



Merger Control Comparative Guide



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Merger Control Comparative Guide

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1. Legal and enforcement framework

1. 1. Which legislative and regulatory provisions govern merger control in your jurisdiction?

India

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Merger control in India is governed by the Competition Act, 2002 – the primary legislation governing competition law in India – along with certain rules, regulations and guidelines made thereunder. The Competition Commission of India (CCI) is the competition regulator responsible for overseeing merger control in India.

The Indian merger control regime is mandatory and suspensory. This means that acquisitions, mergers or amalgamations which trigger a notification requirement with the CCI cannot be consummated until approval is received from the CCI.

The key rules and regulations governing merger control in India are set out below.

Competition (Criteria for Exemption of Combinations) Rules, 2024 ('Exemption Rules'): The Exemption Rules list certain categories of transactions where notification to the CCI need not be filed – for example:

- minority acquisitions;
- creeping acquisitions;
- demergers with mirrored shareholding; and
- intra-group mergers and acquisitions.

Competition (Minimum Value of Assets or Turnover) Rules, 2024 ('De Minimis Rules'): The *De Minimis* Rules provides for the *de minimis* exemption, which exempts from notification acquisitions, mergers and amalgamations where the target/merging enterprise has:

- assets (see question 2.6 for a definition) with a value of less than INR 4.5 billion; or
- turnover (see question 2.6 for a definition) of less than INR 12.5 billion.

Competition (Criteria of Combination) Rules, 2024 ('Green Channel Rules'):

The Green Channel Rules prescribe the criteria to be met for notifying a transaction under the green channel route, which is a simplified filing that can be made with the CCI where there are no overlaps between the parties.

CCI (Combinations) Regulations, 2024 ('Combination Regulations'): The Combination Regulations set out the detailed framework for notifying a filing with the CCI, including guidance on:

- the legal framework governing merger control; and
- the procedural/administrative aspects of the approval process.

The CCI also recently published an updated version of its Frequently Asked Questions, which provides:

- guidance on key aspects of the merger control regime; and
- helpful clarifications on the interpretation of key legal issues.

1. Legal and enforcement framework

1. 2. Do any special regimes apply in specific sectors (eg, national security, essential public services)?

India

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There are no special standalone merger control regimes for specific sectors. However, certain exemptions prescribed under the Competition Act apply to:

- banks;
- public financial institutions;
- foreign portfolio investors; and
- Category I alternative investment funds.

Please see question 2.7.

1. Legal and enforcement framework

1. 3. Which body is responsible for enforcing the merger control regime? What powers does it have?

India

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The CCI is responsible for enforcing merger control in India. The core objective of the CCI is to prevent practices that have an adverse effect on competition in India (AAEC); to this end, no transaction that triggers a notification requirement can be consummated without the CCI's approval. To enforce this objective, the CCI has the following broad powers.

Review combinations: When reviewing merger filings, the CCI undertakes a competition assessment to determine whether such a transaction will cause or is likely to cause an AAEC in India. This assessment may be based on the contents of the merger filing itself, although the CCI has the power to seek additional information from the parties.

Order remedies: At various stages of review, the CCI may propose remedies, either *suo motu* or based on third-party submissions (see question 5.2 for a detailed discussion of remedies). These remedies can be:

- structural, where the CCI orders the divestment of a business;
- behavioural, where the CCI imposes restrictions or otherwise controls the manner in which the parties conduct business; or
- a combination of the two.

Seek information: Vested with civil court powers under Section 36(2) of the Competition Act, the CCI may, as part of its review process:

- summon and examine individuals on oath;
- compel the production of documents; and
- receive evidence on affidavit.

The CCI also has the power to consult experts in economics, commerce, accountancy, international trade or other relevant fields to assist in the review process.



Block combinations: If the CCI concludes that a combination will have, or is likely to have, an AAEC, it can prohibit the transaction from taking effect. To date, however, no such combination has been blocked.

Levy penalties: The CCI has the power to impose a penalty of up to 1% of the assets or turnover of the parties or of the deal value of the transaction (whichever is higher) for gun-jumping (ie, consummating a notifiable transaction without or before seeking approval from the CCI). The CCI also has the power to impose monetary penalties on parties for:

- contravening its orders or directions;
- making false statements or withholding material information (relevant to the CCI's assessment of a transaction); and
- other contraventions relating to the submission of information.

Direct an investigation: The CCI also has the power to direct the director general to investigate a transaction and undertake a deeper review (to assess for its potential anti-competitive effects). However, so far, this power has never been used by the CCI.

Orders passed by the CCI can be appealed to the National Company Law Appellate Tribunal and subsequently to the Supreme Court within stipulated timeframes. For more information on appeals, please see question 6.1.

2. Definitions and scope of application

2. 1. What types of transactions are subject to the merger control regime?

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Any acquisition of control, shares, voting rights or assets, as well as mergers and amalgamations of enterprises that meet the prescribed asset, turnover or deal value thresholds (collectively, 'jurisdictional thresholds'), and that do not qualify for any exemptions available under the Competition Act (read with applicable rules and regulations), must be notified to the Competition Commission of India (CCI). For further details, see question 2.7.

2. Definitions and scope of application

2. 2. How is 'control' defined in the applicable laws and regulations?

India

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'Control' under the Competition Act is defined to mean the ability to exercise "material influence" in any manner whatsoever over the management or affairs or strategic decisions by:

- an enterprise(s), singly or jointly over another group/enterprise; or
- a group(s), singly or jointly, over another group or enterprise.

