A CRITICAL STUDY OF MERGER CONTROL REGULATION, CORPORATE CONSOLIDATION, AND REGULATORY ACCOUNTABILITY IN INDIA

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ABSTRACT

India's merger and acquisition landscape has witnessed unprecedented growth in the post-liberalisation era, reflecting the increasing concentration of economic power across sectors and the growing significance of merger control regulation in maintaining competitive markets. According to the CCI, more than 1,300 combination notices have been reviewed since the merger control provisions became operational in 2011, with approval rates exceeding 95%, indicating a predominantly facilitative regulatory approach. Simultaneously, India recorded M&A transactions valued at over USD 125 billion in 2024, driven by consolidation in technology, telecommunications, infrastructure, financial services, and digital platform markets. The emergence of data-driven business models, platform economies, and innovation-based acquisitions has challenged traditional competition assessment tools, particularly where transactions involve significant market influence despite limited turnover or asset thresholds. The research addresses the central problem of whether the existing framework adequately identifies and remedies anti-competitive concentrations while ensuring transparency, consistency, and accountability in regulatory decision-making. The study adopts a doctrinal and analytical methodology through an examination of statutory provisions, regulatory frameworks, landmark decisions, enforcement practices, and contemporary scholarly literature. The analysis further draws upon significant merger decisions involving telecommunications, pharmaceuticals, e-commerce, digital platforms, and cross-border transactions to evaluate how the Competition Commission of India has responded to evolving theories of competitive harm, market concentration, and emerging concerns surrounding innovation and data-driven market power. The findings indicate that although India's merger review system has evolved into a mature regulatory mechanism, significant concerns remain regarding the assessment of digital and data-centric mergers, gun-jumping enforcement, remedy monitoring, post-merger evaluations, and institutional transparency. The study further identifies accountability deficits arising from limited disclosure of economic assessments, inconsistent application of remedies, and the absence of

structured post-merger competitive impact analysis. By proposing doctrinal, procedural, and institutional reforms, this research contribute to the evolving discourse on competition governance and provides a foundation for future scholarship on digital market regulation, merger accountability, and evidence-based competition policy.

Keywords: Mergers, Competition, Consolidation, Accountability, Governance.

Introduction

The economic liberalisation of 1991 changed India's mindset towards markets, competition, and the functioning of corporations. Over these 30 years, the volume and complexity of mergers and acquisitions grew significantly fueled by outflows of foreign investment, sectoral deregulation, digitalization, and integration of Indian markets with global value chains[1]. Corporate consolidation was initially considered mainly a frame problem in industrial policy, but it now is considered a major concern in competition governance, one that raises a question of "what regulatory regime is needed to differentiate between efficient transactions and those that could adversely affect competition, innovation and consumer welfare?"[2].

Merger control is the first line of defence to foster competitive market conditions. Pre-merger notification systems react before a Merger is completed, thereby allowing the regulators to review the combinations in advance and impose conditions prior to eliminating the change in market structures[3]. The shift from Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) to the Competition Act, 2002 (Competition Act) is a structural shift from an Act concerned mainly in controlling the size of industrial enterprises to an Act concerned primarily in competitive effects and consumer welfare[4].

When the provisions of the Competition Act, 2002 for merger came into effect on 1 June 2011, the Competition Commission of India took over merger review functions from the Department

[1] Pulak Mishra, *How Have Mergers and Acquisitions Affected Financial Performance of Firms in Indian Manufacturing Sector?*, 12 Eurasian J. Bus. & Econ. 79 (2019).
[2] Avaantika Kakkar & Vijay Pratap Singh Chauhan, *Evolving Character of the Indian Merger Control Regime*, ccijoclp 1 (2023), https://doi.org/10.54425/ccijoclp.v3.94
[3] Devanshu Gupta, *Implementation of Merger Remedies under India Competition Law – Jurisprudential Journey in the Last Decade*, SSRN Journal (2022), http://dx.doi.org/10.2139/ssrn.4221939
[4] Parmesh. N & Sastra Deemed to be University, Thanjavur, Tamil Nadu, India, *An Overview of Competition Laws in India*, Volume-2 IJTSRD 1705 (2018), https://www.ijtsrd.com/economics/other/17151/an-overview-of-competition-laws-in-india/parmesh-n

of Company Affairs[5]. Since then almost 990 merger notifications have been submitted to the CCI and the overwhelming majority have been approved without remedial measures being implemented and the CCI has been establishing a broadly consistent stance on the threshold, control, assessment of the AAEC, and remedy design[6]. It is a significant institutional success by any standard on the part of a relatively new regulatory body in a complex multi-sectoral context.

Despite these trends, the development of India's merger control regime has led to ongoing legal and institutional issues on the ground of 'control' and 'minority acquisition', merger remedies, digital-market transactions and regulatory surveillance[7]. The wide scope of control doctrine into minority purchases and investor protections, the undefined nature of the gun-jumping remedy obligations, remedy monitoring issues that plague the doctrine continuously, and the rise of digital market transactions that bypass traditional asset and turnover parameters have all revealed gaps in the current doctrine[8]. These are not just technical considerations, but deeper issues that relate to the CCI's ability to fulfil their mandate as the effective, credible and accountable competition regulator[9].

