COMMON OWNERSHIP AND COMPETITION LAW (INVISIBLE COLLUSION): SHOULD INDIA RECOGNISE INSTITUTIONAL INVESTOR CONCENTRATION AS A NEW ANTITRUST HARM?

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ABSTRACT

The swift growth of large institutional shareholders has reshaped today's capital markets, as a limited set of asset managers now more often controls sizable shareholdings in rival companies within a single sector. Often labelled "common ownership," this development has sparked a significant but still unsettled discussion within competition law. Even though standard antitrust systems mainly target overt collusion, restrictive arrangements, exploitative behaviour, and consolidation through mergers. Common ownership raises a quieter difficulty by possibly shifting competitive motivations absent any explicit cooperation. The article explores whether this new type of investor concentration represents a separate antitrust issue that Indian competition law can no longer ignore. Using economic research and comparing trends in the United States, the European Union, and the United Kingdom, the paperoffers a critical assessment of both the conceptual basis and the empirical constraints surrounding the common-ownership claim. It contends that the current record does not warrant viewing common ownership as automatically anti-competitive, yet it also fails to justify leaving it wholly unregulated. Instead of imposing sweeping bans or importing overseas regulatory templates, India should craft a careful, evidence-led approach based on proven competitive injury, industry-tailored vulnerabilities, and strict economic evaluation. This path would protect the efficiency gains linked to institutional investing while ensuring that changing ownership patterns do not erode the core aims of competition law.

Keywords: Common Ownership, Institutional Investors, Competition Law, Antitrust, Corporate Governance, Market Concentration, Indian Competition Law.

I. Introduction

Competition law has long concentrated on businesses that vie head-to-head within a market. It proceeds on the premise that distinct enterprises act to advance their own separate business goals. Shifts in contemporary capital markets are putting that premise under mounting pressure. Today, large financial institutions hold sizable stakes in several firms that compete within the same sector. Across the globe, their expanding role has altered patterns of corporate ownership.

In this setting, common ownership has become a notable issue. The term describes circumstances in which one institutional investor owns shares in competing businesses. Opponents contend that this arrangement can weaken the drive to compete forcefully. Even in absence of any express collusion, companies might lean toward predictable returns instead of hard-fought competition. That prospect unsettles the traditional underpinnings of competition law. Current legal regimes mainly focus on collusive deals, combinations, or solo firm behaviour in markets. They are not well designed to capture indirect impacts on competition that stem from investor holding structures.

The issue is still unresolved. Research in economics provides inconsistent results, and regulators respond differently from one legal system to another. India still lacks a clear, consistent legal stance on the matter. With institutional capital continuing to grow, the lack of definite regulatory direction warrants more careful scrutiny.

This article assesses whether India should treat common ownership as its own competition-law problem. It closely examines economic reasoning, regulatory moves in other systems, and gaps in the existing legal structure. It supports a restrained, proof-driven course instead of sweeping regulatory action.

II. Common Ownership and the Economics of Competition: Competing Theories

Common ownership exists when one investor owns sizable equity stakes in companies that compete in the same industry. Major institutional investors often pursue broad, diversified portfolios. As a result, they can hold shares in multiple direct competitors at the same time. This form of ownership has spread widely across international financial markets.

Standard competition models presume each business aims to maximise its own earnings. When ownership is shared, those motivations can shift. An investor with stakes in rivals gains when the group's total profits rise. Fierce rivalry that damages one firm in the investor's set can lower the investor's total return. For this reason, some academics suggest executives might steer away from sharp pricing battles or high-risk competitive moves.

Interest in this problem grew after major economic research associated shared ownership with elevated prices in tightly concentrated sectors. Airlines and banking were frequently cited as key illustrations in the discussion. On this account, investor-driven incentives may weaken rivalry even without any open coordination among companies. The supposed damage is thus indirect and hard to identify using standard antitrust tools.

The proposal is still widely disputed. Many researchers challenge its premises as well as the strength of the data behind it. They maintain that big institutions usually behave as passive owners. Most of such investors do not run day-to-day operations or set competitive plans. Opponents further argue that the results depend heavily on the methods used and which industries are chosen. Comparable outcomes could arise from other economic influences instead of shared ownership by itself.

Shared ownership can also bring meaningful economic advantages. Investors who diversify can allocate capital more effectively and limit exposure to risk. They may also press for stronger governance and a focus on long-run value. Overly strict rules might deter investment and make markets less efficient. It could also raise compliance expenses while yielding no clear improvement in competition.