In its decisional practice, the CCI has identified the following categories/degrees of 'control':

- **Material influence:** The lowest form of control, codified in the Competition Act. It refers to the ability to influence the day-to-day operations and management of a business. Material influence can even be exercised by even a single investor being present on the board of a company.
- ***De jure* control:** A shareholding conferring more than 50% of the voting rights of the target.
- ***De facto* control:** Holding less than the majority of the voting rights but in practice controlling more than half the votes cast at the target's board meeting.
- **Negative control:** The ability to block special resolutions.
- **Operational control:** The acquisition of control over the target's operations through commercial arrangements.

In its decisional practice, the CCI has held that acquisition of affirmative voting rights over matters such as the following amount to conferring 'control':

- approval of the business plan;
- commencement or discontinuation of a line of business;
- changes in capital structure;
- appointment or removal of key managerial personnel;

- amendments to charter documents (articles and memorandum of association);
- approval of the annual budget;
- appointment or change of auditors; and
- changes in dividend policy.

The CCI, in its Frequently Asked Questions (FAQs), has clarified that a right to appoint even one director on the board of a company may be considered as allowing the acquirer to exercise ‘material influence’ (and therefore control) over the target, particularly where that director can influence the business activities of the target.

Investor protection rights that do not qualify as ‘control’: The CCI, in its FAQs, has also clarified that:

- rights such as information rights, tag-along rights, exit rights, anti-dilution rights or restrictions on share transfers to specific persons will not ordinarily be presumed to confer control; and
- the mere right to appoint a board observer does not, by itself, constitute material influence over the target enterprise.

2. Definitions and scope of application

2. 3. Is the acquisition of minority interests covered by the merger control regime, and if so, in what circumstances?

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Yes. The acquisition of minority shares or voting rights may trigger a filing requirement to the CCI if:

- the jurisdictional thresholds are breached; and
- no exemptions are available.

Specifically, the following categories of minority acquisitions are notifiable to the CCI.

First-time acquisition of shares/voting rights accompanied with controlling

rights: A minority acquisition of less than 25% made in the target for the first time triggers a filing if the acquirer will secure:

- the right or ability to appoint any directors/observers on the board of the target;
- the right to access any ‘commercially sensitive information’ in the target – defined under the CCI’s FAQs as information that is important in order for a company to protect, maintain or improve its market position (eg, in relation to pricing, costs, capacity utilisation, minutes of board meetings); or
- ‘control’ over the target (for a definition of control, please see question 2.2).

If there are overlaps (horizontal, vertical or complementary) between the business activities of the acquirer (including the acquirer group) and the target, a minority acquisition is notifiable under the following circumstances:

- It involves an acquisition of shareholding/voting rights above 10%; or
- It involves an acquisition of shareholding/voting rights below 10%, where any of the other conditions regarding directors/observers, commercially sensitive information and control (as detailed above) are also met.

Creeping acquisitions: The acquisition of shares/voting rights where the acquirer/acquirer group (prior to the acquisition) holds below 25% and (post the acquisition) will continue to hold below 25% is notifiable to the CCI if the acquirer will secure:

- ‘control’ over the business activities of the target;
- the right or ability to appoint a director/observer in the target for the first time through such acquisition; or
- any right to access commercially sensitive information (provided that access to such commercially sensitive information was not available prior to the transaction).

If there are overlaps (horizontal, vertical or complementary) between the business activities of the acquirer (including the acquirer group) and the target, the transaction is notifiable under the following circumstances:

- The incremental acquisition is of a shareholding above 5%; or

- The incremental acquisition is of a shareholding below 5%, but such acquisition would result in the acquirer (including through the acquirer group) moving from a total shareholding of below 10% to a shareholding of above 10% in the target. If an incremental acquisition is of less than 5% and the post-acquisition shareholding of the acquirer/acquirer group remains below 10%, a notification to the CCI will still be required if the acquirer will secure:
 - a director/observer right (for the first time);
 - commercially sensitive information (for the first time); or
 - the ability to secure control over the target.

2. Definitions and scope of application

2. 4. Are joint ventures covered by the merger control regime, and if so, in what circumstances?

India

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Yes, joint ventures (JVs) are subject to merger control if they meet the jurisdictional thresholds. Brownfield JVs that involve a transfer of assets into such JVs (eg, business divisions, technology/know-how, intellectual property) may require notification if the value of assets or turnover from such in the preceding financial year crossed the jurisdictional thresholds. In contrast, greenfield JVs are typically formed through capital contributions without asset transfers and therefore:

- benefit from the *de minimis* exemption; and
- will not breach the deal value threshold, since the JV entity will have had no turnover or users in the year preceding that in which the JV is formed.

Accordingly, the India nexus test of the deal value threshold will not be met (see question 2.6). For these reasons, greenfield JVs are typically exempt from CCI notification.

2. Definitions and scope of application

2. 5. Are foreign-to-foreign transactions covered by the merger control regime, and if so, in what circumstances?

India

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Yes. All acquisitions of control, shares, voting rights or assets that meet the jurisdictional thresholds are notifiable, regardless of whether the parties themselves are not located in India. That said, the jurisdictional thresholds themselves build in India-specific elements which typically do not trigger notification requirements for foreign-to-foreign mergers, although this will need to be tested each time. Examples include the following:

- Definition of ‘turnover’: The definition of ‘turnover’ excludes revenue generated through exports from customers located outside India. Accordingly, parties that generate no revenue ‘in India’ directly or through their subsidiaries typically benefit from the *de minimis* exemption.
- Global asset and turnover thresholds maintain an ‘Indian’ element: The global jurisdictional thresholds under the Indian merger control regime also include an ‘India’ asset or turnover requirement. As a result, transacting parties or their groups must meet this criterion to trigger a notification requirement in India.

