm's Competition Law Practice, with nearly 15 years' experience. He has been involved in a wide range of enforcement and merger control work, specialising in abuse of dominance cases in the technology sector. His clients include WhatsApp, Meta Platforms, National Stock Exchange, Microsoft, Uber, Monsanto and Suzuki Motor Corporation.

He has successfully defended Microsoft and WhatsApp in allegations of anticompetitive tying and bundling. On the predatory pricing front, Rohan currently represents the National Stock Exchange before the Supreme Court and in a stayed action for compensation before the NCLAT. Rohan regularly represents Uber in predatory pricing allegations and has successfully defended it in the Supreme Court from claims that it was engaged in a hub-and-spoke cartel with its driver-partners. Rohan is currently defending Maruti Suzuki, India's largest automobile manufacturer before the NCLAT, against CCI findings that it had engaged in resale price maintenance. He is also involved in several challenges before the High Court of Delhi to the CCI's jurisdiction in relation to auto parts cases.

On the merger control side, Rohan has advised on several complex mergers. Recent matters advising Omnicom Group Inc. on its USD 13.25 billion acquisition of The Interpublic Group of Companies, Inc.; 3G Capital Partners on its USD 9 billion acquisition of sole control of Skechers U.S.A., Inc.; and Allison Transmission Holdings Inc. on its USD 2.7 billion acquisition of sole control over the off-highway business of Dana Incorporated.

Rohan is recognised by Chambers and Partners as a Band 4 practitioner, with clients commenting that he is "savy, sharp and practical", and "provides very reliable and credible advice which aligns with our business requirements". He is 'Recommended' for Competition law by Lexology 2025 and Chambers. He was listed as a 'Thought Leader: Global Elite' for Competition law under 45 by Lexology 2025.

Rohan regularly contributes to competition law publications and has co-authored the India chapters on Dominance and Merger Control in "Getting the Deal Through" publications. He has co-authored articles on the recently introduced commitments and settlements mechanism. He is also a leading voice on the overlap between ESG principles and competition law in India.

**Aman Singh Sethi**, Partner

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Aman Singh Sethi is a Partner partner in the Firm's Competition Law Practice, working on contentious as well as non-contentious cases. He has advised clients in high-tech/ disruptive industries, seeds, agrochemicals and agricultural traits, cement, petrochemicals, media & entertainment, and telecommunication sectors.

On the enforcement front, Aman is involved in several litigious matters before the CCI, the National Company Law Appellate Tribunal as well as the Supreme Court. He has also been involved in several challenges against the CCI before various Writ Courts on due process and natural justice grounds.

Aman has acted for several parties in obtaining favourable decisions against Google for abuse of dominance with Android (upheld in appeal) and Play Store payments practices (GCR - 'Behavioural Matter of the Year – Asia Pacific, Middle East and Africa' 2023). He is currently advising in a challenge to Google's alternate billing policy. Aman represented Matrimony.com in its complaint against Google for abuse of dominance (GCR - 'Behavioural Matter of the Year – Asia Pacific, Middle East and Africa' 2019), and continues to do so in appeal.

Aman has also successfully defended Uber against complaints of alleged abuse of dominance and anti-competitive agreements and Indian hospitality disruptor Oravel Stays Private Limited for alleged abuse of dominance. He has also represented Monsanto Company (now Bayer), Ambuja Cements Limited, Abbott Healthcare and the National Stock Exchange of India Limited in alleged anti-competitive agreements and abuse of dominance proceedings.

Aman has been involved in several major mergers notified to the CCI and has advised on complex remedies. Most recently, he advised Reliance Industries in its USD 8.5 billion merger of entertainment businesses with Disney in India, involving unique structural and behavioural modifications. Other notable cases include clearances for the Bajaj Group's acquisition of Bajaj Allianz Life Insurance and Bajaj Allianz General Insurance, GSK/Novartis exchanges of businesses, the Dow-DuPont merger and the Vodafone-Idea merger. Aman also advised Microsoft on India merger control aspects of its acquisition of Activision Blizzard (GCR - 'Matter of the Year' 2024).

