
ASSESSING COMPETITION COMMISSION OF INDIA (CCI)'S JURISDICTION TO INVESTIGATE ABUSE OF DOMINANCE POST PRIVATE SETTLEMENT BETWEEN PARTIES

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ABSTRACT

The study reviews the jurisdiction of Competition Commission of India (CCI) to take cognizance of abuse of dominance under the Competition Act, 2002 when consumer and company have settled the disputes privately. The examined dilemma involves the conflicting nature of reserved settlements—which are market tailored and, in effect, individual—as opposed to the CCI's statutory obligation to intervene in corruptive market practices that reduce public welfare in the markets. By analyzing judicial precedents, including *CCI v. Bharti Airtel* (2019) and *Hyundai Motor India Ltd. v. CCI* (2017), the paper highlights the CCI's concurrent jurisdiction to investigate market abuse, even after the settlement has settled. In a more controversial departure, the Delhi High Court has, in *JCB India Limited v. CCI* (2023), barred CCI investigations after private settlements, and held that a contractual restriction is superior to the larger harm to the market.

The paper explains why this was a mistake, contending that private settlements generally do not address systemic dangers (for example, that big companies use predatory lawsuits to chill competition and entrench their monopolies). Comparing the Indian framework with the ITT Promedia criteria of the EU and the PREI test in the U.S, the study argues for a modular and intent-based framework to meaningfully assess vexatious litigation. It suggests a hybrid two-stage test: (1) prima facie review of the reasonableness of litigation and its impact on the market by the CCI and (2) judicial determination regarding anti-competitive intent. Furthermore, procedural reforms, such as permitting appeals against CCI's prima facie findings, are suggested to align the regulatory and judicial roles.

The analysis highlights the need to legislate clearly to restate the jurisdiction of the CCI under Sections 18 and 19 of the Competition Act (Competition Act) in a manner that makes it unambiguous that an in rem mandate to protect competitive markets should not be compromised by private settlements. The

paper argues that through adherence to global standards and institutional collaboration, India can harmonize private dispute resolution with effective antitrust enforcement to reduce market distortion while protecting consumers.

Introduction

The Competition Commission of India (CCI) is a quasi-judicial body that was invented under the Competition Act, 2002 with the purpose of promoting competition, protecting the interests of consumers and ensuring freedom of trade in Indian markets. Sections 18, 19 and 20 of the Act are pivotal to its authority, elucidating the jurisdiction vexing it to investigate anti-competitive practices, including abuse of dominance. Yet, the interaction between these provisions and private settlements between layers is hotly contested law, sitting particularly uncomfortably when the provisions regulating private settlements may provide a complete shield for the parties, completely extinguishing CCI's statutory function of probing for dominance abuse.

Jurisdictional Framework of the CCI

To enhance completeness, Section 18 of the Competition Act, 2002, also places an obligation on the CCI to even eliminate practices that have an adverse effect on competition, to protect consumer interests and to promote freedom of trade. In addition, Section 19 enables CCI to investigate contraventions of Section 3(1) (anti-competitive agreements) and Section 4(1) (abuse of dominant position). The discretionary language — “may inquire” — empowers the CCI to decide the subject of initiation of investigations, while Section 20 provides it with similar powers with the scrutiny of mergers and combinations. Moreover, Section 60 contains an overriding clause that establishes the supremacy of the Act over other laws, preventing any dilutive effect for any inconsistencies in other statutes on the authority of the CCI.

Nonetheless, this wide statutory structure did not establish the specific legislative limitations that would allow for CCI jurisdiction to be interpreted strictly. While this provides for strong regulation of the market, it has also resulted in frequent tensions with sectoral regulators and the courts. Conflicts, in this regard, emerge when the CCI investigates a matter upon which things have already been decided upon by another authority, and the matter falls outside the jurisdiction of the CCI, leading to the question of which of these authorities takes precedence in investigation.