Further details regarding the jurisdictional thresholds are provided in question 2.6.

2. Definitions and scope of application

2. 6. What are the jurisdictional thresholds that trigger the obligation to notify? How are these thresholds calculated?

India

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The jurisdictional thresholds that trigger the obligation to notify a transaction to the CCI are based on the assets and turnover of the parties or the deal value of the transaction, provided that the transaction is not exempt under any of the relevant exemptions (see question 2.7).



Asset and turnover thresholds: These thresholds are triggered when one of the following tests is satisfied:

- Parties test: The parties have:
 - combined domestic assets exceeding INR 25 billion;
 - combined domestic turnover exceeding INR 75 billion;
 - combined worldwide assets exceeding \$1.25 billion, including domestic assets of at least INR 12.5 billion; or
 - combined worldwide turnover exceeding \$3.75 billion, including domestic turnover of at least INR 37.5 billion.
- Group test: The group(s) to which the target will belong post the transaction, along with the target, individually or collectively, have:
 - in India, assets of over INR 100 billion or turnover of over INR 300 billion; or
 - worldwide:
 - assets of over \$5 billion, including at least INR 12.5 in India; or
 - turnover of over \$15 billion, including at least INR 37.5 billion in India.

‘Assets’ include the book value of the assets (from audited financial statements, including intellectual property) of the company in the year preceding that in which the transaction takes place. Similarly, ‘turnover’ includes the turnover certified by the statutory auditor and excludes intra-group sales, indirect taxes, trade discounts and revenue from exports for the year preceding that in which the transaction takes place.

Deal value threshold: A transaction triggers the deal value threshold where:

- the transaction has a global deal value of INR 20 billion; and
- the target has substantial business operations (SBO) in India.

The SBO test varies depending on whether the target entity offers ‘digital services’ in India, for which there is a distinct test. A ‘digital service’ is defined in the Combination Regulations as “the provision of a service or one or more pieces of digital content, or any other activity by means of an internet whether for consideration or otherwise to the end user or business user, as the case may be”. However, the CCI recently clarified through its FAQs that the sale of non-digital goods through a website will not automatically amount to a ‘digital service’.

SBO if the target provides digital services	SBO if the target does not provide digital services
• The number of business/end users is 10% or more of the global number of such users; • Gross merchandise value (GMV) for the last 12 months preceding the relevant date in India is 10% or more of its global GMV; or • Turnover for the preceding financial year in India is 10% or more of its global turnover derived from all products and services.	• GMV for the last 12 months preceding the relevant date in India is: ◦ 10% or more of its global GMV; and ◦ more than INR 5 billion; or • Turnover in India in the preceding financial year was: ◦ 10% or more of its global turnover derived from all products and services; and ◦ more than INR 5 billion.

‘Deal value’ includes:

- consideration for:
 - covenants, obligations or restrictions imposed on the seller or others;
 - interconnected steps or transactions; and
 - arrangements incidental to the transaction payable within two years; and
- amounts for:
 - technology transfer;
 - licensing;
 - supply;
 - branding; and
 - the full exercise of call options or share acquisition.

Obligation to notify: The merger control regime in India is mandatory and suspensory. Transactions that meet the jurisdictional thresholds and that cannot avail of any exemption:

- must be mandatorily notified to the CCI; and
- cannot be consummated without the CCI’s approval.

Failing to notify the CCI or consummating a transaction without waiting for approval from the CCI qualifies as ‘gun-jumping’ and may result in a penalty of up to 1% of the assets/turnover of the parties or of the deal value of the transaction (whichever is higher).

2. Definitions and scope of application

2. 7. Are any types of transactions exempt from the merger control regime?

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Yes. These are described below.

Exempted Combination Rules: The transaction-specific exemptions covered in the Exempted Combination Rules are as follows:

- Ordinary course of business: The acquisition of shares in the ordinary course of business by Securities and Exchange Board of India-registered (or equivalent foreign) underwriters, stockbrokers and mutual funds are exempt from notification, provided that such acquisitions:
 - in the case of underwriters/stockbrokers, do not confer more than 25% of the shares in the target; and
 - in the case of mutual fund companies, do not confer more than 10% of the shares in the target.
- Fresh acquisitions, solely as an investment: Fresh acquisitions of up to 25% of the shares/voting rights in the target solely as an investment are exempt, as long as certain conditions are met (see question 2.3).
- Incremental acquisitions resulting in a holding of less than 25%: Incremental acquisitions of shares/voting rights of up to a 25% holding in the target are exempt, as long as certain conditions are met (see question 2.3).
- Incremental acquisitions resulting in a holding of more than 25% but less than 50%: An acquisition of shares/voting rights in the target where the acquirer/acquirer group holds a shareholding of 25% or above in the target but will not (post the acquisition) hold 50% of the shares/voting rights in the target is exempt from notification, as long as there is no change in control in the target.
- Incremental acquisitions resulting in a holding of less than 50%: The acquisition of shares/voting rights in a target where the acquirer group or its entities will

hold more than 50% of the shares/voting rights post the acquisition is exempt, as long as there is no change in control in the target.

