

Review on the Competition Law Regime in India: Merger Control and Anti-Competitive Agreements.

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Abstract: *The Competition Act, 2002 has established a modern competition law framework in India, replacing the outdated MRTP Act. This review critically analyses the regime governing anti-competitive agreements under Section 3 and merger control under Sections 5 and 6 of the Act. While the Competition Commission of India (CCI) has strengthened enforcement, challenges persist in addressing digital market dynamics, algorithmic collusion, gun-jumping, and timely merger approvals. Drawing upon legislative analysis, judicial pronouncements, and scholarly works, the paper evaluates the strengths and limitations of the current framework and suggests the need for further reforms to enhance its effectiveness in promoting fair competition.*

Keywords: Competition Law, Competition Act 2002, Anti-Competitive Agreements, Cartels, Merger Control, CCI, Appreciable Adverse Effect on Competition (AAEC)

I. INTRODUCTION

India's modern competition law is enshrined in the Competition Act, 2002 (as amended), which replaced the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969. The MRTP regime was control-oriented, focusing on curbing monopolies through size-based thresholds, but it suffered from limited enforcement, absence of effective merger control, and lack of economic analysis. The Competition Act ushered in a paradigm shift toward an effects-based regime that promotes competition, protects consumer interests, ensures freedom of trade, and fosters economic efficiency.

The Competition Commission of India (CCI) is the primary quasi-judicial body responsible for enforcement, investigation, and adjudication. Appeals originally lay before the Competition Appellate Tribunal (COMPAT), later merged into the National Company Law Appellate Tribunal (NCLAT). The Act's key provisions on anti-competitive agreements and abuse of dominance were notified in 2009, while merger control (Sections 5 & 6) became effective from 2011. The Competition (Amendment) Act, 2023 introduced transformative changes, many effective from 2024 onward, including the Deal Value Threshold (DVT), reduced timelines, settlement and commitment mechanisms, expanded penalties (including references to global turnover), clarifications on hub-and-spoke cartels, and a broader "material influence" standard for control.

The central prohibition revolves around practices causing or likely to cause an Appreciable Adverse Effect on Competition (AAEC) in India. The regime is inspired by EU, US, and other mature jurisdictions but is adapted to India's developing economy, with emphasis on consumer welfare, innovation, ease of doing business, and sectoral sensitivities (e.g., digital markets, pharmaceuticals). As of 2025, the CCI received around 149 merger filings and registered 54 antitrust cases, disposing of 146 merger notices and passing final orders in 38 antitrust matters, reflecting steady activity and maturing enforcement.



The three core pillars are:

- Anti-competitive agreements (Section 3);
- Abuse of dominant position (Section 4); and
- Regulation of combinations (Sections 5-6).

II. LITERATURE REVIEW

Extensive literature exists on the Indian competition law regime. T. Ramappa in *Competition Law in India* (Ramappa, 2018) provides a comprehensive doctrinal analysis of the transition from the MRTP era to the effects-based approach under the Competition Act. Similarly, S. Chakravarthy has offered valuable insights into policy implementation challenges in his writings.

International perspectives are offered by scholars such as Ariel Ezrachi and Maurice E. Stucke in *Virtual Competition* (Ezrachi&Stucke, 2016), who examine the challenges posed by algorithmic collusion and data-driven markets. Aditya Bhattacharjea has critically assessed India's competition policy in various articles in the *Economic & Political Weekly*, pointing out enforcement gaps and the need for stronger economic analysis. Journal articles in the *Journal of Competition Law & Economics* and *Competition Law International* have analysed CCI decisions on cartels and mergers, often comparing them with global best practices. Reports by OECD and CUTS International further complement these scholarly works by providing empirical data on market outcomes.

III. DISCUSSION

Anti-Competitive Agreements (Section 3)

Section 3 prohibits agreements (including arrangements, understandings, or concerted practices) that cause or are likely to cause AAEC. It distinguishes between horizontal and vertical agreements.

Horizontal Agreements (Section 3(3)): Agreements between competitors relating to price-fixing, bid-rigging, market-sharing, or output control are presumed to cause AAEC. These are treated with a *per se*-like approach, though parties can rebut the presumption through economic evidence. Cartels remain a top enforcement priority. The CCI employs leniency (including leniency-plus), dawn raids, and economic analysis. Penalties can extend up to three times the profit or 10% of turnover (with global turnover considerations in appropriate cases post-amendments). Individuals, including directors and officers, are also liable.

Vertical Agreements (Section 3(4)): These (tie-ins, exclusive distribution/supply, refusal to deal, resale price maintenance) are assessed under the rule of reason, balancing anti-competitive effects (e.g., market foreclosure) against efficiencies (e.g., better distribution or innovation).

AAEC Assessment Factors (Sections 19 & 20): Market shares, entry barriers, countervailing buyer power, nature and history of the agreement, and consumer/economic benefits.

Key Developments (2023 Amendments & 2025 Enforcement): Explicit recognition of hub-and-spoke cartels; introduction of settlement and commitment mechanisms (for non-cartel cases), allowing faster resolution without full admission of guilt; structured Penalty Guidelines (2024); and increased use of dawn raids. In 2025, enforcement activity rose across sectors like technology, paints, chemicals, and procurement. The first settlements under the new regime were issued. Supreme Court rulings have emphasized rigorous effects-based analysis.