Judicial Scrutiny of CCI's Jurisdiction

The jurisdictional reach of the CCI has often been contested in Indian courts. A key challenge is if the CCI can step in when parties have privately settled disputes, especially in abuse of dominance cases. This tension is reflected in judicial precedents. In *CCI vs. Bharti Airtel Ltd.*, 2019, the Supreme Court held that the CCI's jurisdiction is not completely ousted simply because a sectoral regulator (for example, TRAI) has also been involved when there are anti-competitive practices in question, underscoring its jurisdictional concurrency. Likewise in *M/s Hyundai Motor India Ltd. vs. CCI* (2017), the court reaffirmed the power of the CCI to probe post-compromise, emphasizing that private arrangements cannot impinge upon the statutory duty to prevent market abuse.

But the recent DHC decision in *JCB India Limited v. Competition Commission of India* (2023), brings a disturbing contradiction to this judicial trend. In this case, the DHC barred the CCI from investigating claims of abuse of dominant position made by JCB India Limited as the informant, Bull Machines Private Limited, had withdrawn its complaint in view of a private settlement. It emphasized the “sanctity of private settlements” and the need to protect parties from “multiple proceedings” on the same issue. Significantly, the DHC disposed of CCI's prima facie conclusions—one of which called out JCB's dominance and threat of vexatious litigation—on the ground of its lack of merit. This is even as the latest decision is not only restrictive in its jurisdictional reach for CCI, but also leads to ambiguity in dealing with anti-competitive behaviour affecting a more extensive market structure.

Conflicting Interpretations and the Need for Clarity

The JCB ruling highlights an important divergence in how judges have approached the jurisdiction of the CCI. While previous orders, such as *Bharti Airtel* and *Hyundai*, supported the CCI as a public enforcer of competition law, the DHC in *JCB* gives preferential treatment to private autonomy over systemic market issues. This difference is indicative of deeper ambiguities in the framework of the Competition Act, especially in terms of the relationship between the discretionary powers under Section 19 and the overriding effect in Section 60. If private settlements can override CCI investigations, critics say, it would defeat the purpose of the Act — to keep markets competitive — because private resolutions are limited to the linear focus of an individual plaintiff and not systemic market damage.

This project report critically assesses the implications of the JCB ruling on the CCI's jurisdiction to investigate abuse of dominance after private settlement. It evaluates two core issues:

1. Jurisdictional Conflict: Whether the available private settlements will deprive the CCI of its statutory obligation of investigating anti-competitive practice when no private individual may have an interest to settle, they are in the public domain.

2. Vexatious Litigation Framework: The lack of a standardized formulary method to interpret vexatious litigation claims, demonstrated in embarrassing detail by the DHC dismissing the CCI's prima facie outcomes, without any merit-examination.

Based on the contentions against the JCB judgment, the study recommends the retention of the CCI's jurisdiction in such matters and theorizes a [structured] test [mnemonic] to determine vexatious litigation. This framework would align the objectives of the Competition Act with principles of legal certainty, preventing private settlements from undermining the welfare of the market at large.

Facts of the Case

JCB India Limited v. Competition Commission of India (2023) arose in the context of an intellectual property (IP) dispute between: (i) JCB India Limited (also JC Bamford Excavators Limited of the UK); and (ii) Bull Machines Private Limited, both of which provide heavy equipment vehicles, such as backhoe loaders, used in construction. In 2014, while the parties were negotiating a settlement to settle their IP disputes, Bull Machines filed a stand-alone complaint with the Competition Commission of India (CCI), claiming that JCB was abusing its dominant position under Section 4 of the Competition Act, 2002, by filing litigation mala fide. Bull Machines argued that JCB's actions in court over a prolonged period of time — so-called predatory litigation — were intended to suppress competition by denying market access and to distort the competitive landscape.

The CCI found prima facie merit in the allegations under Section 19 of the Act, within the objective of the object of law. It highlighted that vexatious litigation might itself constitute anti-competitive conduct, especially in the hands of a dominant player seeking to eliminate competitors from the market. As a result, the CCI directed a detailed probe into JCB's

practices. JCB, however, challenged the investigation's validity, contending that the CCI could not characterise the litigation as "sham" without a conclusive judicial determination on the merits of the dispute vis-à-vis the IP. JCB further raised due process issues questioning the extent of a dawn raid conducted by the CCI.