- Asset acquisitions are exempt:
 - in the ordinary course of business if only the current assets (stock in trade, raw materials and trade receivables) are acquired;
 - if the assets are solely as an investment and unrelated to the acquirer's business;
 - if the assets do not form part of the SBO of the target; and
 - if the acquisition does not result in the acquirer gaining control over the business activities of the entity that is selling the assets to the acquirer.
- Intra-group acquisitions:
 - The acquisition of assets within the same group is exempt, as long as there is no change of control over the assets being acquired.
 - Mergers/amalgamations within the group are exempt, as long as there is no change of control of the business activities of the merging/amalgamating enterprises.
- Demergers: Demergers are exempt where the shareholding held in the transferee company is (post demerger) mirrored in the resultant company.
- Acquisition of shares pursuant to bonus issue/stock splits/consolidation of face value of shares: Such acquisitions are exempt as long as they do not lead to a change in control.
- Buybacks of shares or subscription to rights issue of shares: These are exempt as long as they do not lead to a change in control.
- Acquisition of shares, control, voting rights or assets by an approved purchaser under Section 31 of the Competition Act: These are also exempt.

***De minimis* exemption:** The *De Minimis* Rules provides for the *de minimis* exemption, which exempts from notification acquisitions/mergers/amalgamations where the target/merging enterprise has:

- assets with a value of less than INR 4.5 billion; or
- turnover of less than INR 12.5 billion.



If only a portion of a business is being acquired, the value of the assets/turnover attributable to that portion of the business will be considered when assessing the applicability of the *de minimis* exemption. The *de minimis* exemption will not apply where the transaction meets the deal value threshold.

Certain financial institutions: The following are exempt from notification to the CCI:

- share subscriptions;
- provision of financing facilities;
- pursuant to a covenant of a loan agreement or investment agreement, acquisition by:
 - a public financial institution;
 - a foreign portfolio investor;
 - a bank; or
 - a Category I alternative investment fund;
- the reconstitution, full or partial transfer or amalgamation of nationalised banks (identified under specific banking laws).

3. Notification

3. 1. Is notification voluntary or mandatory? If mandatory, are there any exceptions where notification is not required?

India

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The merger control regime is mandatory and suspensory. Exemptions from notification are detailed in question 2.7.

3. Notification

3. 2. Is there an opportunity or requirement to discuss a planned transaction with the authority, informally and in confidence, in advance of formal notification?



India

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Any party intending to file a transaction with the Competition Commission of India (CCI) can approach the CCI for a pre-filing consultation (PFC). A PFC is voluntary and is intended to resolve any doubts or queries that may arise prior to a filing. The advice provided by the CCI during a PFC is not binding and verbal. Under a PFC, parties can seek clarifications with respect to filing procedures, interpretations of the Competition Act or the relevant rules or regulations from officers at the CCI. Parties can also discuss substantial issues relating to the transaction, including drafts of their form filings, along with supporting documents. The CCI typically schedules the consultation within 10–12 working days of the date of filing the PFC request over email. The PFC meeting is closed door and the CCI maintains confidentiality over such discussions.

3. Notification

3. 3. Who is responsible for filing the notification?

India

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In an acquisition, the acquirer must file the notice with the CCI. In the case of a merger/amalgamation, parties must file the notice jointly with the CCI.

3. Notification

3. 4. Are there any filing fees, and if so, what are they?

India

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- The fee for a simple Form I is INR 3 million.
- The fee for a more complex Form II is INR 9 million.

The person(s) filing the notice must pay the fees; and in case of a joint filing, the fee is payable jointly and severally by the parties.

3. Notification

3. 5. What information must be provided in the notification? What supporting documents must be provided?

India

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- Basic information, including the details of the parties (eg, name, address and contact details).
- Proof of payment of fees.
- Financial information, including:
 - assets and turnover in India and worldwide; and
 - deal value.
- A description of the combination, including the following:
 - scope;
 - structure;
 - steps and timelines;
 - rights acquired;
 - value;
 - foreign investment;
 - filings in other jurisdictions; and
 - rationale for the transaction.
- Activities of the parties to the combination, including:
 - details of their entities and trademarks/brand names in India; and
 - an overview of their businesses and a list of products/services.
- In case of overlaps, specific information on the overlapping products and relevant markets, including:
 - market size (by sales and volume);
 - market shares (by value and volume); and
 - details of key competitors, customers and suppliers.

Form II is more detailed and requires further information, including:

- the structure of the market and demand (including concentration indices such as Herfindahl–Hirschman Index/Four-Firm Concentration Ratio);

- the nature and extent of competition;
- product differentiation;
- switching costs;
- market disruptions; and
- the role of imports as a competitive constraint.

It also seeks details on:

- the applicable legal and regulatory framework;
 - research and development;
 - entry and exit conditions; and
 - other factors under Section 20(4) of the Competition Act.
- Supporting and ancillary documents, including:
 - proof of payment;
 - authorisation for signing the notice;
 - annual reports;
 - public and executive summaries of the combination;
 - shareholding charts;
 - copies of board approvals/agreements;
 - relevant market studies; and
 - a declaration.

Templates of Form I and Form II (setting out exhaustively all the questions that need to be answered) are set out as annexes to the Combination Regulations.

3. Notification

3. 6. Is there a deadline for filing the notification?

India

AZB & Partners

There is no statutory deadline for filing the notification, except in the case of an open offer, where notice must be filed with the CCI within 30 calendar days of acquiring shares or convertible securities on the regulated stock exchange. In all other cases, parties may file any time after executing the transaction documents (ie, acquisition agreements or board approvals for mergers/amalgamations or control acquisitions) but before taking any steps towards consummating the transaction.