This paper presents two related research questions. First, how effective is the merger control framework under the Competition Act, 2002 in regulating corporate consolidation and preserving competition in India? Second, to what extent does the CCI ensure regulatory accountability through merger review, enforcement mechanisms, and merger remedies? The study takes a doctrinal and analytical legal approach to answer the aforesaid questions, relying on the set of facts, CCI cases, decisions and enforcement trends, academic scholarship, and the experience gained from other regulatory bodies as provided in the set of provisions and material submitted prior to the commencement of the study. The paper proceeds through an examination of the existing literature and research gap, followed by an analysis of the merger control framework, an assessment of consolidation trends and competition concerns, a critical evaluation of the CCI's regulatory accountability, and concluding recommendations and directions for future inquiry.

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[5] Gauri Chhabra & Suhail Nathani, *Merger Control in India: Is There A Long Road Ahead?*, 38 WOCO 281 (2015), https://doi.org/10.54648/woco2015019
[6] Kakkar & Chauhan, *supra* note 2
[7] Chhabra & Nathani, *Supra* note 5.
[8] Kakkar & Chauhan, *supra* note 2.
[9] Vikas Kathuria, *Competition Commission of India's Interaction with the Judiciary*, SSRN Journal (2023), http://dx.doi.org/10.2139/ssrn.4466750

Literature Review and Research Gap

In recent years, the scholarship on merger control regulation in India has expanded considerably in scope and depth, but has been developed in different analytical pockets that do not necessarily consider the issues in an integrated manner. Several themes emerge from the literature surveyed: progressive development of the CCI's merger review function, uncertainty about the definition of the "control" and "notification" triggers, designing and monitoring remedies, cross-border merger challenges and the limited capacity of existing tools to tackle new expressions of market power. These themes recur across the literature but are rarely woven together to provide an integrated appreciation of India's merger control system as a tool for competition protection and regulatory governance[10].

On the core framework, scholarship has converged on several important findings. The mandatory and suspensory merger control mechanism has proved effective in terms of the processing of notifications, as the majority of transactions have been settled during the initial review period, and the Green Channel mechanism, in absence of competitive overlaps, has facilitated speedy approvals[11]. The CCI's success in processing large numbers of notifications in a system based on conditional approvals and negotiated remedies suggests, in general, a facilitative attitude that most commentators agree is suitable for a developing economy[12]. Although the speed of doctrinal evolution and development is sometimes deemed to be slow in the transition from the MRTP Act to modern, effects-based competition law, the right direction of the step has been enthusiastically applauded as a required modernisation[13].

However, there has been a significant difference of opinion among scholars on the meaning of control and minority acquisitions[14]. The Commission's wide interpretation of control, which includes a veto on key business decisions, company governance and investor protection provisions, has won it both praise and criticism. Critics say the broadened definition significantly restricts all exemptions, added up compliance costs for private equity, financial investors, and subjectivity via the material-influence standard in the Ultratech/Jaiprakash case. By contrast, supporters argue that a narrower interpretation of control could allow "structurally significant" acquisitions to pass and this would be a fundamental failure of the entire pre-

[10] Chhabra & Nathani, *supra* note 5; Kakkar & Chauhan, *supra* note 2.
[11] Id.
[12] Id.
[13] Parmesh N. *supra* note4; Chhabra & Nathani *supra* note 5.
[14] Chhabra & Nathani, *supra* note 5; Kakkar & Chauhan, *supra* note 2.

merger notification logic[15]. As evident from the decisions of SAAB/Pipavav and ChrysCapital/Intas, the material-influence standard brings along quite different result than a more traditional control test, resulting in material consequences for transaction planning and financial investment[16].

The literature also reflects continuing uncertainty regarding the event that should be treated as the triggering document for merger notification purposes. The Tesco/Trent decision introduced significant compliance risks because it treated regulatory applications, rather than a definitive agreement, as the relevant triggering event, but on the applications made to regulatory authorities to implement the compliance[17]. The lack of uniformity has caught the interest of many practitioners and academic commentators, but scholarship has not reached agreement on the norm for what should be included in the doctrine or on the value of the institutional costs of continuing on this path of uncertainty[18].

The merger remedies and their implementation constitute another area of significant scholarly debate. There is broad agreement that the CCI has increasingly moved away from preferring structural remedies to accepting behavioural and hybrid commitments, but there is more concern about the effectiveness of remedy monitoring[19]. The Schneider/L&T issue which has been studied extensively in the literature is a good example of how remedy implementation may involve many years, with procedural problems in the process, and provide only limited competitive advantages. This revealed a governance gap that academic scholarship has repeatedly identified but has not yet satisfactorily resolved. The concern was further highlighted by the Delhi High Court when it questioned the CCI's compliance-monitoring practices in that case[20]. Unlike more mature competition regimes, the Indian framework lacks a systematic ex-post combination assessment mechanism which makes correcting misguided remedies or learning from past interventions challenging for the Indian regime[21].

