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# ONE SPONSOR, MANY TARGETS? SERIAL PRIVATE EQUITY ACQUISITIONS AND THE BOUNDARIES OF TRANSACTION AGGREGATION UNDER INDIAN MERGER CONTROL

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## ABSTRACT

Serial private-equity acquisitions pose a specific problem for merger control: multiple acquisitions may collectively alter market structure, even where the individual acquisitions seem unproblematic when considered in isolation. Indian merger-control law attempts to tackle this problem through the deal-value threshold in Section 5(d) of the Competition Act, 2002, the prior-acquisition rule set out in the Competition Commission of India (Combinations) Regulations, 2024, and notification of connected steps as a single transaction. Yet, these protections address separate legal issues and do not automatically lead to the aggregation of step-acquisitions of different targets by a single sponsor. This article analyses the border between deal-value calculation, transaction interconnection, and the cumulative competitive effects of numerous acquisitions. It then evaluates the current and potential approaches to scope in the Competition Act, 2002, the threshold in the related Regulations and the guidelines of the Competition Commission of India, and the practice of the Competition Commission of India, as well as in the European Union and the United States. It contends that the fact of cumulative competitive harm is to be separated from the evidence of a regulatory failure. Instead of assuming the need for sponsor-wide aggregation, it suggests clearer rules as to the application of existing rules and broader legislative intervention only where there is evidence of a material gap in the current regime.

**Keywords:** Serial acquisitions; private equity; Indian merger control; deal-value threshold; transaction aggregation; interconnected transactions; Competition Commission of India.

## INTRODUCTION

A private-equity fund might have acquired multiple companies to grow a portfolio business, take advantage of a fragmented market, or integrate related businesses. Each such deal might be individually negotiated and completed, but the combined impact might change the market structure and reduce competitive pressures. Merger control faces a challenge: how to decide at what point multiple transactions should be treated as one without assuming that every acquisition of a target by the same investor is anti-competitive. Serial acquisitions may promote efficiencies and promote competition; the worry is where sequential transactions have the effect of eroding competitive pressures over time without this effect being captured by the analysis of individual deals.

Indian merger-control law tackles this problem in different ways. Deal-value threshold in Section 5(d) of the Competition Act, 2002, of ₹2,000 crore, subject to this requirement of substantial-business-operations-in-India; Regulation 4(1), Explanation (c), of the Competition Commission of India (Combinations) Regulations, 2024, tackles how qualifying prior acquisitions within the same enterprise are to be counted within a fixed two-year window; and Regulation 9(4)-(5) deals with associated transaction steps, and calls for an enquiry into the substance of the transaction. These provisions address different questions – the computation of deal value, the treatment of connected steps, and avoidance structures. Yet, none of these mechanisms imposes a universal requirement that when multiple targets are acquired by the same private equity sponsor, these must be aggregated. Factoring in past consideration in a 'deal-value' calculation does not automatically aggregate subsequent acquisitions as a single package. So too, may separate acquisitions have cumulative effects on competition even where neither mechanism guides their aggregation.

The article poses the following: How does Indian merger-control law treat: acquisitions that have to be aggregated with the deal-value calculation? Interconnected steps that need to be notified as a single combination? And successive buy-outs of different targets that might lead to the market being concentrated? The article claims that these are separate but connected issues. Indian law offers specific rules for valuation aggregation and transaction interconnection, but each one does not necessarily capture every independent acquisition made by a single sponsor. While serial acquisitions may give rise to accumulated competitive harm, they do not, absent specific proof, constitute a regulatory failure or call for a sponsor-specific

aggregation rule.

This Article adds to the literature by recognizing three questions:

- (1) Which prior consideration counts;
- (2) When two or more steps need to be notified simultaneously; and
- (3) Whether two independent successive acquisitions could have a cumulative effect in harming competition.

To achieve this, the authors employ a doctrinal and comparative approach to the study of the Competition Act, the 2024 Combination Regulations, the CCI's standards and relevant case law, and selected European Union and US approaches. This comparative analysis helps to differentiate notification standards from competitive analysis, rather than to promote importation of foreign law.

