



AZB & PARTNERS
ADVOCATES & SOLICITORS

Energy, Expertise, Execution – Unmatched

**COMPETITION / ANTITRUST
LAW PRACTICE**

AUGUST 2021



ABOUT US

The AZB & Partners' Competition / Antitrust team advises clients on matters across the spectrum of competition law, including merger control, cartels and abuse of dominance investigations, leniency applications and other antitrust matters related to commercial agreements. Our bench strength of 24 members, spread across our offices in Bangalore, Delhi and Mumbai, enables us to deliver large mandates in a timely and efficient manner.

By drawing on the Firm's wide-ranging expertise in mergers and acquisitions, corporate finance, technology licensing, complex litigation, intellectual property and regulatory matters, we are able to offer clients well-rounded, holistic advice.

We have also been at the forefront of the development of competition law jurisprudence, including in relation to new age and emerging markets, such as online search, new media and digital payments. We act as the non governmental advisor to the Competition Commission of India ("CCI") and have recently been actively involved in the ongoing review of competition law, as a special invitee member of the Ministry of Corporate Affairs ("MCA") to the Competition Law Review Committee ("CLRC") and as a member of its antitrust, digital economy and regulatory structure working groups.

Our team also works with industry bodies such as the Confederation of Indian Industries ("CII") to help consolidate their concerns and recommend appropriate legislative changes to the Competition Act, 2002 ("Competition Act") and the associated regulations.

Additionally, members of the Firm have contributed to the development of competition law internationally through their work with the International Competition Network ("ICN") and in assisting with formulating the competition policy for the Government of the Islamic Republic of Afghanistan.

"Respected, holistic competition offering, operating across India and handling both merger control and contentious mandates, including cartel and abuse of dominance cases. Known for its representation of leading domestic and international clients, and increasingly recognized for its global cartel investigations capability while also offering a full suite of compliance services. The team is further noted for its ability to offer cross-functional expertise on transactional and tax questions and to staff mandates with personnel from across its national network of offices. Adept at assisting clients with leniency applications to the Competition Commission of India."

– Chambers Global & Asia-Pacific 2021

KEY DEVELOPMENTS



Competition law has become increasingly important for doing business in India, whether in the context of simple distribution agreements or planning complex cross-border mergers and acquisitions. India is a key jurisdiction that must be factored in for efficient deal planning and execution, whether global or domestic.

Since its inception, the CCI has received more than 650 merger control filings. While the CCI is yet to block a deal, it has required modifications to at least 15 deals. More recently, the CCI has become active in issuing show cause notices for non-notification of deals and gun jumping issues.

On the antitrust front, the CCI has reviewed over 1200 cases and has passed 800 final orders. Several are currently on appeal before the National Company Law Appellate Tribunal (“NCLAT”), various High Courts and the Supreme Court of India (“Supreme Court”). On April 10, 2019, the High Court of Delhi pronounced its landmark judgement in relation to petitions challenging the constitutional validity of certain provisions of the Competition Act and associated regulations. This is likely to be a crucial decision in entrenching principles of natural justice in the CCI’s practice and procedure.

The CCI takes its enforcement mandate very seriously. Recently, it has been scrutinizing bid-rigging cases and the automotive, pharmaceutical and e-commerce sectors more closely. It has also conducted dawn raids. The CCI has imposed significant penalties, the highest of which were levied in a cartel case, in the amount of INR 63 billion (i.e., US\$ 902.19 million) and in an abuse of dominance case, in the amount of INR 13.46 billion (i.e., US\$192.82 million). Given the rise in penalties levied, companies are seeking to increase their awareness of and be compliant with competition law. The CCI’s enforcement activity has made the leniency program more attractive. Since the leniency regulations were amended in 2017, the CCI has received 100 leniency applications. As of 2019, nine leniency cases have been decided and in some cases, the CCI has granted up to 100% reduction on penalty.

The momentum of the CCI’s advocacy efforts has also picked up. So far, it has conducted over 700 advocacy events. Recently, the CCI has issued a policy note entitled, ‘*Making markets work for affordable healthcare*’ and launched a sectoral investigation into e-commerce. The CCI has also published sectoral reports on the telecommunications, infrastructure, air transportation, petroleum and steel sectors.