The pivotal turn in the matter came in 2021, when the parties, following court-ordered mediation, settled the underlying IP dispute privately. After this, all IP-related cases pending in the Supreme Court were disposed, and the DHC was directed to expeditiously decide JCB's writ petitions challenging the CCI's investigation. In 2023, the DHC held in its ruling that CCI cannot proceed to investigate an abuse of dominance following a private settlement, since the "sanctity" of the private settlement and parties to the settlement should be protected against "de-examination" in subsequent proceedings in the courts. Significantly, without testing their substantive merits, the court took jibe at the CCI's prima facie findings, which insinuated about JCB being in a dominant market position and a potential for predatory litigation.

In a sharp departure from previous jurisprudence, such as that in *CCI v. Bharti Airtel* (2019) where the Supreme Court recognised the CCI's concurrent jurisdiction since it could apply to regulated sectors, and *Hyundai Motor India Ltd. v. CCI* (2017) where the CCI was found to have jurisdiction to inquire into anti-competitive practices even if private settlements were subsequently made, the ruling is in sharp contrast. Accordingly, the DHC's decision in *JCB* thus reveals a potential judicial divergence, prioritising private self-determination over the CCI's obligations under statute to prevent systemic harm in the market, and ultimately speaks to an enduring tension in the competition law enforcement debate in India.

Analysis: The Jurisdictional Imperative of the CCI Beyond Private Settlements

The Delhi High Court's (DHC) recent ruling in *JCB India Limited v. Competition Commission of India* (2023), which limited the CCI's investigation of alleged abuse of dominance on the basis of JCB's private settlement with Bull Machines, has sparked a renewed debate over the relationship between private dispute resolution and public enforcement of competition law. Such a ruling prioritising the finality of private settlements over systemic oversight of market forces risks undermining the foundational purpose of the Competition Act, 2002, which is "to ensure that the competition in markets is not distorted". The US DOJ's criticism of an earlier US proposal to Microsoft includes similar misconceptions; a closer analysis shows that DHC's decisions conflates individual grievance resolution and broader market harm, remains blind to

CCI proceedings' in rem nature, and ignores international precedents that determine regulatory authority independent of private agreement.

1. In Rem Nature of CCI Proceedings: Interests of the CCI Beyond Government of India

The difference between in personam (private) and in rem (public) causes the heart of this controversy. According to Section 19 of the Competition Act, the CCI's jurisdiction is in rem and not about attacking wrongs between parties. In *CCI v. Bharti Airtel Ltd.* (2019), the Supreme Court explained that it was not the CCI's task to merely redress individual grievances, to the exclusion of the overall health of markets. The Court finally ruled that despite the fact that sector-specific regulators, such as TRAI, may handle particular disputes, the CCI has not only the jurisdiction, but also an obligation, to investigate anti-competitive actions that impact the larger markets.

The CCI's case was dismissed by the DHC in the JCB case by conjoining the resolution of you're the IP dispute with the wider import of JCB's alleged predatory litigation. Although it settled the case, the private settlement did not speak to whether JCB's conduct — using litigation as a weapon to suppress competition — posed systemic risks. Such vexatious litigation can prevent potential competitors from taking on market leaders, creating a landscape where dominance is maintained through legal intimidation and market manipulation rather than merit. The CCI's investigation sought to scrutinize this practice, as it has ramifications outside of the parties involved.

2. The Myth of “Finality” of Private Settlements

The D.H.C. defended its ruling, saying that it was important to respect the “sanctity of private settlements,” and that multiple proceedings should be avoided. But this reasoning fails to consider one important reality: private settlements tend to value efficiency over public response. Settlements in abuse of dominance cases can be a function of unequal bargaining power, with smaller players folding to avoid entry into lengthy litigation. Such outcomes do not automatically correct market distortions, but can further entrench dominant players.

For example, if JCB's litigation was actually predatory, the settlement with Bull Machines could appear to other competitors as a signal that challenging the dominant firm's practices leads to a costly litigation, thereby chilling competition. The CCI's probes sought to answer

whether JCB's behavior represented a more sweeping drive to shut out competitors — a question the settlement left unanswered. Through its ruling, the DHC thus risks setting a precedent that allows dominant firms to use private settlements to evade substantive redress from regulators, placing anti-competitive practices behind the curtain of contractual autonomy.