3. Notification

3. 7. Can a transaction be notified prior to signing a definitive agreement?

India

AZB & Partners

No, a transaction cannot be notified before signing a definitive, binding agreement, board resolution or such other document as prescribed by the Competition Act, except in the case of an open offer as described in question 3.8. In all other cases, notice may be filed with the CCI any time after execution of the transaction documents (acquisition agreement or board approval for mergers/amalgamations/acquisition of control), but before consummation.

3. Notification

3. 8. Are the parties required to delay closing of the transaction until clearance is granted?

India

AZB & Partners

The merger control regime in India is suspensory, and accordingly, parties cannot close a transaction until approval is received from the CCI. If the CCI does not form a *prima facie* opinion on whether the transaction causes adverse effect on competition in India within 30 calendar days of filing, the transaction is deemed approved. However, in case of open offers on the stock exchange, parties can acquire shares or securities and file a notice with the CCI within 30 calendar days of such an acquisition. During this period, parties exercise very limited rights in the target (see question 3.6).

3. Notification

3. 9. Will the notification be publicly announced by the authority? If so, how will commercially sensitive information be protected?

India

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The notification filed by the transacting parties is not published by the CCI. However, as a part of the notice, parties must submit a public summary (maximum 1,000 words), which requires them to set out the broad details regarding:

- the transaction description;
- the business activities of the parties; and
- the key relevant markets.

This summary is published on the CCI's website on the day of filing.

The CCI follows a self-certification regime for information which the parties wish to keep confidential. To this end, the parties must file an affidavit with the CCI (as a part of the note) which certifies that:

- the information is not available in the public domain;
- the information is known only to limited:
 - employees;
 - suppliers;
 - distributors; and
 - others involved in the party's business;
- adequate measures have been taken by the party to guard the secrecy of such information; and
- the information cannot be acquired or duplicated by others.

Finally, the CCI will publish its final approval (or rejection) order, which will offer a more detailed description of the transaction and the CCI's analysis of overlaps and reasons for its decision. If the CCI is of the view that the information for which confidentiality was claimed should be included in the approval order, it will ask the parties to waive confidentiality over such information. If the parties refuse to do so, the CCI will prepare two versions of the approval order:

- a confidential version of the approval order sent only to the parties; and

- a public version of the approval order (redacting the confidential information) that is published on CCI's website.

4. Review process

4. 1. What is the review process and what is the timetable for that process?

India

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The outer limit for approving a transaction is 150 calendar days (reduced from 210 days by a 2023 amendment to the Competition Act). This review period is divided into two parts:

- The first 30 calendar day period is the Phase I review; and
- If a detailed Phase II review is needed, the overall timeline extends beyond 30 calendar days to an outer limit of 150 calendar days.

Phase I review: There is a 10-working-day period from the date on which the notice is filed with the Competition Commission of India (CCI), within which the CCI must assess whether the form filed is complete. If not, the parties must respond with the missing information within the stipulated timeframe. The 30-calendar day Phase I review begins once the parties have responded to the CCI's defects notice and the CCI is satisfied with their response. Most non-complex, straightforward filings made under Form I to the CCI are cleared within the 30-calendar day period.

Phase II investigation: If the CCI is of the opinion that the transaction is likely to cause an adverse effect on competition (AAEC) in India, it will issue a show cause notice (SCN) calling upon the parties to respond within 15 calendar days. After reviewing the response to the SCN and offered remedies (if any), if the CCI is still of the opinion that the transaction may cause AAEC, a Phase II investigation will be initiated. Otherwise, the CCI will approve the transaction. For more details regarding the Phase II investigation, please refer see question 5.2.

4. Review process

4. 2. Are there any formal or informal ways of accelerating the timetable for review? Can the authority suspend the timetable for review?

India

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Formal ways of engaging at the pre-filing stage: Pre-engaging with the CCI before formally filing the notice by way of a pre-filing consultation (PFC) gives the CCI additional time to review the matter, reducing the likelihood of further requests for information. For more details on the PFC process, please see question 3.2.

Informal ways of engaging at the post-filing stage: The parties should proactively engage with the CCI case officer post receipt of a request for information to see what concerns or clarifications the CCI would like the parties to address. The case team may provide insights and comments which can be included in the formal submissions made to the CCI.

The CCI's review clock is automatically suspended while the parties are responding to additional information requests.

4. Review process

4. 3. Is there a simplified review process? If so, in what circumstances will it apply?

India

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In 2019, the CCI introduced the 'Green Channel route', which allows for a transaction to be notified through Form I where the acquirer group and the target and their affiliates have no horizontal, vertical or complementary overlaps in India. An enterprise is considered to be an affiliate of another enterprise if that enterprise:

- holds more than 10% of the shares or voting rights of the enterprise; or
- has:

- the right or ability to have board representation (ie, a director or observer seat in the enterprise); and
- the right or ability to access commercially sensitive information of the enterprise.

A green channel filing is deemed approved from the time it is filed with the CCI. It is prudent to engage in a PFC before filing a green channel form, to ensure that the CCI agrees that the transaction can benefit from the green channel route and avoid the approval being subsequently revoked.

4. Review process

4. 4. To what extent will the authority cooperate with its counterparts in other jurisdictions during the review process?

India

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The CCI is empowered to execute memoranda of understanding with competition regulators in other jurisdictions and to this end has entered into arrangements with nine competition authorities in addition to those of the other BRICS nations (Brazil, Russia, China and South Africa). The CCI may discuss specific transactions with foreign competition agencies, especially in the case of global transactions.