Challenges include proving tacit collusion (especially algorithmic), balancing with IP rights/joint ventures, extraterritorial application, and resource-intensive investigations.

Merger Control (Sections 5 & 6)

India follows a **mandatory, suspensory** regime. Notifiable combinations (acquisitions of control/shares/assets, mergers, amalgamations) cannot be implemented until CCI approval. A combination is void if it causes or is likely to cause AAEC.



Notification Thresholds:

Traditional asset/turnover thresholds (India and group levels), with de minimis exemptions (e.g., target India turnover \leq ₹1,250 crore or assets \leq ₹450 crore, subject to periodic revision).

Deal Value Threshold (DVT, effective 2024): Transactions exceeding ₹2,000 crore where the target has "substantial business operations" (SBO) in India (e.g., significant users, revenue, or assets). This targets "killer acquisitions" in tech/digital/pharma sectors. In 2025 (first full year), ~40 DVT filings were estimated amid ~150 total filings.

Exemptions & Green Channel: Schedule I exemptions, intra-group, ordinary course acquisitions, and the Green Channel for no-overlap/no-linkage deals (deemed approved if no objection). Green Channel usage declined in 2025 due to stricter scrutiny.

Control: Broadened to "material influence" over management or affairs (including veto rights, minority stakes with influence).

Review Process & Timelines (post-2023):

Prima facie opinion within 30 days (often shorter in practice).

Overall timeline reduced to 150 days (from 210).

Phase I to Phase II if concerns arise.

Forms: Simplified Form I or detailed Form II. 2025 average clearance ~52 days.

Assessment: Relevant market definition, AAEC factors (HHI, market shares, unilateral/coordinated effects, vertical/conglomerate concerns, efficiencies, failing firm defense). Most cleared unconditionally in Phase I; conditional approvals with structural (divestitures) or behavioral remedies. First Phase II in years occurred in 2025 (e.g., Bharat Forge case, cleared with modifications).

Recent Trends (2024-2025): Increased gun-jumping penalties (including on financial investors for mis-assessed overlaps or ordinary course investments); revised FAQs (May 2025) clarifying DVT, SBO, value calculation (including options, KM P earn-outs), open-market purchases (Section 6A derogation allowing implementation with voting rights restrictions), and on-market acquisitions; focus on digital markets, common ownership, and portfolio effects. No outright blocks recorded, but heightened scrutiny.

Strengths: High clearance rate, alignment with ease of doing business, adaptation to digital economy. Challenges: Uncertainty in SBO/DVT application, remedy monitoring, resource constraints for complex global deals, and procedural compliance risks.

SUGGESTIONS FOR STRENGTHENING THE REGIME

Enhance Predictability and Guidance: Issue comprehensive guidelines on DVT/SBO assessment, material influence factors, remedy design/implementation, and effects-based analysis in dominance/cartel cases. Regular updates to FAQs and regulations, with stakeholder consultations, would reduce litigation and over-notification.

Capacity Building and Digital Expertise: Strengthen CCI's resources, especially in economics, data science, and tech markets. Dedicated digital/AI units and market studies (building on the 2025 AI study) should inform ex-ante tools without over-regulation. Consider phased, evidence-based digital competition rules if needed.

Remedy Monitoring and Post-Merger Review: Establish robust mechanisms for monitoring remedy compliance, with periodic reviews of approved combinations' actual impact. Publish anonymized remedy effectiveness reports to build institutional learning.

Procedural Efficiency and Compliance Culture: Further streamline Green Channel (with clearer safe harbors) while maintaining scrutiny. Promote leniency/settlements and introduce incentives for robust internal compliance programs as mitigating factors in penalties. Educate businesses, especially SMEs and startups, through advocacy.

International Cooperation and Convergence: Deepen MoUs with global authorities for cross-border deals and digital investigations. Align where possible on issues like algorithmic collusion and data privacy-competition interface, while preserving sovereignty for India-specific concerns.



Balanced Penalty Regime: Ensure penalties (especially global turnover) are proportionate and transparent via clear guidelines. Greater emphasis on economic harm quantification and individual accountability balanced with leniency.

Research and Data-Driven Policy: Mandate more ex-post evaluations of enforcement decisions and conduct regular market studies in high-impact sectors (e.g., e-commerce, fintech, renewables). Foster academic and think-tank collaboration for evidence-based reforms.

IV. CONCLUSION

The competition law regime in India has matured significantly since the establishment of the CCI. It has effectively addressed many anti-competitive agreements and scrutinised major mergers. However, as observed by Whish & Bailey (2021) and Indian scholars like Ramappa (2018), gaps persist in handling digital economy challenges, algorithmic practices, and ensuring timely yet thorough merger control.

There is a need for a more robust, technology-enabled, and economically sophisticated framework. Legislative fine-tuning, capacity building of the CCI, clearer guidelines on digital markets, and greater integration of international best practices are essential for the regime to fully realise its objectives of fostering competitive markets, innovation, and consumer welfare.

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