3. International Precedents: Regulatory Obligation Overrides Private Contracts

The DHC's approach is in sharp contrast to norms in international competition law. It ruled that private compromises do not excuse the regulators from the need to investigate anti-competitive conduct, in *AstraZeneca AB v European Commission* (2012) in the European Union. AstraZeneca was fined by the European Commission for abusing its dominant position, that is, deceiving patent offices and delaying the entry of generic drugs into the market, although it reached arrangements with some generic manufacturers. The EU General Court upheld the ruling, noting that settlements do not outweigh the interest in addressing harm across the market.

Similarly, in the U.S., the Federal Trade Commission (FTC) regularly investigates both mergers and conduct after private parties have resolved their disputes. The FTC has brought similar claims that go beyond what has already been settled — for instance, in *FTC v. Qualcomm* (2020), alleging anti-licensing practices despite Qualcomm's settlements with Apple and other firms. These cases highlight a growing global consensus: competition authorities should continue to hold jurisdiction to protect the health of the market, even in the face of private settlements.

4. On Mediation and Coercion: The Paradox

The DHC also relied on Section 28 of the Mediation Act, 2023 — which imposes restrictions on the challengeability of mediated settlements — adding another layer of complexity. Although mediation facilitates quick settlement of disputes, there is no appeal from mediation (other than for fraud, coercion, etc.), thus empowering big fish to persuade settlements. If a market leader like JCB uses the threat of long-running litigation to impose adverse terms on a smaller competitor, perhaps the later settlement will unreasonably reflect coercion, not mutuality. By quashing the CCI's investigation, the DHC indirectly legitimises such cartelisation.

Indeed, the court's concern for the "legitimacy of mediation" is misdirected. The implication that CCI investigations should not be permitted after a mediation settlement does not undermine mediation; instead, it seeks to ensure that mediation does not become a tool to evade competition law. A good regulatory framework prevents from using mediation as a means to disguise anti-competitive behavior, thus encouraging trust in the process.

5. Establishing Prima Facie Findings: CCI's Bastion of Power

The DHC's setting aside of the prima facies findings of the CCI, which had unearthed the dominance of JCB and possibility of vexatious litigation without any merit-based scrutiny flies in the face of established law. In *Google Inc. v. CCI* (2015)[5], the Supreme Court held that the CCI is not only authorized, but required to form a prima facie view before it passes an order for an investigation to be carried out under Section 26(1) of the Act. This requirement of a threshold of proof helps to prevent frivolous inquiries, while empowering the CCI to take action on matters that are truly of concern.

By avoiding the merits of the CCI's finding, the DHC short-circuited this procedural protection. The court's suggestion that the CCI might reconsider the investigation suo moto (on its own motion), is legally unnecessary and inefficient. This would put accountability back on the shelf, premium, and adds to the regulatory burden on the CCI, undermining the Act's philosophy of expeditious interventions in the over-markets.

6. Systemic Risks: Settlements as Anti-Competitive Tools

The JCB ruling creates the risk that settlements will be used in a manner the antitrust system was never intended to permit, as instruments for anti-competitive collusion. Such dominant firms may file cases before the CCI with the intent to harass competitors into settlements and withdraw the complaints when aligning on favourable terms. This approach reduces the CCI from being a market overseer to a bargaining agent, undermining its regulatory potency.

For instance, the mere filing of a complaint by a dominant party such as JCB against a rival entity, and the initiation of a CCI probe—no matter how innocuous its outcome—has the potential to significantly affect the reputation and performance of the rival in the market. Again, the MPC would target the competitor to settle for unfavorable terms due to the slow

moving process of the CCI, which is indeed weaponizing the process by the CCI against the competitor.

Addressing Vexatious Litigation in India

The recent case of *JCB India Limited v. Competition Commission of India* (2023) brings to light an important gap in the framework of competition law in India, particularly with regard to abuse of dominance, specifically, a structured mechanism for assessing vexatious litigation claims. The Delhi High Court's (DHC) rejection of CCI's prima facie findings of predatory litigation (on the grounds of jurisdictional overreach in IP matters and finality of private settlements) underscores the pressing need for legislative and judicial clarity. Contextualizing with international practices, trends, and the subtle nuances in Indian jurisprudence, this article argues for the need to find a middle ground to effectively control vexatious litigation while accommodating competition law demands with IP rights objectives.