4. Review process

4. 5. What information-gathering powers does the authority have during the review process?

India

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The CCI has extensive data-gathering powers during its review. Apart from the extensive information that the parties must submit as part of their notice (including copies of internal board material, documents or other materials presented to the board of directors of the transacting parties in relation to the transaction), the CCI can ask for any other details in relation to the transaction through requests for further information, including a defects notice. In addition, the CCI can:

- reach out directly to party representatives and request meetings; and
- reach out to third parties during its review, particularly for complex transactions involving significant overlaps.

The CCI is empowered to do this in both Phase I and Phase II reviews. After the initiation of a Phase II investigation, the CCI directs parties to publish details of the combination and seek written objections from the public through a notice published in leading newspapers and its website within 10 calendar days of such a publication.

Another power of the CCI (which has not been invoked to date) is the power to direct the director general to prepare a report to ascertain whether a transaction has caused or is likely to cause an AAEC in India. The director general (as a part of their investigation report) will:

- conduct an elaborate fact-finding exercise, including gathering additional information from parties and third parties; and
- based on this information, prepare a report and present it to the CCI for it to rely on in its review process.

The CCI can also:

- summon and enforce attendance for examination under oath;
- issue commissions for the examination of witnesses or documents; and
- call upon experts in the fields of economics, commerce or other disciplines to assist it with its inquiries.

4. Review process

4. 6. Is there an opportunity for third parties to participate in the review process?

India

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Yes, at the CCI's behest in the following manner:

- In its Phase I review, the CCI can reach out to third parties to seek additional information.
- The CCI can also reach out to third parties in its Phase II review, pursuant to the response to the public notice, as described in question 4.5.

4. Review process

4. 7. In cross-border transactions, is a local carve-out possible to avoid delaying closing while the review is ongoing?

India

AZB & Partners

No. A global deal that meets the jurisdictional thresholds and that does not qualify for any exemptions is notifiable and subject to the CCI's suspensory regime; a local carveout is not possible. In its order imposing a gun-jumping penalty in the *Baxalta/Baxter* case, the CCI clarified this and held that deferred closing for the Indian leg for a global transaction (where the rest of the transaction had been consummated) would constitute gun-jumping, since the parties to such transaction would have integrated globally and as a result the independence of such parties in the deferred jurisdictions/geographies would be compromised. As a result, the CCI would consider the global deal to be the trigger and therefore the suspensory regime in India would require parties to seek approval from the CCI before closing the global deal.

4. Review process

4. 8. What substantive test will the authority apply in reviewing the transaction? Does this test vary depending on sector?

Under Sections 6(2) and 20(4) of the Competition Act, the CCI must review a combination and assess whether it causes or is likely to cause an AAEC in the relevant market in India. Although the test is sector agnostic, depending on the strategic nature of the sector to the economy, the CCI may scrutinise the transaction in more detail. For example, the CCI is likely to scrutinise transactions involving:

- digital markets;
- the health sector; or
- the pharmaceuticals sector.

In assessing whether there is an AAEC, the CCI can take into account the following factors:

- actual and potential levels of competition through imports in the market;
- the extent of any barriers to entry into the market;
- the level of concentration in the market;
- the degree of countervailing power in the market;
- the likelihood that the combination will result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- the extent of effective competition that is likely to sustain in a market;
- the extent to which substitutes are available or are likely to be available in the market;
- the market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- the likelihood that the combination will result in the removal of a vigorous and effective competitor or competitors in the market;
- the nature and extent of vertical integration in the market;
- the possibility of a failing business;
- the nature and extent of innovation;
- the relative advantage, by way of the contribution to the economic development, of any combination that will have or is likely to have an AAEC; and
- whether the benefits of the combination outweigh the adverse impact of the combination, if any.

4. Review process

4. 9. Does a different substantive test apply to joint ventures?

India

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No different substantive test applies to joint ventures – the same test set out in question 4.8 will apply.

4. Review process

4. 10. What theories of harm will the authority consider when reviewing the transaction? Will the authority consider any non-competition related issues (eg, labour or social issues)?

India

AZB & Partners

In reviewing a combination, the CCI will assess whether the transaction is likely to cause an AAEC in the relevant market(s) in India, guided by the factors set out in question 4.8. The CCI's jurisdiction is limited to reviewing competition-related issues in India and its review must be limited to reviewing the transaction for any AAEC in India.

5. Remedies

5. 1. Can the parties negotiate remedies to address any competition concerns identified? If so, what types of remedies may be accepted?

India

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Yes. The parties can offer remedies:

- as part of their notification during the Competition Commission of India's (CCI) review;
- when responding to a show cause notice (SCN); or
- at any time during a Phase II review.

The CCI can then ask for modifications to these remedies (eg, divestments, hold separate obligations, ring fencing between the parties). The types of remedies are detailed below:

- Structural remedies: These involve changes to the structure of the transaction or the businesses involved – most commonly through divestiture of overlapping business units, assets or shares.
- Behavioural remedies: These are commitments regarding the future conduct of the merged entity, such as:
 - non-exclusive supply obligations;
 - access to technology or infrastructure;
 - restrictions on tying/bundling; or
 - commitments not to increase prices or reduce output for a specified period.
- Hybrid remedies: In some cases, the CCI may accept a combination of structural and behavioural remedies to comprehensively address competition concerns.

Further details with respect to the process are set out in question 5.2.

