

Merger Control in India - A Practitioner's Perspective (Proposal 1)

The Competition Commission of India (CCI) withdrew approval for Amazon's investment in Future Group, which was granted earlier for misrepresentation and suppression of material facts in its notification to the CCI. This is a first-of-its-kind order passed by the CCI, as the CCI directed Amazon to re-notify a transaction. This unprecedented move by the regulator has shed light on the ever-evolving role of the CCI in assessing acquisitions and mergers in India. The M&A activity, investments and deal-making in India are at an all-time high. With the evolving jurisprudence on merger control, private equity players and merging parties need to be mindful that notifiable transactions need prior approval of the CCI.

The Competition (Amendment) Act, 2023, has brought key changes to the Competition Act, 2002 (CA 2002). Some of these changes include 'deal value thresholds' pursuant to which 'large-value' transactions will require the approval of the CCI, relaxations for implementation of open offers and stock exchange purchases and shortened timelines for review of combinations. While this is an exciting time for M&A and merger control, it is important that transactions that may lead to anti-competitive effects in the market are carefully assessed. As India positions itself as one of the fastest-growing economies and a hub for global capital, merger control has become not just a procedural hurdle but a strategic determinant of deal success. The CCI's scrutiny of market structures, digital economy transactions, and private equity investments shows a clear shift toward ensuring competitive markets while balancing the need for investment and innovation.

This course aims to provide students with a practitioner's perspective on merger control in India, enabling them to critically analyse the regulatory, strategic, and political economy dimensions of deal-making. To this end, this course has several goals, some of which are set out below:

1. This course aims to introduce students to the merger control regime through the CA 2002, competition regulations and various case laws to understand the competition law jurisprudence in India.
2. Through my practical experiences of merger filings with the European Commission and the CCI, this course will introduce students to the international regulatory framework while appreciating the Indian law framework. This class will be designed to teach students merger filings and help them understand the role of lawyers, clients and business professionals in a transaction.

3. This class will also focus on teaching the drafting of various transaction documents, such as clean team agreements, to make students aware of the business realities of a merger filing. In addition, students will be given practical tips for drafting and negotiating antitrust provisions in acquisition and merger documents.
4. This course will focus on contemporary issues, such as digitalization, to better understand the law and functioning of the transactional side of the CCI.
5. The course hopes to develop independent thinking on competition policy and critically reflect on the law and economic approach to merger control, keeping in mind the business realities.
6. Ultimately, the course seeks to develop budding lawyers and policy professionals who can navigate the dynamic intersection of business strategy and competition regulation in India's rapidly evolving market economy.

Teaching Methodology

This course will be taught from a practical perspective, with the goal of preparing students to address merger control issues in M&A transactions. Instruction will be delivered using a combination of lectures and the Socratic approach. Concepts and principles will be taught through a discussion of legal provisions and how statutory laws are interpreted. Case studies will be used extensively to teach students.

Students are asked to read the assigned materials before class so that class discussions can supplement the lectures.

In addition to the lectures and class discussions, there will be an effort to incorporate drafting exercises, seminars, and/or guest lectures and workshops.

Lecture Design (Tentative)

Week	Topics
1.	Introduction to Competition Law
2.	Introduction to Competition Law

3.	The Framework of Merger Control in India
4.	The Framework of Merger Control in India
5.	The Framework of Merger Control in India
6.	The Conundrum of 'Control' under Competition Law
7.	Schedule 1 and Private Equity Transactions
8.	Merger Remedies
9.	Contemporary Developments and Challenges in Merger Control
10.	Contemporary Developments and Challenges in Merger Control
11.	Building Competition Law Policy for M&A
12.	Drafting Applications to the CCI
13.	M&A Workshops
14.	REVISION WEEK

Select readings in this course

- Mergers (1) – Introduction, in Richard Whish & David Bailey, Competition Law (OUP 8th Ed.), at Ch. 20
- Mergers (2) – EU Law, in Richard Whish & David Bailey, Competition Law (OUP 2015, 8th Ed.), at Ch. 21
- Einer Elhauge and Damien Geradin, Global Competition Law and Economics, Hart Publishing (2nd edition), chapter 7 (only certain parts of this chapter will constitute required reading for the class, and students will be accordingly informed).
- Prateek Bhattacharya, 'Competition Commission of India's 'Control' Quandary - Practice, Precedent, and Proposals' [2021] European Competition Journal Iss. 1
- Geeta Gouri and Kalyani Pandya 'The Indian competition law experience– its history and its (digital) future' [2020] Indian Law Review 4:3, 276
- Terry Calvani and Karen Alderman, *BRIC in the International Merger Review Edifice* [2010] Cornell International Law Journal Vol. 43, 74

- John E. Kwoka, Jr., 'Does Merger Control Work? A Retrospective on U.S. Enforcement Actions and Merger Outcomes' [2013] Antitrust Law Journal Vol. 78(3) 619
- Gauri Gupta, 'An Indian Perspective on Merger Control in Digital Markets: Looking Ahead by Looking Across' [2023] Kluwer Competition Law Blog 1
- Tomaso Duso, Damien J. Neven and Lars-Hendrik Röller, 'The Political Economy of European Merger Control: Evidence Using Stock Market Data' [2006] WZB Discussion Paper No. FS IV 02.
- Aditi Bagchi, 'The Political Economy of Merger Regulation' [2005] The American Journal of Comparative Law 1.