The literature on cross-border mergers highlights two recurring concerns: the extraterritorial nature of Indian merger control and the complex compliance issues associated with multi-

[15] Id.
[16] Id.
[17] Chhabra & Nathani, *supra* note 5; Kakkar & Chauhan, *supra* note 2.
[18] Chhabra & Nathani, *supra* note 5.
[19] Id.
[20] Gupta, *supra* note 3 ; Kakkar & Chauhan, *supra* note 2.
[21] Gupta, *supra* note 3.

jurisdictional transactions[22]. The Vodafone/Idea, Walmart/Flipkart, and Etihad/Jet Airways deals all demonstrated the difficulty of having to reconcile CCI requirements with sector-specific regulatory frameworks administered by SEBI, RBI, IRDA and others[23]. While the statutory and institutional framework for such transactions has been reasonably traced in the literature, it is not as successful in determining whether the CCI's attempts to cooperate with foreign competition authorities are to any extent coordinated transactions or merely formal gestures[24].

Empirical studies examining merger outcomes in Indian manufacturing present a more complicated picture than conventional efficiency-based justifications for consolidation might suggest. Several studies find that acquiring firms do not consistently experience significant post-merger improvements in profitability. Others indicate that post-merger performance is influenced as much by technology acquisition and business strategy as by consolidation itself[25]. The literature also suggests that concentrated ownership structures, while common within Indian corporate groups, may contribute to insider entrenchment rather than improved governance outcomes[26]. These findings have important implications for competition policy because they caution against assuming that mergers will automatically generate efficiencies or broader welfare gains[27].

In addition to doctrinal discussions on merger reviews, there are multiple studies that have discussed general implications of corporate consolidation in India. Mergers are frequently justified on grounds of efficiency, economies of scale, technological acquisition, and market expansion, but the findings of empirical studies remain mixed[28]. While some research indicates that the efficiencies the process of consolidation may bring can ultimately fuel continued profitability and competitive performance, other studies emphasise the risks associated with concentrated ownership, reduced market rivalry, and barriers to entry[29]. These findings

[22] Id.
[23]Id.
[24] Gupta, *supra* note 3.
[25] Ambarish Bharadwaj Sivashankaran -, *Cross Border Mergers and Competition Law in India*, 5 IJFMR 2887 (2023), https://doi.org/10.36948/ijfmr.2023.v05i03.2887
[26] Id.
[27] Id.
[28] Mishra, *supra* note 1
[29] Sumon K. Bhaumik & Ekta Selarka, *Impact of M&A on Firm Performance in India: Implications for Concentration of Ownership and Insider Entrenchment*, SSRN Journal (2008), http://dx.doi.org/10.2139/ssrn.970001

highlight the importance of examining concentration trends rather than assuming that corporate consolidation is inherently welfare-enhancing[30].

Research Gap. The foregoing survey reveals three principal gaps that the present paper seeks to address. First, existing scholarship tends to examine merger control, corporate consolidation, and regulatory accountability separately, producing valuable but ultimately partial analyses of each[31]. A sustained examination of how the design of the merger control framework, broader patterns of corporate consolidation, and the accountability mechanisms of the CCI interact as components of a single system of competition governance remains largely absent. Moreover, while existing studies discuss individual mergers and procedural aspects of merger review, relatively little attention has been devoted to whether India's increasingly facilitative merger-control approach adequately responds to broader patterns of market concentration and consolidation across sectors[32]. Second, relatively limited scholarly attention has been devoted to the accountability dimensions of merger regulation, transparency in the reasoning process of CCI, effectiveness of remedy monitoring, and the failure of ex-post evaluation[33]. Third, the issues of digital market acquisition, data concentrations, and killer acquisition are not fully explored under the Indian merger-control framework, despite the Competition (Amendment) Act, 2023 introducing deal-value thresholds in response to concerns that traditional notification thresholds may fail to capture competitively significant digital acquisitions[34]. A study integrating these dimensions is both necessary and long overdue[35].

3. MERGER CONTROL REGULATION UNDER THE COMPETITION ACT, 2002

The Indian system of controlling mergers dates back to the Monopolies and Restrictive Trade Practices Act, 1969 and its system of regulation was inadequate to deal with the level of competition that a liberalising economy created. The MRTP regime focused primarily upon regulating the size and growth of big industrial houses. The regime was built on the assumption

[30] Mishra, *supra* note 1; Bhaumik & Selarka, *supra* note 29.
[31] Pulak Mishra & Neha Jaiswal, *Mergers, Acquisitions and Export Competitiveness: Experience of Indian Manufacturing Sector*, 4 JOC 3 (2012), https://doi.org/10.7441/joc.2012.01.01 ; Mishra, *supra* note 1.
[32] Nitin Navin & Pankaj Sinha, *Market Structure and Competition in the Indian Microfinance Sector*, 44 Vikalpa: The Journal for Decision Makers 167 (2019), https://doi.org/10.1177/0256090919896641 ; Bhaumik & Selarka, *supra* note 29;
[33] Chhabra & Nathani, *supra* note 5; Kakkar & Chauhan, *supra* note 2; Navin & Sinha, *supra* note 32.
[34] Maartje De Visser, *Judicial Accountability and New Governance*, 37 LEIE 41 (2010), https://doi.org/10.54648/leie2010005; Vikas Kathuria, *Competition Commission of India's Interaction with the Judiciary*, SSRN Journal (2023), http://dx.doi.org/10.2139/ssrn.4466750; Gupta, *supra* note 3.
[35] Kakkar & Chauhan, *supra* note 2.

that concentration itself was undesirable, irrespective of its actual competitive effects. The shortcomings in the MRTP framework were made evident as economic reforms continued to be carried out in the 1990s, as it could not adequately address issues of cartels, predatory pricing or mergers based on market power rather than merely scale reasons. The Raghavan Committee's proposal on reforms of the competition regime culminating in the Competition Act, 2002, was, then, not only a change in the legal framework but a paradigm shift in the manner in which the competition regime is approached in India when dealing with business combinations[36].