Aman regularly contributes to international publications and reports and routinely writes on issues related to the interplay of competition law and intellectual property, as well as on digital markets. Aman was listed as a 'Future Leader – Partner' for Competition law by Lexology 2025 and Who's Who Legal India 2024.



Nitika Dwivedi, Partner

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Nitika Dwivedi is a Partner in the Firm's Competition Law Practice. She advises clients on contentious and non-contentious competition law matters and is regularly sought out for abuse of dominance and cartel cases.

On the enforcement front, Nitika has been involved in defending private and public sector companies in cases before the CCI, the NCLAT and the Supreme Court. She has successfully defended WhatsApp, Oil and Natural Gas Corporation and Asian Paints against allegations of abuse of dominance. She has also represented Monsanto (now Bayer) in relation to allegations of abuse of dominance. She has also secured an unconditional stay for ACC Limited (part of the Lafarge-Holcim group) in a bid-rigging case and achieved a successful outcome for Coal India Limited (largest coal manufacturer) in a cartel complaint. Notably, she played a key role in India's first-ever leniency application before the CCI for Globecast Asia, securing a 100% penalty reduction—setting a crucial precedent for India's leniency regime. Additionally, she secured the closure of eight investigations against Robert Bosch involving allegations of cartelisation amongst manufacturers of automotive parts.

Clients also rely on Nitika to shape their competition policies, including through delivering compliance training sessions.

On the merger control front, Nitika has secured clearances for high-profile, multi-billion-dollar deals including GE's acquisition of Alstom, Alstom's acquisition of Bombardier Transportation (nominated for Merger Control Matter of the Year - GCR Awards 2021), merger between Fiat Chrysler Automobiles NV and Groupe Peugeot S.A., (winner of Matter of the Year – GCR Awards 2021), and Archroma Operations' acquisition of the textile effects division of Huntsman International.

Beyond casework, Nitika supported the Committee of Digital Competition Law in the preparation of the report on the "Anti-Competitive Practices by Big Tech Companies" and the draft of the Digital Competition Bill.

Nitika co-authors the India chapter in GTDT Cartel Regulation and "Cartel Laws and Regulations" in Global Legal Insights. Nitika was listed as a 'Future Leader – Partner' for Competition law by Lexology 2025 and Who's Who Legal India 2024.



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Ritwik Bhattacharya is a Partner in the Firm's Competition Law Practice with more than 10 years of experience in this field.

On the merger control side, he has been involved in some of the most complex cases before the CCI. These include L&T/Schneider (the first case where the CCI accepted purely behavioural remedies in a phase II investigation), the acquisition of shares by Singapore Airlines in the merged entity comprising of Air India and Vistara (one of the few cases approved with purely behavioural remedies despite issuance of a show cause notice), ZF/WABCO (the first case where parties successfully challenged certain aspects of the CCI's directed remedies before the High Court), Facebook/Reliance Jio, Siemens Healthineers/Varian, PVR/DT (the first case where the CCI accepted hybrid remedies), Suzuki/Toyota, HP/Samsung, HPE/Juniper, Ctrip/MMT and Piramal/Annapurna.

On the enforcement side, Ritwik has been involved in some of the most cutting-edge cases before the CCI, including several landmark big-tech related matters. His cases include numerous successful complaints against Google's Play store policies, successfully defending several abuse of dominance cases against PVR INOX, abuse of dominance cases against DLF, Verifone and T-Series. He has also acted for clients in a number of cartel cases, including auto-parts companies and companies in the railways sector.

Ritwik was listed as a 'Future Leader – Partner' for Competition law by Lexology 2025 and Who's Who Legal Global 2023 and 2024.

He has co-authored several competition law publications on topical merger control as well as enforcement related issues. He also worked closely with the CCI during the Government's review of amendments required to the law. Ritwik has also delivered guest lectures in various law institutions, including Jindal Law University and ILS Law College, Pune.

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Atreyee Sarkar is a Partner in the Firm's Competition Law Practice. She has been involved in several significant merger control and enforcement cases.