5. Remedies

5. 2. What are the procedural steps for negotiating and submitting remedies? Can remedies be proposed at any time throughout the review process?

India
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Both the CCI and the parties can propose remedies to address competition concerns that may arise from a notified transaction. The following are the stages in which remedies can be proposed by both the CCI and the transacting parties:

- During the Phase I review: The parties or the CCI may propose modifications during the CCI's review of the notified transaction. However, these must be offered within 10 working days of:
 - the date of the CCI filing; or
 - the date after the CCI clears any defects following the issuance of a request for information or defects notice.
- In response to an SCN (Phase I review): The parties can propose modifications as part of their response to the SCN within 15 calendar days of receiving the SCN.
- During a Phase II review: After receiving the response to the SCN and any objections to the combination from the public notice (including receipt of the director general's report, if ordered by the CCI), the CCI may:
 - issue a statement of objections identifying an adverse effect on competition (AAEC) in India; and
 - direct the parties to respond within 25 calendar days of receipt as to why the combination should be allowed to take effect.

The parties can offer their remedies in response to the statement of objections along with suitable explanations. If the CCI is not satisfied with the modifications, it will, within seven calendar days of receipt of the response:

- communicate why the modifications are not sufficient to eliminate the AAEC; and
- call upon the parties to offer revised modifications within 12 calendar days.

At this stage, instead of asking the parties to offer revised modifications, the CCI can also propose modifications *suo moto*.

5. Remedies

5. 3. To what extent have remedies been imposed in foreign-to-foreign transactions?

Remedies have been imposed in foreign-to-foreign transactions where parties also have high market shares in India. The imposition of remedies is not linked to whether a transaction is global but rather relates to the Indian presence and the effect of the transaction on the Indian market. The recent *Ruby/Singtel* decision concerned Ruby Asia Holdings II Pte Ltd (an affiliate of the KKR group) and Singtel Telecommunications Ltd's acquisition of a shareholding in STT GDC (a wholly owned subsidiary of Singapore Technologies Telemedia). In its review, the CCI noted that STT GDC competed with Singtel's indirect subsidiary, Nxtra Data Ltd, in providing 'data centre colocation services' across several Indian cities. On account of their high combined market shares in some cities, the CCI accepted a voluntary remedy submitted by the parties that precluded STT GDC and Singtel from exchanging any commercially sensitive information and required them to be run independently.

6. Appeal

6. 1. Can the parties appeal the authority's decision? If so, which decisions of the authority can be appealed (eg, all decisions or just the final decision) and what sort of appeal will the reviewing court or tribunal conduct (eg, will it be limited to errors of law or will it conduct a full review of all facts and evidence)?

India

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Yes. The parties can appeal the following Competition Commission of India (CCI) decisions to the National Company Law Appellate Tribunal (NCLAT):

- the declaration of a notice filed by the parties as *void ab initio* due to the provision of incorrect or incomplete information;
- a decision to approve/block/order remedies/accept remedies in a combination; and
- penalties imposed for:
 - failure to comply with directions of the CCI or director general;
 - gun jumping;

- false statements; or
- contraventions relating to the furnishing of information (Sections 43, 43A, 44 and 45 of the Competition Act).

The CCI's order can be filed before the NCLAT within 60 days. The NCLAT's decision may be appealed before the Supreme Court within 60 days of receipt. Thus far, no combinations have been blocked by the CCI. Instead, remedies have been directed in 32 cases. Only seven merger-related appeals to the NCLAT have been filed and none have succeeded.

Appeals before the NCLAT and the Supreme Court can extend to a full review of all facts and evidence. Thus far, very few approval orders have been appealed to the NCLAT and no appeals have been allowed. The NCLAT looks broadly at whether the CCI has undertaken the adverse effect on competition in India analysis appropriately.

6. Appeal

6. 2. Can third parties appeal the authority's decision, and if so, in what circumstances?

India

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Any person aggrieved by a CCI order may appeal to the NCLAT. In practice, third-party appeals in combination cases are uncommon. In a recent case involving an appeal against a combination order by an industry body, the NCLAT found that the industry body could appeal the combination decision by the CCI as it fell within the definition of an 'aggrieved person' under the Competition Act (*UP Glass Manufacturers Syndicate v CCI*).

7. Penalties and sanctions

7. 1. If notification is mandatory, what sanctions may be imposed for failure to notify? In practice, does the relevant authority frequently impose sanctions for failure to notify?

India
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If a transaction meets the jurisdictional thresholds and no exemptions are available, and the transaction is not notified, the Competition Commission of India (CCI) can impose penalties for ‘gun-jumping’ – that is, consummating a combination before the CCI has granted approval. Under Section 43A of the Competition Act, the CCI has the power to impose penalties which may extend to 1% of the total turnover or assets or the deal value, whichever is higher. The CCI can impose this penalty taking into account the factors in the Penalty Guidelines.

In practice, over the last five years, the CCI has imposed only token penalties, ranging from INR 400,000 to INR 10 million. The highest penalty imposed by the CCI was INR 50 million and the lowest penalty was INR 400,000 (with the only aberration being the *Amazon* case, in which an INR 2 billion penalty was imposed. There have also been a few instances in which no penalties have been imposed for gun-jumping.

7. Penalties and sanctions

7. 2. If there is a suspensory obligation, what sanctions may be imposed if the transaction closes while the review is ongoing?

India
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The Indian merger control regime is mandatory and suspensory. If a transaction closes while the review is ongoing, the CCI may impose penalties on the parties to the combination under Section 43A of the Competition Act, as described in question 7.1.