The CCI has entered into several bilateral/multilateral international cooperation agreements with other competition regulators, such as the European Commission, the Competition Bureau Canada, the Australian Competition and Consumer Commission, the Federal Trade Commission and regulators of the BRICS nations.

In order to ensure that competition legislation is in sync with the needs of strong economic fundamentals, the MCA constituted the CLRC in 2018 to review the Competition Act and associated regulations. Though still evolving, the commercial impact of the Competition Act can be far-reaching, particularly in light of the stringency of the CCI’s enforcement efforts.

MERGER CONTROL

The Team boasts of one of the top merger control practices in India, accounting for a significant share of all mergers approved by the CCI thus far. Our experience encompasses all forms of mergers, acquisitions, joint ventures, leveraged buyouts and divestitures, including negotiated transactions to hostile takeovers. Our team of specialist competition lawyers work closely with the transaction team, in-house counsel and economists to ensure a smooth CCI approval process with minimal delays or surprises. The lawyers associated with the Team have vast experience in dealing with some of the most complex and landmark merger control approvals in India.



Syngenta International AG in relation to obtaining a Phase I merger control clearance in India for its US\$ 43 billion takeover by China National Chemical Corporation. We negotiated complex structural and behavioural remedies and addressed competitive concerns of the CCI, without going into Phase II.



The Walt Disney Company on the Indian merger control aspects of its US\$ 66.1 billion acquisition of Twenty-First Century Fox. The multijurisdictional deal involved the acquisition of Star TV, India's largest television conglomerate. We obtained an unconditional Phase I clearance in India, while the deal underwent a detailed review in other jurisdictions.



Tata Steel ("TSL") on the Indian merger control aspects of multiple transactions as a part of India's new Insolvency & Bankruptcy Code, 2016 ("IBC"), including TSL's (i) US\$ 5.1 billion acquisition of Bhushan Steel; (ii) US\$ 3.36 billion acquisition of Bhushan Power & Steel; (iii) and US\$ 600 million acquisition, on a slump sale basis, of Usha Martin's steel division. We navigated unique issues pertaining to timing in relation to the IBC, the effect of standstill requirements and worked with the CCI to shape the enforcement of the IBC.



Softbank Group Corp and Softbank Vision Fund LP ("Softbank") on the Indian merger control aspects of its investments, particularly in the technology and e-commerce sectors. We successfully obtained Indian merger clearances for Softbank's (i) US\$ 2.467 billion investment in FlipKart; (ii) US\$ 1.4 billion investment in One97 Communications (PayTM); and (iii) US\$ 350 million investment in Delhivery.



GlaxoSmithKline Plc in relation to its US\$12.7 billion acquisition of Pfizer's consumer healthcare business, where we obtained an unconditional clearance in India, whereas several other jurisdictions imposed remedies.



Bharti Airtel ("Airtel") in relation to its merger filings, including (i) the US\$ 14.6 billion merger of Bharti Infratel and Indus Towers (ii) its acquisition of the wireless telephony business of Tata Communications; and (iii) the merger of Airtel and Telenor (India) Communications. We also obtained Phase I clearance in the telecom sector, marked by increased consolidation.

"Consistent instructions from major global clients maintain the group's position in the top tier of the market. Remains an accomplished practice with significant expertise across a broad sweep of competition matters that is especially well known for merger filings."

– Chambers Asia-Pacific, 2018

ANTITRUST

The CCI has been very active in enforcement relating to allegations of cartels and abuse of dominance. Recently, the CCI has aggressively promoted its 'leniency program' to induce enterprises to break rank and expose cartels. The CCI's focus on antitrust enforcement, its extensive investigatory powers and the substantial fines imposed signify that companies and their employees need to be adequately prepared. This requires experienced and high-quality legal representation to minimize business disruption and advice on the appropriate defense strategy, including use of the 'leniency program.' We provide end-to-end support in all such cases, beginning with assistance at the time of 'dawn raids,' to investigation by the Director General, followed by oral and written submissions before the CCI and finally in appeal before the appellate tribunal and Supreme Court. We also regularly advise and represent clients in relation to investigations into other conduct, such as vertical restraints, predatory pricing and excessive pricing.



The CCI before the Supreme Court in CCI v. SAIL, the first substantive competition law case decided by the Supreme Court.



GlaxoSmithKline Pharmaceutical before the appellate tribunal in overturning its INR 64 crore (US\$ 9.5 million) penalty imposed by the CCI for alleged bid rigging.