The key elements of the merger control regime can be found in the combination provisions (principally Sections 5 and 6) of the Competition Act. Section 5 provides a definition for a combination being carried out as a consequence of the acquisition of control, shares or voting rights of an enterprise, a merger or an amalgamation of enterprises that meet certain asset and turnover expectations. Section 6 prohibits combinations that cause, or are likely to cause, an appreciable adverse effect on competition (AAEC) within the relevant market in India and that the original framework required notification within thirty days of the triggering event, although this filing requirement was subsequently suspended. A combination may not come into effect until such time as 210 days are over from the date of notification or the date of CCI's order (whichever comes earlier)[37].

The AAEC standard translated into how the factors in subsection 20(4) are applied, requires consideration of factors such as existing and potential competition, entry barriers, concentration, the individual's buying power, price trends, ongoing competitiveness, the availability of substitutes, and assuring that the benefits of a combination outweigh the costs. It bears similar resemblance to the "substantial lessening of competition" test that has been employed in common law countries, although the test of AAEC still has many elements that have allowed the CCI to evolve a methodology over time to assess horizontal, vertical, conglomerate effects, portfolio concerns, and innovation-related theories of harm across sectors (including agrochemicals, pharmaceuticals, air conditioning, etc.)[38].

The two-stage review format is consistent with international format. Phase I review allows the

[36] Parmesh N. *supra* note 4.
[37] Competition Act, 2002, Sec 5–6; Competition Act, 2002, Sec. 6(1); Competition Act, 2002, § 6(2); S. Nathani & G. Chhabra, *Merger Control in India: Is There A Long Road Ahead?*, 38 World Competition 281, 282 (2015)
[38] Competition Act, 2002, Sec. 20(4); A. Kakkar & V.P.S. Chauhan, *supra* note 2.

CCI to undertake a prima facie assessment of competitive effects within the prescribed review period. Even if concern is raised, CCI can issue a show cause notice which can be responded to within 210 days after extending the period of review with provisions for third party and Director General's intervention and for public consultation. To date, there has been a high rate of transactions being cleared in Phase I, with the majority of the transactions that have had to go through a Phase II process having been addressed during Phase I through to voluntary disclosures by the parties in the most problematic cases. This illustrates the efficiency of the review process as well as the CCI's broadly facilitative approach towards controlling the mergers[39].

As an important procedural innovation, the Green Channel mechanism allows transactions to be considered as if they have been approved, as long as there is no horizontal, vertical or complementary overlap. Eligibility is self-assessed and parties will file under the Green Channel route and receive immediate approval without any scrutiny. The mechanism has significantly reduced transaction timelines and has been touted as a law-based, 'trust-compliance system', with a high level of dependency on good faith and accuracy of self-assessment. Importantly, this means that the CCI could still take steps, even if permission was granted under the Green Channel, to investigate gun jumping or inaccurate disclosures[40].

The Competition (Amendment) Act, 2023 is the most substantial legislation since the merger provisions came into effect which brings significant changes to the merger competition regime. The most significant innovation is the introduction of a deal-value threshold for transactions where the consideration being paid is over INR 2,000 crore and substantial business operations are maintained in India. This reform goes directly to the process of digital markets acquisitions, especially those of data-rich start-ups with lower assets and revenues, going unnoticed by mandatory review under traditional rules. A central rationale for the reform appears to have been concern regarding so-called killer acquisitions: an innovative start-up with few assets or turnover being acquired by a mature firm without appearing to weigh up the notification requirements on traditional acquisition notifications. The Amendment also enhances the waiting period and adds other efficiencies to the review process that could positively impact the review structure[41].

[39] A. Kakkar & V.P.S. Chauhan, *supra* note 2, at 20; Competition Act, 2002, sec. 31(11)
[40] Gupta, *supra* note 3.
[41] Competition (Amendment) Act, 2023; Kakkar & Chauhan, *supra* note 2.

In India the evolution of the doctrine of merger control has been the most controversial in regards to the interpretation of control and the gun-jumping jurisprudence. The concepts of control and material influence have been interpreted broadly by the CCI, resulting in an expansive understanding of notifiable transactions. Rights to personnel changes at key managerial position, to budgets and business plans, and voting power over strategic business decisions have all been considered to constitute potential indicators of control by the manager. In the Etihad–Jet Airways transaction, a 24 percent shareholding stake coupled with governance arrangements was treated as indicative of joint control, making the implementation concept more practical. This has led to the imposition of mandatory notification requirements on acquisitions below the majority ownership limits, and to the substantial reduction of the exemptions for ordinary course of business investments[42].

Gun jumping, defined as carrying out any part of a transaction prior to CCI approval, has been subject to increasingly rigorous enforcement. The Commission has taken a wide view on identifying interconnected and interdependent transactions, and transactions that may satisfy the exemption on one component may be required to be reported as part of a transaction if they are related to another transaction that meets the definition of interconnected and interdependent. One of the most prominent illustrations of accountability concerns was the incomplete disclosure in the Amazon/Future case, where the CCI levied a penalty of INR 202 crore for the same. The NCLT upheld the CCI's conclusions and further emphasized the Commission's disclosure requirements carry meaningful regulatory consequences[43].