1. When Authorities Become Sources of Law: The Current Void in Indian Jurisprudence

Section 4 of India's Competition Act, 2002, does not explicitly describe or deal with vexatious litigation as an abuse of dominance. Although the CCI has, at times, dealt with such cases (e.g., *Biocon Ltd. v. Roche Products India Pvt. Ltd.* (2016) and *Macleods Pharmaceuticals v. Boehringer Ingelheim* (2021)), have left it a test-clearing house leading to inconsistent results. This uncertainty is exemplified in the DHC's dismissal of the CCI's prima facie findings in the *JCB* case. The court was hesitant because of worries about:

Jurisdictional Clashes: The CCI's ability to hear IP-related disputes that fall within civil courts' traditional jurisdiction

Procedural Ambivalence: An absence of criteria distinguishing legitimate IP enforcement from anti-competitive litigation.

Importantly, the recent amendment made by Ministry of Corporate Affairs to Section 4 itself, which bars IP rights as an absolute defence to abuse of dominance claims, reflects intent by the legislation to prevent anti-competitive exploitation of IP. This amendment essentially emboldens the CCI to act on practices like *JCB*'s alleged predatory litigation as well, even in IP-heavy sectors.

2. The U.S. and the EU: Global Frameworks with Lessons to Share

Key Insights from U.S. and EU Frameworks: Jurisdictions including the U.S. and EU have worked out nuanced frameworks to counter vexatious conduct and can offer valuable lessons for India:

a) The U.S. ‘PREI Test’: An Extremely High Bar

In *Professional Real Estate Investors v. Columbia Pictures Industries* (1993), the two-part test established by the U.S. Supreme Court was:

(Right-wing organizations are more than welcome to bring such lawsuits, but they must lose.) Objective Baselessness: The lawsuit must have no reasonable chance of success.

As with all conference papers, it was given Sanctuary and Subjective Intent: The litigation cannot be based on an intent to harm competition, only on an assertion of rights.

While the test stops frivolous claims from threatening actual IP rights holders, its strict “zero-percent-likelihood-of-success” standard threatens to under-regulate predatory behavior. In *Biocon v. Roche* for example, applying the PREI test, the CCI exonerated Roche from its patent infringement suit against Biocon (a biosimilar manufacturer), which was found not to be baseless. But critics say the extremely high threshold has been weaponised by monopolists with deep pockets, to file lawsuits that, while not 0% baseless, are simply too heavy for their smaller rivals.

b) EU ITT Promedia Criteria: Intent and Market Impact

The EU’s rationale as stated in *ITT Promedia NV v. European Commission* (1998) is:

Reasonableness: Whether the litigation could reasonably be viewed as defending rights, or whether it was instead intended to harass competitors.

A litigation based on anti-competitive design studied in the video being prospective as to determine if it is part of a broader strategy to eliminate competition.

It is more flexible than the PREI test and focuses on intent and market impact. Take *AstraZeneca v. European Commission* (2012) as an example; there, the EU levied a fine against

AstraZeneca for abusing patent procedures to delay entry of that brand name-drug's generic version, even though the company had settled its case with its competitors. The purpose of the EU's focus on systemic harm fits well in the CCI's in rem mandate instead of an ex-post facto perspective, which suits better in the context of India.

3. A Model: Adapting the EU Framework to India

India should pursue a hybrid framework keeping Europe's intent-based focus and context-based considerations like market dominance and litigation history in mind:

a) A Twostage test for vexatious litigation

Stage 1: Identification of Same or Similar Products (the Prima Facie Finding)

Reasonableness: Was there a plausible legal basis for the litigant to make the claim?

Market Implications: Will the lawsuit discourage a market entry; impose a strain on competitors' resources?

Dominance: Does the party in question have a position of dominance (110% market share in backhoe loaders in JCB's case)?

Stage 2: Subjective Intent (Courts' Final Determination)

Anti-Competitive Design: Was the litigation part of a strategy to exclude competitors?

Course of dealing: Is it the case that the litigant routinely brings similar suits against competitors?