Prerequisites

Company Law

Practitioner's Guide to Competition Law (Proposal 2)

Course Introduction

The liberalisation of India's economy and the rapid growth of markets have fundamentally transformed the way businesses operate. Alongside this transformation, competition law has emerged as a crucial pillar of market regulation. The Competition Act, 2002 (CA 2002), enforced by the Competition Commission of India (CCI), is tasked with promoting and sustaining competition, protecting consumer interests, and ensuring freedom of trade. Over the past decade, the CCI has played a pivotal role in addressing cartels, abusive dominance, and anti-competitive mergers, while grappling with new-age challenges in the digital economy, platform markets, and globalised trade.

High-profile investigations ranging from cartels in the cement and automobile sectors to abuse of dominance cases involving digital platforms like Google demonstrate how competition law is reshaping India's economic landscape. With the Competition (Amendment) Act, 2023, India has taken significant steps forward by introducing settlement and commitment mechanisms, expanding definitions of cartels, refining penalty frameworks, and making the law more aligned with global standards.

This course is designed to equip students with a comprehensive and practice-oriented understanding of competition law in India, connecting doctrine, policy, and business strategy. By drawing on both Indian and comparative perspectives, and incorporating real-world case studies, the course prepares students to critically analyse enforcement trends, regulatory interventions, and the intersection of competition law with broader political economy considerations.

Course Goals and Vision

1. **Foundational Understanding** - Introduce students to the framework of competition law in India, covering cartels, abuse of dominance, merger control, and emerging trends.
2. **Practical Application** - Illustrate how cases are investigated, argued, and resolved, including practical challenges faced by lawyers, businesses, and regulators.
3. **Transactional & Compliance Insight** – Train students to identify competition risks in agreements, business practices, and transactions, and to advise clients on compliance strategies.
4. **Contemporary Issues** - Explore competition law challenges in the digital economy, big data, AI, and network effects in platform markets.
5. **Comparative Perspective** - Situate Indian law within global enforcement practices (EU, US, China) to understand how international developments influence domestic policy.
6. **Critical & Policy Analysis** - Encourage students to reflect on the political economy of competition law in India, including issues of lobbying and industrial policy.

Teaching Methodology

- **Lectures and Socratic Method:** Core concepts taught interactively through doctrinal provisions and leading case law.

- **Case Studies:** Landmark CCI orders, judicial decisions, and global precedents will be dissected in class.
- **Simulation Exercises:** Drafting pleadings, compliance notes, and strategy memorandums.
- **Guest Lectures/Workshops:** Sessions with practitioners, economists, and policymakers.
- **Policy Discussions:** Reflection on how competition law interacts with broader industrial and economic policies in India.

Students are expected to complete assigned readings in advance to fully participate in discussions.

Lecture Design (Tentative)

Week	Topic
1	Evolution of Competition Law in India: From MRTP Act to CA 2002
2	Objectives and Institutional Framework of the CCI
3	Anti-Competitive Agreements: Horizontal Restraints and Cartels
4	Anti-Competitive Agreements: Vertical Restraints
5	Abuse of Dominance: Concept, Legal Standards, and Case Studies
6	Abuse of Dominance: Digital Markets and Platform Economy
7	Merger Control (Overview and Thresholds)
8	Theories of Harm
9	Remedies and Enforcement Trends
10	Penalties, Leniency, Commitments, and Settlements
11	Comparative Perspectives: EU, US, and Global Best Practices
12	Competition Law, Political Economy, and Industrial Policy in India
13	Simulation/Workshop: Drafting Competition Compliance Notes
14	Revision

Select Readings

- Richard Whish & David Bailey, *Competition Law* (OUP, 8th Ed.).
- Einer Elhauge & Damien Geradin, *Global Competition Law and Economics* (2nd Ed.).
- Geeta Gouri & Kalyani Pandya, “The Indian Competition Law Experience – Its History and its (Digital) Future” (2020) *Indian Law Review*.
- Aditi Bagchi, “The Political Economy of Merger Regulation” (2005) *Am. J. Comp. L.* (for comparative insights).
- Vikas Kathuria, Vertical Restraints under Indian Competition Law: Whither Law and Economics, *Journal of Antitrust Enforcement* (2021).
- International Competition Network Workbooks on Unilateral Conduct and Merger Guidelines.
- Gauri Gupta, ‘An Indian Perspective on Merger Control in Digital Markets: Looking Ahead by Looking Across’ [2023] *Kluwer Competition Law Blog* 1
- Ministry of Corporate Affairs, Government of India, Report of the Competition Law Review Committee (2019)
- Lina Khan, Amazon’s Antitrust Paradox, *Yale Law Journal* (2018)

- Prateek Bhattacharya, 'Competition Commission of India's 'Control' Quandary - Practice, Precedent, and Proposals' [2021] European Competition Journal Iss. 1

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Company Law