Overall, the merger control regime has generally succeeded in balancing business facilitation with competition protection. It has processed a large volume of notifications within relatively short timelines, developed a reasonably consistent body of jurisprudence across sectors, and incorporated remedial principles within a broadly effective notification framework. Nevertheless, important limitations remain. Questions surrounding the interpretation of control, uncertainty regarding notification triggers, the untested operation of the deal-value threshold, and the absence of a systematic ex-post assessment mechanism continue to generate both doctrinal and institutional concerns. These limitations are partly technical in nature, but they also raise broader questions regarding the relationship between merger regulation, market concentration, and regulatory accountability. Understanding those questions requires a closer

[42] S. Nathani & G. Chhabra, *supra* note 5, at 291; A. Kakkar & V.P.S. Chauhan, *supra* note 2, at 08.
[43] Gupta, *supra* note 3.

examination of corporate consolidation trends and their competitive implications within the Indian economy[44].

4. CORPORATE CONSOLIDATION AND COMPETITION CONCERNS IN INDIA

Since the dawn of liberalization, consolidation in India has taken place in several ways, changing the contours of the market in various industries, from telecom to retail, pharmaceuticals to financial services. The M&A literature shows that the number and amount of consolidation transactions increased significantly after the economic reforms, as a result of domestic restructuring needs, foreign investment trends, technological convergence and the strategic needs for competing in globalised markets etc. Analyzing the consequences of this consolidation must be separated from different kinds of mergers – horizontal, vertical, and conglomerate – that trigger different theories of harm and competition authorities' considerations[45].

Horizontal mergers are the most obvious with competition concerns because the rivals in the same market and product segment are simply eliminated. The Vodafone/Idea merger, one of the largest horizontal combinations in India's telecom sector, reduced the number of major operators in the market and generated concerns regarding concentration, coordinated effects, and the competitive dynamics of a highly capital-intensive industry. The CCI acknowledged the merger as such with stipulations, but the next question, whether the ensuing highly concentrated market performance has worked to the interest of the Indian consumer base has not been put through an ex-post-type evaluation that would allow for any realistic conclusion[46].

The Bayer/Monsanto combination of agrochemicals showed that horizontal aspects of innovation do not only affect market shares but also future research pipelines as well as stacks of combined companies' incentives to engage in competing product development. The CCI noted that the elimination of an innovative competitor in the market of crop protection products could lead to a decline in the incentive for innovation, and hence analysed the merger based on the innovation-harm theories in addition to the existing theory on market power. This analysis of portfolio effects, risks in the bundle and vertical foreclosure is a major step toward the EU

[44] S. Nathani & G. Chhabra, *supra* note 5, at 298–99; D. Gupta, supra note 3; A. Kakkar & V.P.S. Chauhan, *supra* note 2, at 27

[45] Pulak Mishra & Neha Jaiswal, *Mergers, Acquisitions and Export Competitiveness: Experience of Indian Manufacturing Sector*, 4 JOC 3 (2012), https://doi.org/10.7441/joc.2012.01.01

[46] A.B. Sivashankaran, *supra* note 25.

Commission's approach in similar global cases and a new element for the CCI's analytical toolkit in this context[47].

Vertical and conglomerate mergers are more difficult to analyze. Much concern has been raised by public opinion regarding the effects of the Walmart/Flipkart merger on the small-scale local retailers and competition in the e-commerce sector in India, yet the CCI granted approval for this acquisition. Although Walmart did not have a significant pre-existing presence in Indian retail markets, the transaction raised broader concerns regarding data accumulation, platform power, and long-term structural effects in e-commerce. The case also exposed the limitations of existing analytical tools used to assess market power and conglomerate effects in rapidly evolving platform markets[48].

The combination of the investment in the Etihad/Jet Airways showed the extent to which market definition, competitive impact and remedial design issues arise in a cross-border context in industries with networks. The transaction also revealed significant disagreement regarding market definition, with competing views emerging on whether the relevant market should be defined narrowly through specific routes or more broadly through international passenger transportation services. Moreover, the commercial collapse of the transaction brings doubts to the aptness of the merger procurement procedure in sectors where competition is very dynamic and complex[49].

Digital market consolidation has emerged as one of the most significant competition concerns confronting merger control in India. The CCI's analysis of data-sharing arrangements in the Facebook/Jio transaction accepted the importance of data aggregation as it pertains to the Competition assessment. However, the framework for competition analysis of data powered market power is still in its early stages. Large Platforms' Killer Acquisitions, or acquisitions of innovative start-ups at early stages of development, before revenue or asset thresholds are reached are an example of acquisitions that have a potential anti-competitive effect and ‘systematically’ stay outside of the scope of the conventional merger review. The deal-value threshold introduced by the Competition (Amendment) Act, 2023 was intended to address this concern, and the monetary threshold of INR 2,000 crore is crucial to match the value at which

[47] A. Kakkar & V.P.S. Chauhan*, supra* note 2, at 16
[48] .B. Sivashankaran*, supra* note 25
[49] Id; S. Nathani & G. Chhabra*, supra* note 5.

competitive acquisitions in digital markets are typically made[50].