The Google Group on allegations in relation to its online search conduct. While similar allegations relating to Google's online search advertising were scrutinized in other jurisdictions, we successfully defended Google's conduct before the CCI. We also successfully represented Google in obtaining a closure order on allegations of abuse of dominance in relation to the terms and conditions of its "AdWords" program.



The Roche Group before the High Court of Delhi in a jurisdictional challenge against the CCI's decision to initiate an investigation into Roche and its conduct with respect to certain bio-similar drugs.



Mercedes-Benz India and Tata Motors before the High Court of Delhi in a constitutional challenge on the validity of certain provisions of the Competition Act. Notably, the High Court of Delhi had passed far-reaching orders on the functioning of the CCI based on this challenge.



Honda Motorcycles and Scooters India before the CCI against allegations of abuse of dominance and anti-competitive vertical arrangements.



Toyota Kirloskar before the Supreme Court in an appeal against the order of the appellate tribunal on alleged anti-competitive vertical restraints and abuse of dominance.



Warner Brothers on its Supreme Court challenge against the appellate tribunal's decision to investigate the company in relation to allegations of abuse of dominance.

"Accomplished practice with significant expertise across a broad sweep of competition matters and especially well known for merger filings. Also offers a very good track record on complex cartel investigations and leniency applications."

– Chambers Asia-Pacific, 2016

COMPLIANCE & ADVISORY

Anti-competitive restrictions imposed on suppliers, distributors or consumers may result in significant fines. Companies often require advice on how to set up appropriate supply and distribution chains within the limits imposed by the Competition Act. We have advised several companies on the substantial impact that the Competition Act may have on how companies establish and operate their businesses.



Several Indian and multinational companies on the best practices to follow in the event of a dawn raid.



One of the world's largest FMCG companies in relation to various issues regarding internet sales.



One of India's leading shipping vessel companies in relation to allegations of abuse of dominance against a key procurer.



Various pharmaceutical companies in relation to pay for delay agreements.



A leading technology company on with respect to MFN clauses.



One of the world's leading hotel chains on competition law issues appertaining to a proposed loyalty and rewards scheme.



One of the world's largest oil and gas producers on its proposed joint venture and supply arrangements with one of India's leading private sector integrated oil companies.



Various airlines on joint services agreement and enhanced strategic cooperation agreements covering code-sharing, network management, pricing, revenue management, and sales and marketing.



Several clients on concerns regarding dual distribution arrangements.

"Respected, holistic competition offering, operating across India..."

- Chambers & Partners, 2019

COMPETITION POLICY

Our team has been closely involved with the formulation and subsequent evolution of Indian competition law. We regularly provide independent expert feedback to the MCA and the CCI as part of the stakeholder consultation process that generally precedes any amendment to the law. Separately, we also assist other stakeholders, including private enterprises and industry associations, in effectively engaging with the MCA and the CCI during these stakeholder consultations. Moreover, members of our team have helped draft the competition policy for the Government of the Islamic Republic of Afghanistan.



One of the few law firms actively involved in multiple working groups of the CLRC.



The CII and **Bombay Chamber of Commerce and Industry** on recommending legislative changes to the Competition Act and merger regulations, from time to time, to the Prime Minister of India, the MCA and the CCI.



The CII in making a representation to the Parliamentary Standing Committee on Finance on the changes sought to be introduced to the Competition Act through the Competition (Amendment) Bill, 2012, specifically regarding penalty guidelines.



The CCI with respect to (i) comments on annual amendments to merger control rules, leniency regulations, DIY online merger control; (ii) preparing the competition compliance manual (along with the Competition Law Bar Association)



Advised the CCI on linkages between trade law and competition law.



We also act as a non-governmental advisor to the CCI.



Merger Working Group of the Antitrust Committee of the International Bar Association (“IBA”) on conceptualizing, drafting and presenting to the MCA and the CCI on specific merger control amendments sought to be introduced to the Competition Act through Competition (Amendment) Bill, 2012.



Member of the working group for the introduction of the merger control regulations in 2011.



PROFILES



SAMIR GANDHI

Senior Partner

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Samir Gandhi, Senior Partner, heads AZB's competition practice out of the Delhi office. A highly regarded practitioner, Samir has extensive experience advising domestic and international clients on complex merger control, antitrust cases, and litigation matters before the CCI, the appellate tribunal, various High Courts and the Supreme Court. He has acted as counsel to the CCI and advised on several precedent-setting matters. He boasts an impressive list of clients, including Google, Lafarge, Syngenta / China National Chemical Corporation, GSK, Mercedes-Benz India and Tata Motors.