This dual framework initially subjects to scrutiny under the CCI (under Section 26), but then moves to final determinations made by courts, ensuring checks and balances.

b) Procedural Reforms: Appeals & Judicial Oversight

At present, the prima facie conclusions of the CCI are not appealable resulting in a faceoff with courts (as in JCB). Adopting the EU model, in which the European Commission's findings can be challenged before courts, would also harmonize this process. Permitting appeals against the CCI's prima facie findings would:

Improve Legitimacy: Diminish perceptions of CCI overreach over IP Issues.

Help Clarify Jurisdiction: Resolve conflicts between CCI's regulatory role and courts' adjudicatory power.

4. Factors in Context: Market Conditions and IP Protections

Based on the unique market dynamics, India needs a framework:

Dominance Metrics: In industries such as pharma or heavy machinery (think JCB), the market share cut-offs (e.g., >50%) may lead to closer scrutiny of litigation.

Litigated history: IP suits against smaller firms (e.g., JCB's multiple disputes) should be red flags.

Public Interest: Courts and the CCI have to decide that protection of IP with providing goods access at affordable price (pgs.tel in case of biosimilars Biocon)

The amendment to Section 4 by the Ministry, which removes IP rights as a blanket defence, is in this spirit. It puts the CCI in a position to determine whether IP litigation conceals anti-competitive intent, and that is the allegation in JCB.

5. Responding to Worries: Steering Clear of Overreaches and Safeguarding Genuine IP

Critics say laws regulating litigation could marginalize legitimate IP enforcement. The proposed framework nevertheless protects legitimate rights holders through:

Reasonableness check: Only those without legal merit or too focused on competitors get a look.

Judicial Review: Courts have the final word on intent, protecting against regulatory overreach.

For example, the CCI applied the PREI test in Macleods Pharmaceuticals to reject the claims against Boehringer Ingelheim's patent disputes, acknowledging that it is genuine. And a more refined framework could collect such outcomes while deterring abuse.

Conclusion

JCB India Limited v. CCI (2023) case illustrates the tension between private settlements and the Competition Commission of India (CCI) remit to prevent abuse of dominance. The DHC's order to suspend the investigation post-settlement supports private autonomy at the cost of moving the needle toward systemic market welfare and could tamp down ongoing consumer harm through anti-competitive practices. Settlements deal with specific complaints, but fail to address wider market damage, especially when leading firms use litigation as a weapon against competition. In need of a systemic approach, the CCI's in rem responsibility as per Sections 18 and 19 of the Competition Act, 2002, hinged on a jurisdiction outside the ambit of private consensual agreements, offered the interstitial space between private litigation and public interest — targeting practices like predatory litigation, which dither into the entry of competition into the market and pervert the antitrust purpose.

Internationally, those jurisdictions rely on standards like those of the E.U., which manages this collision by evaluating both the purpose of litigation and its effect on the market. The EU's ITT Promedia test, which emphasizes harassment and anti-competitive design, is a better model for India than the U.S.'s rigid PREI criteria. India needs a hybrid solution: judicially empower the CCI to conduct the *prima facie* assessment of litigation's reasonableness/segregate dominance-driven harm, while the courts look at intent. Clarity through legislation, for example, confirming the post settlement jurisdiction of CCI under Section 19, and procedural reforms like allowing appeals against findings of CCI would make regulatory and judicial roles harmonious.

The JCB ruling highlights the need for a structured framework to combat vexatious litigation. Such a two-stage test — jointly utilising objective merit and dominance assessments alongside judicial review of intent — would act as a deterrent against predatory practices, while protecting legitimate IP rights. Also, improving CCI-court synergy improves functionality and responsibility.

In sum, India's competition jurisprudence needs to adapt in order to strike a balance between private resolution of disputes and regulatory oversight. To maintain the integrity of the market, legislative amendments, alignment of judicial approaches with global standards, and procedural synergy between the CCI and courts are of paramount importance. The CCI's authority as a public enforcer must prevail, allowing markets to be driven by innovation and

fairness, not coercion. Private settlements that do provide some relief can't detract from the CCI's role as a protector of competition, the life-blood of India's economic growth.