On the merger control side, Atreyee has represented clients in several complex transactions involving remedies, including Reliance/Disney, Metso/Outotec, L&T/Schneider and Lafarge/Holcim. Other noteworthy transactions include the Bunge/Viterra merger, One Rock Capital Partners' acquisition of Constantia Lux, Saudi Aramco's separate acquisitions in Valvoline Inc and SABIC, separate acquisitions by Baring Private Equity Asia in NIIT Technologies, CitiusTech Healthcare, and Global Content Alpha Partners, Baring Private Equity Asia's acquisition by EQT AB, FedEx's acquisition in Delhivery, Flipkart's acquisition in Aditya Birla Fashion and Retail, and Vodafone India's merger with Idea Cellular Limited.

In 2024, Atreyee secured CCI approvals in several multi-billion-dollar complex deals. She advised Reliance Industries on the USD 8.5 billion merger of Viacom18 and Star India, the largest in India's entertainment sector, approved conditionally by the CCI. She also advised on Bunge Global's USD 18 billion acquisition of Viterra, approved unconditionally by the CCI.

On the cartel enforcement front, Atreyee has defended several multinational companies in landmark cartel and leniency cases. She represented Carlsberg India in cartel enforcement proceedings before the CCI and the NCLAT (GCR 'Behavioural Matter of the Year (Asia-Pacific, Middle East and Africa)' 2022). Atreyee has also successfully represented an auto-parts company in a cartel case before the CCI, acted for Ambuja Cement in the cement cartel case and UltraTech Cement in relation to alleged bid rigging.

In the past year, Atreyee has been representing JK Tyre in ongoing cartel proceedings before the CCI. She has also been advising a party in the investigation against Google's Android licensing policies and a logistics company in an ongoing investigation involving allegations of cartelisation.

Atreyee regularly advises several clients on compliance, vertical agreements and abuse of dominance. She contributes to India chapters in key global reference materials on cartels, dawn raids and merger control. Atreyee has been ranked as a 'Future Leader – Partner' for Competition law by Lexology 2025 and Who's Who Legal India 2023.

**Supriya Prodaturi**, PartnerE-mail: supriya.prodaturi@AMSShardul.com | Phone: +91 99104 96139

Supriya Prodaturi is a Partner in the Firm's Competition Law Practice.

In the last year, Supriya has been involved in some of the most prominent cases in India. She is currently defending WhatsApp and Meta Platforms before the NCLAT in relation to the CCI's order relating to WhatsApp's 2021 Privacy Policy and Terms of Service update and succeeded in securing a stay on certain directions imposed by the CCI. She is also representing Maruti Suzuki before the NCLAT in relation to its alleged resale price maintenance.

Earlier, Supriya was involved in some of the most prominent cartel and abuse of dominance cases in India, acting for clients in CCI investigations, appeals to the NCLAT and judicial review proceedings before the High Courts. She regularly leads large teams in complex documentation review exercises. She was involved in successfully defending Indo National in an alleged price fixing cartel in the market for flashlights. She successfully represented Aveva Information Technology in an abuse of dominance case.

She has been involved in several significant merger control and enforcement cases for clients including Meta Platforms, Blackstone, Mitsui, Ctrip, Microsoft, Maruti Suzuki, Fresenius Kabi, Indraprastha Apollo Hospitals, Indo National, DLF, and JK Tyres. She has secured unconditional merger clearances from the CCI for various large global and Indian transactions, including Saint-Gobain's acquisition of Fosroc's construction chemicals business, Facebook's acquisition of a shareholding in Jio Platforms, HP's acquisition of Samsung's printer business, Tianjin Tianhai Investment Company Limited's acquisition of Ingram Micro, and Capgemini's acquisition of iGate.

Supriya also advises and delivers training to companies on competition law compliance issues. She played an instrumental role in finalising the report submitted to the Ministry of Corporate Affairs by the Competition Law Review Committee, which was set up by the Government of India to consider reforms to Competition Law in India.

Supriya has been ranked as a 'Future Leader – Partner' and 'Thought Leader: Global Elite' for Competition law under 45 by Lexology 2025. She was also featured as a "Future Leader" in the Who's Who Legal: Competition Future Leaders - Non-Partners List in 2023.

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Radhika Seth is a Partner in the Firm's Competition Law Practice.