7. Penalties and sanctions

7. 3. How is compliance with conditions of approval and sanctions monitored? What sanctions may be imposed for failure to comply?

India
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The CCI may appoint independent monitoring agencies (eg, accounting or consulting firms) to oversee compliance with conditions attached to approvals under Section 31 of the Competition Act or other provisions (Regulation 54 of the CCI (General) Regulations, 2024). These agencies:

- monitor implementation;
- report non-compliance; and
- submit periodic reports to the CCI.

Failure to comply with conditions may result in action under Section 42 of the Competition Act, which empowers the CCI to:

- impose fines of up to INR 100,000 per day of non-compliance (subject to a maximum of INR 100 million); and
- in case of continued default, even initiate criminal proceedings against the relevant individuals, which may result in punishments of:
 - imprisonment for up to three years;
 - a fine of up to INR 250 million; or
 - both, where the court deems fit.

8. Trends and predictions

8. 1. How would you describe the current merger control landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

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Faster merger approvals: The Competition Commission of India (CCI) has fast-tracked the approval process by approving transactions within 15–16 working days of the notice being filed with the CCI.



Low number of tech transactions under deal value threshold: The deal value threshold was introduced to capture tech-sector transactions that fell outside the traditional asset and turnover thresholds in India's digital markets. Since its introduction, however, only 34 transactions have been notified under the deal value threshold regime, with less than 10% relating to the digital sector.

Heightened gun-jumping scrutiny: In the first eight months of 2025, four orders imposing penalties for gun-jumping were imposed, compared to just one such order in 2024.

New willingness to accept behavioural remedies: Over the past two years, the CCI has increasingly accepted behavioural remedies, even in cases with very high market shares (in two out of seven cases). For instance, in the *Ruby/Singtel* filing, where the combined market shares were around 90% in certain cases, the CCI accepted voluntary modifications preventing the exchange of commercially sensitive information between the acquirer's indirect subsidiary and the target. Similarly, in the *Air India/Vistara* filing, which involved the merger of two of India's largest airlines, the market shares in some markets were as high as 80–85% and the CCI accepted voluntary modifications to maintain 'annual air passenger transport capacity' on certain routes. This is in contrast to the early years of the merger control regime, when the CCI typically ordered structural remedies (in the form of divestments).

Proposal to lower deal value threshold: In August, the Standing Committee on Finance presented its report on the CCI's role in the digital landscape. Although the report largely concerned digital competition law, it recommended that the deal value threshold of INR 20 billion be reviewed and lowered to ensure that the acquisition of micro, small and medium-sized enterprises by dominant players does not fall outside the CCI's jurisdiction of review.

New Combination Regulations and Frequently Asked Questions (FAQs): In late 2024:

- the CCI published the newly amended Combination Regulations and Penalty Guidelines; and
- the Ministry of Corporate Affairs published:
 - the Exemption Rules;
 - the Green Channel Rules; and

- the *De Minimis* Rules.

These regulations and guidelines have updated the existing framework and more CCI decisions on their interpretations are awaited. The CCI also published its FAQs this year, providing interpretations of the new rules and regulations, including:

- the definition of ‘commercially sensitive information’ in interpreting the Exemption Rules;
- guidance on the ‘material influence’ control threshold; and
- clarifications on certain ambiguities with respect to open offers and interconnected transactions.

Phase II investigation initiated after almost six years: Bharat Forge’s acquisition of AAM India Manufacturing marks the first Phase II investigation opened by the CCI in the last six years, highlighting the speedy approvals in the Indian merger control regime over the past few years.

CCI approval is mandatory before creditors’ committee examination: The Supreme Court recently clarified the relationship between the Competition Act and the Insolvency and Bankruptcy Code, 2016. It held that under Section 31(4) of the code, CCI approval must be obtained *before* the creditors’ committee approves a resolution plan – making the provision mandatory. This marks a departure from earlier National Company Law Appellate Tribunal rulings, which had treated Section 31(4) as directory (ie, optional), allowing acquirers in insolvency proceedings to seek CCI approval *after* creditors’ committee approval.

9. Tips and traps

9. 1. What are your top tips for smooth merger clearance and what potential sticking points would you highlight?

India
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The following are some tips for smooth merger clearance:

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- Adequate disclosure: Ensure adequate disclosure in your filings to avoid multiple requests for information. It is better to make relevant disclosures to avoid further follow-on questions by way of requests for information, which lead to clock stops.
 - Pre-filing consultation (PFC): When in doubt, do a PFC. The Competition Commission of India (CCI) typically schedules a PFC within 10–12 working days of receiving an email request. While drafting, keep in mind that novel legal questions may delay timelines if a PFC is required. Accordingly, factor in time for scheduling a PFC with the CCI when such issues are anticipated.
 - Extra caution with green channel filings: The Green Channel Rules require mapping the target's overlaps with the personal investments of the ultimate controlling person of the acquirer group. Separately, the CCI will also seek confirmation from parties that there are indeed no overlaps with the 'affiliates' of 'affiliates', which results in a never-ending exercise of mapping overlaps coupled with a risk of gun-jumping proceedings and a penalty.
 - Follow CCI precedents: While the CCI is technically not bound by its precedents, it generally stays consistent with the position it takes in its written orders. It is therefore advisable to keep track of CCI precedents and follow the position taken by the CCI, especially when defining relevant markets or assessing the applicability of the exemptions available under the legal framework.



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