Samir is an officer of the IBA Antitrust Committee & the Special Action Group of the ABA Section on Antitrust Law. He takes an active interest in developing India's competition policy. He has contributed to the development of competition law and policy in India as a special government invitee and member of the CLRC's various working groups. He is also involved in the work of the ICN as a non-governmental adviser and also assisted in formulating the Government of the Islamic Republic of Afghanistan's competition policy.

Recognized as a 'Star Individual' (2017 – 2018) and a 'Leading Individual' (2019 - 2021) for Competition/Antitrust by Chambers Asia-Pacific and Chambers Global

Recognized as an 'Elite Practitioner' for Competition / Antitrust by Asialaw Profiles (2020 - 2021)

Recognized as a 'Leading Lawyer' (2021) and 'Recommended Lawyer' (2020) for Competition/Antitrust by Legal 500 Asia Pacific Named for Competition & Antitrust and International Trade & Bilateral Investment Treaties, as part of the 'Top 100 Lawyers List' published by the India Business Law Journal (2019 - 2020)

Recognized as a 'World's leading Competition lawyer and economist' by Who's Who Legal (2021)

Named a 'Thought Leader Global Elite' (2021) and 'Thought Leader' (2019 - 2020) by Who's Who Legal



HEMANGINI DADWAL

Partner

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Hemangini Dadwal is a partner based out of the Firm's Bangalore office.

She regularly advises on complex behavioral issues involving various sectors, including digital and online markets, information technology, pharmaceuticals, media, entertainment and automobiles. She has represented clients in several precedent-setting litigation mandates in various fora, including the CCI, the appellate tribunal, various High Courts and the Supreme Court. She is actively involved in the firm's merger control practice and has secured unconditional approvals for complex transactions. Hemangini regularly conducts compliance training sessions and contributes to reputed competition law journals.

Hemangini also maintains an interest in competition policy and contributed to the CLRC's working group recommendation on digital and new age markets and anti-competitive agreements. She is a member of the IBA and part of its Asia Pacific Regional Forum and Antitrust Section.

Recognized as an 'Up and Coming' competition lawyer by Chambers Asia-Pacific (2021)

Recognized as an 'Up and Coming' competition lawyer by Chambers Global (2021)

Recommended Lawyer for Competition/Antitrust by Legal 500 Asia Pacific (2021)

PROFILES



BHARAT BUDHOLIA

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Bharat Budholia is a Partner based out of the Mumbai office. He advises on the full range of competition matters, including cartel enforcement, abuse of dominance and merger control. He has represented Indian and multinational clients in precedent-setting matters, across diverse sectors, such as banking, sports, media, energy, steel, pharmaceuticals, financial services, FMCG, transport, telecom and airport infrastructure.

Bharat has extensive experience in handling high-stakes merger control matters. Some of his recent headline transactions include (i) P&G's US\$ 4.2 billion acquisition of Merck's consumer health business; (ii) Hindustan Unilever's US\$ 4.3 billion acquisition of GlaxoSmithKline's health food / drinks business; (iii) Blackstone–Embassy Real Estate Investment Trust's first of its kind US\$ 4.5 billion acquisition of certain real estate assets; and (iv) KKR's US\$ 550 million acquisition of Ramky Enviro Engineers.

Additionally, Bharat has advised on several high profile cartels and abuse of dominance cases before the CCI. Some of his recent work includes representing (i) the Board of Control for Cricket in India ("BCCI") in two cases relating to alleged abuse of dominance by the BCCI; (ii) Flipkart Group in an abuse of dominance matter; (iii) International Air Transport Limited ("IATA") in relation to an investigation for alleged abuse of dominance by IATA; (iii) a theatre owner in Tamil Nadu in relation to a collective boycott by the cinema producers associations in Tamil Nadu, Andhra Pradesh and Kerala; and (iv) KCT Group in a bid rigging matter. Bharat has also successfully argued behavioral matters before the CCI.