She over a decade of experience advising Indian and multinational clients on a comprehensive range of competition law issues. Her practice covers merger control, abuse of dominance, cartel investigations, leniency applications, compliance, and vertical agreements. She regularly represents clients across sectors including e-commerce, digital services, pharmaceuticals, automotives, electronics, consumer durables, oil and gas, telecommunications, media, power, ports, aviation, insurance, banking, steel, textiles, and retail, with particular expertise in digital markets, roads, oil and gas, media and entertainment, automobiles, cement, and alcoholic beverages.

Notable clients whom Radhika has represented include Toyota Industries Corporation, Bain Capital Credit, PVR INOX Ltd., ZEE Entertainment Enterprises Limited, ArcelorMittal Nippon Steel, Ontario Teachers' Pension Plan, Brookfield Asset Management, GIC, Tata Group, Singapore Airlines, UltraTech Cement Limited, Grasim Industries Limited, Pfizer Inc., Vedanta Limited, Anheuser-Busch InBev, NSK Ltd., and Kawasaki Kisen Kaisha Limited.

Radhika's publications include the India chapter of the Digital Market Guide (Global Competition Review, 2021), and articles in Concurrences, Global Competition Review, Bar and Bench, Competition Policy International, and CPI Asia Column. She also regularly conducts guest lectures at various colleges and universities.

Radhika has also led competition compliance programs for major FMCG companies, cement manufacturers, and players in the e-commerce and consumer durables sectors. She has also advised market leaders in software, hardware, e-commerce, OTT, motion picture distribution, and pharmaceuticals on drafting and structuring vertical agreements.

Radhika has been recognised as a Rising Star by Asialaw in 2024 and 2025-26.

Awards and Recognition

Shardul Amarchand Mangaldas & Co., founded on a century of legal achievements, is one of India's leading full-service law firms. The Firm's mission is to enable business by providing solutions as trusted advisers through excellence, responsiveness, innovation and collaboration.

SAM is known globally for its exceptional practices in mergers & acquisitions, private equity, competition law, insolvency & restructuring, dispute resolution, international commercial arbitration, capital markets, banking & finance, tax, intellectual property, data protection and data privacy, technology law and infrastructure, energy and project finance.

The Firm has a pan-India presence and has been at the helm of major headline transactions and litigations in all sectors, besides advising major multinational corporates on the legal aspects of their entry into the Indian market and their business strategy. Currently, the Firm has over 950 lawyers including 185 Partners, offering legal services through its offices at New Delhi, Mumbai, Gurugram, Ahmedabad, Kolkata, Bengaluru, and Chennai.

'Outstanding/ Tier 1'

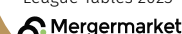
in 2025 for Banking, Banking and Financial Services, Capital Markets, Competition/Antitrust, Construction, Corporate and M&A, Dispute Resolution, Energy, Infrastructure, Insurance, Pharmaceuticals and Life Sciences, Private Equity, Real Estate, Regulatory, Restructuring and Insolvency, Tax and Technology and Telecommunications



Asia Pacific
Outside Counsel
Diversity Awards
2023 by
Morgan Stanley

'Ranked #1'

in deal count and
value in the annual
MergerMarket India
League Tables 2023



'Tier 1'

in 2026 for Antitrust and Competition, Banking and Finance, Capital Markets, Corporate and M&A, Dispute Resolution: Arbitration, Dispute Resolution: Litigation, Fintech and Financial Services Regulatory, Insurance, Private Equity Funds (including venture capital), Projects and Energy, Real Estate and Construction, Restructuring and Insolvency, Tax, TMT and White-Collar Crime

Legal500

'Tier 1'

in 2025 for Banking, Capital Markets: Debt, Capital Markets: Equity, Private Equity, M&A, Project Development: Telecommunications Networks, Project Development: Energy and Infrastructure, Project Finance, Project Development: Transport and Restructuring and Insolvency



Country Firm
of the Year 2024,
India



'Band 1' in 2026 for Capital Markets

Competition/Antitrust
Corporate/M&A: The Elite

Dispute Resolution

Dispute Resolution: Arbitration

FinTech

Insurance

Private Equity

Projects, Infrastructure & Energy

Restructuring/Insolvency

Real Estate: New Delhi-based

White-Collar Crime & Corporate Investigations

India National Law Firm of the Year, 2025

Chambers
AND PARTNERS

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Disclaimer

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