The competition authorities should not assume that the anticipated rationale for improvement of efficiency is the driving factor behind consolidation as this is supported by empirical studies on outcome of the mergers and acquisitions in the manufacturing sector in India. Studies examining the financial performance of post-merger firms in India have not produced consistent results indicating that, post a merger, the acquiring firms have not been able to achieve the expected profit improvement and the performance is more affected by technology acquisition and participation by MNCs and sector-specific business strategy rather than by the merger itself. It is very important to note, however, that concentrated ownership characteristics of the many large business groups in India seem to contribute to insider entrenchment, not the efficient allocation of corporate resources, which pose additional governance risks besides market concentration. These findings warn against blindly building into an efficiency argument where parties are combined and support the need for careful substantive examination in place of an automatic facilitative response[51].

The position is less certain when early-stage acquisitions and digital-market concentrations are considered. The threshold-exempt structural accommodation of consolidation for a decade in data-driven sectors is acknowledged by the Amended threshold; however, the clock on the threshold has started running prospectively and the Amended threshold does not deal with the structural changes that have built up over the 10 years since the earlier threshold was established. However, such a comprehensive answer goes beyond just a threshold revision to an improved way of assessing competitive impact in markets that do not rely on traditional bases of assets or revenues for their competitive advantage, but rather on data ownership, network effects and algorithmic processes[52].

5. REGULATORY ACCOUNTABILITY AND THE ROLE OF THE CCI

The concept of regulatory accountability within merger control can be broken down into a variety of different, but related angles: clarity in the decision-making process, consistency with the application of law, procedural fairness toward those involved, the effectiveness of

[50] Competition (Amendment) Act, 2023; A. Kakkar & V.P.S. Chauhan, *supra* note 2.
[51] P. Mishra, *Supra* note 1; Sumon K. Bhaumik & Ekta Selarka, *Impact of M&A on Firm Performance in India: Implications for Concentration of Ownership and Insider Entrenchment*, SSRN Journal (2008), http://dx.doi.org/10.2139/ssrn.970001
[52] Competition (Amendment) Act, 2023; A. Kakkar & V.P.S. Chauhan, *supra* note 2.

enforcement and remedy implementation, and meaningful judicial appraisal and oversight. All of them, in their own way, relate to the ability of the CCI to perform its role as an effective and legitimate competition authority, and a proper evaluation of the Commission's accountability achievements must take each of these factors individually, especially when there is evidence of the opposite[53].

As far as transparency is concerned, the CCI has shown some commendable time and effort by rationalizing its reasons in published decisions and issuing guidance notes related to the filing process and analytical methodology. The Green Channel process and the pre-filing consultation process contribute to the more predictable and accessible notification processes, as do the standardised forms. However, evidence of the substantive transparency of the AAEC process in the form of detailed reasoning, explaining the application of the AAEC standard, what evidence was deemed to be compelling, and on which grounds specific remedies were selected have been lacking. Academic commentary has highlighted how the orders issued by the CCI are frequently non-exhaustive, and how useful it is to use informal consultations to plan a transaction, but how it does not provide formal certainty of treatment and is not a mandatory element in the CCI orders[54].

The interpretation of control is one of the greatest challenges for accountability. The CCI's wide definition of what constitutes extensive veto power, protection covenants and governance arrangements as signs of control has given rise to results that could not be foreseen by parties engaging in commercial transactions solely based on the text of the law. For Tesco/Trent, the CCI's approach to seeing regulatory applications as the actual trigger for the need to comply immediately meant that the parties had to "pre-consider" the regulatory filing rather than waiting for any transaction to be finalised. The resulting penalty imposed on Tesco for failure to notify within the prescribed period was based upon an interpretation that had not previously been articulated through binding guidance. The scenario in which parties are subject to compliance-imposing standards which are created only because compliance happens on the backend by an enforcement activity would pose a question of accountability[55].

The gun jumping jurisprudence is similar. The CCI has taken a wide view on the notion of

[53]Maartje De Visser, *Judicial Accountability and New Governance*, 37 LEIE 41 (2010), https://doi.org/10.54648/leie2010005
[54] D. Gupta, *supra* note 3; A. Kakkar & V.P.S. Chauhan, *supra* note 5,
[55] S. Nathani & G. Chhabra, *supra* note 5.

interconnected transactions and has mandated the disclosure of arrangements it believes a party would have considered to be a part of the main business of the combination or ancillary/background arrangements. The more visible example of the Commission's disclosure expectations going beyond what parties may anticipate based on public guidance relates to the Amazon/Future Coupons matter, where the Commission was acting against Amazon for not providing disclosure with respect to the arrangements in connection with Future Retail to account for it in disclosures of interconnected transactions. The INR 202 crore penalty on appeal highlights the CCI's tendency to levy high penalties for disclosure violations; however, it also raises concerns about the transparency of the CCI's disclosure requirements. As defined in this study, accountability involves being able to foresee what it means to be accountable and what will happen if someone fails to meet their obligations in a manner that is reasonable and not necessarily something that can only be found out through penalties[56].