Accordingly, the current study is not decisive. It seems unwarranted to either allow it without limits or denounce it across the board. Competition policy should not presume shared ownership is automatically harmful to rivalry. Instead, enforcement should rest on solid economic proof showing real injury within particular markets. This method more effectively weighs investor efficiencies against competitive results in the marketplace.

III. The Blind Spots of Indian Competition Law

Indian competition law was created to oversee recognizable types of conduct that harms competition. Its scheme mainly deals with arrangements, misuse of market power, and mergers or acquisitions. For each of these, proof is needed that the behaviour could limit competitive conditions. As a result, the statute concentrates on actions in the marketplace, not on patterns of shareholding.

That orientation produces major difficulties once shared shareholders are considered. Large financial institutions typically act as hands-off owners and seldom take part in routine business choices. Any sway they have tends to be subtle and hard to prove. Because of this, current rules find it hard to address possible effects on rivalry that stem only from overlapping investors.

Merger review shows this weakness plainly. The merger rules ask whether a purchase could lead to a noticeable harmful impact on competition. Small stakes held by institutional investors frequently avoid detailed examination. Under today's tests, those holdings often do not qualify as obtaining control. Even if sizeable reciprocal stakes are present, it is still hard to prove that any harm to competition has been done.

Laws dealing with anti-competitive arrangements run into comparable problems. Usually, these laws call for proof of an arrangement, mutual understanding, or coordinated behaviour between firms that compete. Shared investors do not automatically imply collusion or collaboration among competing companies. Without straightforward proof, enforcement becomes especially hard.

The rules on misuse of dominance are similarly constrained. They apply only where a firm with dominance carries out conduct that excludes rivals or exploits customers. Shared shareholding, by contrast, relates to what motivates investors, not the actions of a single firm in the market. A shareholder with broad holdings could shape competitive results without violating rules, what the statute demands for dominance abuse.

These shortcomings do not automatically mean the current laws and regulations are defective. Competition rules are not meant to govern every hypothetical worry about markets. Still, the existing structure was not built to evaluate indirect incentives tied to ownership or the economic results that might follow. Whether such incentives truly lessen rivalry is a matter for evidence and measurement. For that reason, Indian competition law should build methods to assess these assertions before moving toward any major change in regulation.

IV. Comparative Perspectives: Regulatory Hesitation and Emerging Approaches

Across leading competition-law systems, the question of shared shareholding has drawn sustained scrutiny. Although scholars have shown increasing curiosity, regulators have largely proceeded carefully. No authority has determined that this form of overlapping investment is, by itself, harmful to rivalry. Rather, decision-makers keep weighing competitive risks against the gains associated with holding broad portfolios.

In this field , the United States has played a prominent role. Initial data-driven research indicated that overlapping investors might dampen rivalry in highly concentrated sectors. Those results led some to urge tougher antitrust action. Yet judges and enforcement bodies have been unwilling to embrace broad, across-the-board changes. A number of economists challenged how dependable those studies were. In their view, elevated prices might stem from various market conditions that have nothing to do with who owns what. As a result, the United States has leaned toward further study instead of swift regulatory action.

The European Union has taken an approach that is cautious in much the same way. EU competition rules have long emphasised proven limits on competition, not merely speculative dangers. The Commission has recognised that institutional shareholders are becoming more significant. Still, it has not set up a distinct legal regime aimed at shared ownership. However there are proof that competition has in fact been harmed. This stance aligns with the EU preference for effects-focused assessment.

The United Kingdom, too, has acknowledged the topic while refraining from passing targeted statutes. Its competition bodies keep tracking shifts in global academic work. Current competition rules remain the main tool for regulation. Accordingly, the UK opts for gradual development rather than sweeping legislative overhaul.

Looking across these systems, a key similarity emerges. Not one treats overlapping ownership, standing alone, as enough to establish anti-competitive behaviour. Their restraint mirrors how uncertain the link is between investor holdings and how markets perform. Overreaching action could deter capital without delivering clear, measurable gains for competition.

From these patterns, India can take instructive guidance. International experience can guide analysist , but it does not supply off-the-shelf answers. India’s capital markets vary materially in ownership structures, levels of concentration, and regulatory aims. Copying foreign rules completely could therefore generate avoidable doubt. Instead, India ought to bolster economic reasoning in competition enforcement. Any later changes should rest on sound empirical work showing real harm in markets. This path would protect investment efficiency while upholding the core purpose of competition law.