Recognized as a 'World's leading Competition lawyer and economist' by Who's Who Legal (2021)

Recognized as a 'Future Leader' by Who's Who Legal Competition Future Leaders – Partners (2019 - 2020)

Recommended for Competition/Antitrust by Legal 500 Asia Pacific (2020 - 2021)

Ranked for 'Competition/Antitrust' by Chambers Asia-Pacific (2021)

Ranked for 'Competition/Antitrust' by Chambers Global (2021)

Recognized as an 'Up and Coming' competition lawyer by Chambers and Partners (2018 – 2019)



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Aditi Gopalakrishnan is a partner based out of the Firm's Delhi office.

She routinely advises and represents clients in the technology, pharmaceutical, e-commerce and airline sectors with respect to antitrust investigations in all competition law forums in India. She has been involved in some of the most complex merger control filings in India, including negotiating remedies packages with the CCI and compliance with remedies. Aditi also has international experience representing clients before the European Commission and the UK's (erstwhile) Office of Fair Trading.

Aditi is also actively involved in framing competition policy, having contributed extensively to the CLRC's merger control working group. She is also a member of the ABA Section of Antitrust Law and has been a non-government advisor to the International Competition Law Network. Aditi contributes regularly to newspapers and leading international publications on competition law issues and has delivered several lectures on competition law.

Named as a 'Recommended Lawyer' for Competition/Antitrust by Legal 500 Asia Pacific (2021)

Recognized as "Future Leader-Partner" in Competition by Who's Who Legal (2020 - 2021)

Named a 'Rising Star' by Experts Guide (2019)

COMPETITION ACCOLADES



'Outstanding' for Competition / Antitrust by
Asialaw Profiles, 2021



Recognized as India's 'Competition & Antitrust Law Firm of the Year' by Lawyers Worldwide Awards, 2019



'Highly Recommended' for Competition / Antitrust by
Asialaw Profiles, 2020



Ranked a 'Tier 1 Firm' for Competition / Antitrust by
Benchmark Litigation, 2019



Ranked a 'Band 1 Firm' for Competition / Antitrust by
Chambers Global, 2021



Awarded 'Firm of the Year for Antitrust / Competition' by
Asian-mena Counsel, 2018 - 2019



'Highly Recommended' for Competition/ Antitrust by
Asialaw Profiles, 2019



Ranked a 'Band 1 Firm' for Competition/Antitrust by
Chambers Asia-Pacific, 2021



Named 'Best Overall Law Firm of the Year' for Competition & Antitrust by India Business Law Journal, 2020 - 2021



Ranked a 'Tier 1 Firm' for Antitrust & Competition by
Legal 500 Asia Pacific, 2021



'Recommended' for the Competition & Antitrust by
Asialaw Profiles, 2018



Named 'Competition Law Firm of the Year, India' by
Corporate INTL Global Awards, 2016



Ranked a 'Band 1 Firm' for Competition / Antitrust by
Chambers Global, 2017 - 2018



Ranked a 'Band 2 Firm' for Competition / Antitrust by
Chambers Asia-Pacific, 2019 - 2020

FIRM ACCOLADES



Consistently recognized as a leading law firm for Banking & Finance, Capital Markets, Corporate / M&A, Competition / Antitrust and Dispute Resolution by **Chambers Global**



Consistently recognized as a leading law firm for Banking & Finance, Capital Markets, Corporate / M&A, Competition / Antitrust, Dispute Resolution, Private Equity, Real Estate and Tax by **Chambers Asia-Pacific**



Ranked the No. 1 Law Firm in India (2019) and consistently recommended for Banking & Finance, Capital Markets, Corporate / M&A, Competition / Antitrust, Dispute Resolution, Private Equity and TMT by the **RSG India Report**



Consistently named 'Best Overall Law Firm' by the **India Business Law Journal**



Consistently rated as 'Outstanding' for Banking & Finance, Capital Markets, Corporate / M&A and Private Equity by **Asialaw Profiles**



Consistently rated as a 'Tier 1 Firm' for Banking, Capital Markets, Corporate / M&A and Private Equity by **IFLR1000**



Consistently rated as a 'Tier 1 Firm' for Banking & Finance, Capital Markets, Corporate / M&A, Investment Funds and Tax by **Legal 500 Asia-Pacific**



Consistently ranked No. 1 by Deal Count and Deal Volume by Asia-Pacific League Tables such as **Bloomberg, Mergermarket, Thomson Reuters and Venture Intelligence**

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