The CCI's track record in the realm of remedy design and monitoring is likely to come in for the most criticism. A significant number of combinations approved subject to remedies have subsequently faced implementation delays, legal challenges, or appellate scrutiny. Problems in implementing the long-term remedy supervision proved to be a defining challenge in the Schneider/L&T case – it took many years for implementation of the white-labelling arrangements intended to keep competition in the low-voltage switchgear markets, the case was challenged by the Delhi High Court on procedural issues, and it brought uncertainty whether the competitive benefit to which the remedy was intended was actually realized. The Court's conclusion that the CCI has no statutory power to review its own orders restricts its capacity to rectify implementation-related issues and further illustrates how institutional design can exacerbate governance challenges in remedy supervision[57].

Overall, the CCI has not introduced an ex-post assessment function , a process similar to the merger review evaluation programmes of the EU Commission, the UK Competition and Markets Authority or the like, that would enable it to make a reasoned evaluation of its own post-merger effects. In the absence of ex-post assessment, the Commission cannot reliably determine whether the competitive conditions expected to be preserved or restored after the Commission's merger approvals have been. This is not just an internal governance issue, but also a fundamental issue that raises the question of the CCI's ability to change the way it

[56] D. Gupta, *supra* note 3;A. Kakkar & V.P.S. Chauhan, *supra* note 2.
[57] D. Gupta, *supra* note 3.

analyzes its frameworks, understand the impacts of competition, and make decisions in the future through evidence and not by institutional precedent[58].

Looking at how the accountability mechanisms can be institutionalised within the merger control allows some useful lessons to be drawn from the comparative experience. The European Commission provides in-depth checklists, remedial monitoring by trustees and periodic assessment of remedial results as supplements to the merger review process. Likewise, competition enforcers in the UK and the US have increasingly adopted post-merger assessment exercises as a means to test if the competitive results prefigured by the competition authorities in their approval are realized. While these models are not applicable in Indian context directly, they provide a pointer towards the role of transparency, monitoring and institutional learning in merger governance. The current Indian system, which does not have a similar system of accountability, is a space to explore ways the responses could be enforced without significantly changing the current Indian system of review[59].

Judicial oversight has been a vital governance safeguard but was in essence a process rather than a content question. The Supreme Court's decision in SAIL characterised the investigative stage as primarily administrative in nature, thereby limiting opportunities for early appellate intervention. High Courts have been very deferential to the institutional competence of the CCI in the past and have only intervened in the cases where the allegations are clearly false, mala fide and/or of a procedural nature. In competition cases, economic analysis is rarely subjected to detailed scrutiny by ordinary courts and in substance, the accountability of a merger decision would be delegated to the appellate body and the NCLAT's ability to provide in-depth substantive analysis has been called into question in principal cases[60].

The key challenge in evaluating the CCI's regulatory accountability lies in balancing its facilitative role, rapid review timelines, high clearance rate, and preference for negotiated solutions against broader expectations of public governance and market oversight. The regulatory accountability of a facilitative posture is not necessarily incompatible, indeed an efficient and predictable merger review is a type of regulatory accountability and a commitment

[58] Competition Act, 2002, Sec. 20(1); D. Gupta, *supra* note 3.
[59] William E. Kovacic, Petros C. Mavroidis & Damien J. Neven, *Merger Control Procedures and Institutions: A Comparison of the EU and US Practice*, SSRN Journal (2014), http://www.ssrn.com/abstract=2397870 ; Mats A. Bergman et al., *Atlantic Divide or Gulf Stream Convergence: Merger Policies in the European Union and the United States*, SSRN Journal (2010), http://www.ssrn.com/abstract=975102
[60] V. Kathuria, *Supra* note 9.

to commercial actors whose investment decisions are based on regulatory certainty. The difficulty is when facilitation becomes an institutional attitude that stifles in-depth analysis, diminishes the depth of published reasoning, and lets gaps remain for how to implement change in remedied cases. This paper's evidence indicates that the CCI's accountability record is creditable in its enforcement of the notification requirements, but needs improvement in terms of substantive transparency, monitoring of remedies, and ex-post assessment[61].

6. FINDINGS AND RECOMMENDATIONS

The foregoing analysis yields several important findings. Since 2011, the institutional development of the Indian merger regime has made significant strides, establishing a fairly uniform review practice, fast processing of a large number of merger notifications and improving its analytical methodology for conducting AAEC evaluations in a progressive manner. The Green Channel mechanism, the deal-value threshold introduced by the 2023 Amendment and the procedural changes in notification forms and review time frames are all positive steps in a system – which in its early operation was significantly less predictable and less convenient than many of the systems that exist internationally[62].

At the same time, important structural and doctrinal shortcomings remain, and these continue to affect both the effectiveness of the merger-control framework and the accountability of the CCI. The nature of control and the parameters of notification remain unclear, since they create compliance costs and risks of enforcing the text that are forcefully disproportionate to their competitive relevance. Gun-jumping enforcement has become increasingly stringent, which hasn't been delivered to the public with a sufficient amount of clarity and specificity. Remedy monitoring and reporting remain weak, institutional capacity constraints persist, and systematic ex post assessment is absent from the implementation framework. Acquisitions in digital markets, which were only partially covered by the 2023 Amendment, are unclear and the analytical instruments used to assess the impact of data-driven market power are still too far behind[63].