V. Should India Recognise Common Ownership as a Separate Antitrust Concern?

As institutional investors gain greater sway, Indian competition policy faces a key issue. Ought shared stakes across rivals be treated as its own distinct antitrust risk? Reaching a conclusion calls for measured scrutiny, not eager rulemaking. If the law reacts too quickly, it could add doubt rather than deliver competitive gains.

Those favouring intervention contend that established competition rules miss quieter shifts in how firms are motivated. More and more, large funds own meaningful portions of rival companies within tightly concentrated sectors. This pattern can push executives to pursue returns for the whole sector instead of fighting hard for market share. Even in absence of any direct contact, companies can slowly move toward softer rivalry as investor incentives realign. Should data ultimately confirm these worries, current doctrines might not spot the harm or provide an effective fix.

The contrary position merits the same seriousness. Most large funds behave as hands-off owners aiming for broad, diversified returns, not day-to-day control. Executives still take business choices within fiduciary obligations and autonomous governance arrangements. For that reason, shared ownership alone cannot, by itself, prove anti-competitive purpose or market skew. Casting diversified holdings as automatically suspect may chill investment, thin trading depth, and raise compliance expenses for investors. These outcomes would erode efficiency while offering no assurance of tougher competition.

Excessive enforcement is a further major risk. Historically, competition rules have stepped in only once where the clear injury to rival is shown. Broadening exposure on the basis of conjectural accounts could erode predictability for both investors and firms. Regulators should not act merely because scholars argue or models suggest a possibility. Good policy demands persuasive real-world proof that ownership patterns have meaningfully weakened rivalry in defined markets.

Implementation difficulties are also extreme. Shared ownership usually lacks explicit deals, coordinated actions, or direct influence over managers. As a result, enforcers may find it hard to separate damaging patterns from routine diversification. Linking an investor’s holdings to diminished rivalry calls for advanced economic reasoning. Pursuing such matters requires large datasets, evidence of conduct, and deep knowledge of particular industries. Without strict analytical benchmarks, outcomes could become uneven and hard to foresee.

India, then, should refrain from immediately treating shared ownership as a standalone antitrust offence via swift statutory change. Rather, the Competition Commission of India ought to build, over time, a clear analytical approach anchored in economic proof. Its starting point should be a proof-driven inquiry showing that shared ownership has led to observable anti-competitive results in a specific market. Simple overlap in shareholders must never, on its own, trigger an assumption of illegality.

Next, oversight should stay tailored to particular sectors. Fields marked by heavy concentration, few choices for buyers, and sizable institutional stakes warrant closer review than dispersed, intensely competitive arenas. This targeting would use enforcement capacity more wisely while limiting needless regulatory load.

Third, reporting requirements should be tightened for major cross-holdings held by large institutions. Improved visibility would let authorities track shifting ownership arrangements without deterring lawful investment. Transparency by itself would not amount to liability, yet it would support better-informed supervision.

Lastly, enforcement should be based on an effects-focused economic test applied individually. Authorities should review real outcomes in the market, pricing patterns, innovation, and consumer wellbeing before deciding that shared ownership has impaired competition. This method aligns with the aims of Indian competition policy while steering clear of inflexible assumptions lacking proof. It also accepts that shared ownership can create efficiencies in certain settings while posing competitive dangers elsewhere. Accordingly, a middle-ground framework would safeguard rivalry and efficient capital allocation without needlessly widening antitrust exposure.

Conclusion

Modern competition policy faces a significant issue in the form of shared ownership, yet it should not, by itself, be assumed to create separate antitrust responsibility. Empirical research to date is still disputed, so sweeping statutory action would be both too early and possibly harmful. For that reason, India ought to avoid importing overseas regulatory templates without weighing domestic market conditions and the strength of its institutions.

A restrained path for change provides a steadier and more durable answer. Competition rules should keep focusing on proven harm to markets, not on hypothetical risks tied only to who holds shares. Any regulatory step should rest on strong economic reasoning, trustworthy data, and a careful study of competitive outcomes in particular sectors. This method safeguards the efficiency gains linked to institutional capital while defending competition against real, not imagined, distortions.

In the years ahead, India's competition regime should build stronger tools to assess changing ownership trends as markets become more concentrated. The Competition Commission of India should craft industry-tailored guidance, deepen economic capability, and promote more openness from major institutional owners. Later policy should be shaped through enforcement grounded in evidence, rather than assumptions that conduct is unlawful. By taking this calibrated route, Indian competition law can adapt to new market conditions without undermining investment efficiency, predictability in law, or the core aims of competitive markets.

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