There's a need for some reforms. The CCI should issue detailed guidelines on the triggers for

[61] M. de Visser, *supra* note 34, at 52–54; Vijay Kumar Singh, *Need for Competition and Regulatory Reform in Developing Countries: Case of Indian Competition Law Enforcement*, SSRN Journal (2021), https://www.ssrn.com/abstract=3908344 ; D. Gupta, *supra* note 3.
[62] A. Kakkar & V.P.S. Chauhan, *supra* note 2; D. Gupta, *supra* note 3.
[63] S. Nathani & G. Chhabra, *supra* note 5; A. Kakkar & V.P.S. Chauhan, *supra* note 2.

control and notification at least as specific as the EU Consolidated Jurisdictional Notice to minimize uncertainty for companies trying to meet notification criteria. The creation of an internal dedicated ex post combination unit that assesses the actions taken by the approved combinations and their expected competitive consequences, as well as the implementation of the remedies, would be of great value to remedy monitoring. The deal-value threshold should also be reviewed periodically; and a broad consultation should be held to decide whether the threshold is appropriate for digital market transactions. Greater emphasis should also be placed on producing detailed merger decisions that clearly explain AAEC findings, remedy selection, and the evidentiary basis of the Commission's conclusions. Finally, strengthening the CCI's institutional infrastructure and hiring appropriate experts to work on digital markets, especially economists specialized in digital markets analysis is necessary to implement the regime to a greater extent in the future[64].

7. FUTURE RESEARCH DIRECTIONS

The judicious development of Indian competition law scholarship must now tackle yet other issues left unanswered by the current paper. The key issues concerning the digital-market acquisition include whether the deal value threshold that has been newly introduced by the Competition (Amendment) Act, 2023 offers adequate protection against killer acquisitions and nascent competition concerns and whether the CCI's analytical tools are adequate to analyse competitive effects in a market characterised by network effects, data economies of scale and tipping dynamics. More research is needed to evaluate the effectiveness of current merger control regimes to prevent the type of market power that can stem from factors such as control over data, digital ecosystems, and platform-based benefits, particularly as the digital market continues to develop.

Comparative studies looking at India's merger control framework in comparison with the EU and the US frameworks, especially with regard to algorithmic competition concerns and the accountability mechanisms adopted by mature regulatory regimes may shed light on the need, or otherwise of the regulators to respond to concerns. Common ownership through private equity investments, which has become a common phenomenon in Indian markets, should also be examined separately by scholars based on long term effects on the listed company, as

[64] S. Nathani & G. Chhabra, *supra* note 5; D. Gupta, *supra* note 3; V.K. Singh, *supra* note 61; A. Kakkar & V.P.S. Chauhan, *supra* note 2.

witnessed in ChrysCapital/Intas. In the same way, it will be important to look at the results of the deal-value thresholds over time to understand how well they reflect digital acquisitions that are potentially competitive, as the Competition (Amendment) Act, 2023 continues to build enforcement expertise and experience.

One of the major research gaps is the lack of systematic ex-post assessment research. Researchers working at the intersection of competition law and empirical economics are well placed to consider whether combinations opted for by the CCI, especially those requiring remedies, preserve competitive conditions as anticipated during merger review. This would ground the process of regulatory learning, largely based on institutional memory and singular case experiences, with supportive evidence. Overall, greater insight into the accountability of regulators in platform markets specifically, how transparently, fairly, and effectively the CCI engages with actors operating in digital markets will be one of the key areas where competition law scholarship in the future will be enriched in India.

8. Conclusion

The findings of this study present a more nuanced picture than either unconditional endorsement or outright criticism of India's merger control regime would suggest. The overall effectiveness of the merger control regime in India established by the Competition Act, 2002 has been reasonably good, and its efficiency, developing analytical framework and practices regarding remedies have yielded reasonably sound results in each of the sectors in most of them. However, there are some doctrinal issues that question the effectiveness of the framework, as the use of “control” to define “notification” triggers is uncertain, there was a lack in the coverage of digital market acquisitions before the 2023 Amendment, and there are no established mechanisms for systematic ex-post assessments. These deficiencies are not merely minor technical concerns but rather structural deficiencies that allow competitively material transactions to go through the cracks that diminish the efficacy of the regime to increase their value through adaptive improvement.

The CCI's regulatory accountability record is less clear-cut. In enforcing gun-jumping obligations, the Commission has shown a notable degree of rigour, gradually improving the quality of its substantive reasoning in decisions and building an arguably deference-earning and commercially respected jurisprudence. It is a real success for a relatively young institution, in an intricate regulatory context. But the accountability issues uncovered in this paper – weak

reporting on the substance of decisions, lack of consistency on when and what to control, lax ex ante combined review, and chronic issues with remedy monitoring, among others – are not just real but consequential. Taken together, these concerns suggest that while the CCI's facilitative approach has contributed to efficient merger review, it has at times been accompanied by insufficient institutional rigour in matters of competition governance.

India's merger control regime stands at a pivotal juncture. Some of the most major structural deficiencies in the framework have been corrected by the Competition (Amendment) Act, 2023, but the impact of its implementation remains to be seen whether the reforms will translate into better protection of competition. The framework's ability to keep up with the evolution of cross-border M&A transactions and the way that market power works in a digital economy will be challenged in ways that it may not adequately address. Improving the CCI's analytical capacity, increasing transparency and introducing a true ex-post assessment are non-negotiable improvements that are essential for a merger control regime to be able to claim to have a long-term vested interest in the competitive interests of the Indian markets and consumers over the coming decades.