The article reviews the Indian statutory framework, then considers the deal-value test and aggregation of qualifying prior acquisitions. It next looks at linked transactions, before applying these principles to various patterns of serial acquisition. It concludes by considering the limitations of the framework, and whether clarification, or even reform, can be called for by the evidence.

## **THE INDIAN MERGER-CONTROL FRAMEWORK**

India's merger-control regime operates through a combination of jurisdictional thresholds, statutory notification requirements and procedural rules governing the assessment of acquisitions, mergers and amalgamations. For serial private-equity acquisitions, the relevant inquiry is not confined to the size of an individual investment. It also requires identification of the acquiring party, the enterprise being acquired, the relevant group and, where multiple steps are involved, the legal relationship between them. These considerations arise under distinct provisions of the Competition Act, 2002 and the Competition Commission of India (Combinations) Regulations, 2024, each serving a different function within the notification framework.

Section 5 of the Act defines the circumstances in which an acquisition, merger or amalgamation

constitutes a “combination” by reference to prescribed financial thresholds. The traditional tests examine the assets or turnover of the relevant enterprise and, where applicable, the group to which the enterprise would belong following the transaction. Following the Central Government’s March 2024 notification revising the thresholds, the domestic enterprise-level tests refer to assets exceeding ₹2,500 crore or turnover exceeding ₹7,500 crore. The corresponding domestic group-level thresholds are assets exceeding ₹10,000 crore or turnover exceeding ₹30,000 crore. Separate worldwide thresholds apply where the prescribed Indian asset or turnover component is satisfied.<sup>1</sup> These tests remain important because the financial position of the relevant enterprise or group may determine whether a transaction falls within the merger-control framework.<sup>2</sup>

The Competition (Amendment) Act, 2023 introduced an additional jurisdictional criterion through Section 5(d): the deal-value threshold (“DVT”). Under this provision, a transaction exceeding ₹2,000 crore may constitute a combination where the enterprise being acquired, or the enterprises concerned in a merger or amalgamation, has substantial business operations in India, subject to the statutory conditions.<sup>3</sup> The DVT therefore supplements rather than replaces the asset- and turnover-based tests. Its significance lies in extending the reach of merger control to certain transactions whose value may be substantial even where the traditional financial thresholds are not met. The substantial-business-operations requirement is further elaborated in Regulation 4(2) of the 2024 Regulations, which specifies criteria relating to digital-service users, gross merchandise value and turnover in India.<sup>4</sup>

The statutory framework also makes the identification of the relevant enterprise and group important. The Act’s group and control provisions determine the circumstances in which enterprises are treated as belonging to a group or as being controlled by another person or enterprise. In a private-equity structure, the sponsor, investment fund, acquisition vehicle and portfolio company may occupy different legal positions. Their association with a common investment platform does not, by itself, establish that every entity must be treated as part of the same group for every purpose under the Act. The applicable statutory definitions, the rights held and the relevant post-transaction structure must instead inform the analysis. This

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<sup>1</sup> Competition Act, No. 12 of 2003, § 5(a)–(b) (India); Ministry of Corporate Affairs, Notification No. S.O. 1130(E), Gazette of India, Extraordinary, pt. II, sec. 3(ii) (Mar. 7, 2024).

<sup>2</sup> Competition Act, No. 12 of 2003, § 5(a)–(b), Explanation (India).

<sup>3</sup> Competition Act, No. 12 of 2003, § 5(d) (India), as amended by the Competition (Amendment) Act, No. 9 of 2023 (India).

<sup>4</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 4(2) (India).

distinction matters because the identity of the acquiring party and the enterprise being acquired may affect both the applicable jurisdictional test and the calculation of transaction value.

Section 6 supplies the principal notification framework. Subject to the statutory provisions and applicable exemptions, a combination meeting the relevant requirements must be notified to the CCI before it is given effect, and the Act regulates implementation pending the Commission's review.<sup>5</sup> The 2024 Regulations prescribe the procedure and information required for notification, including the ordinary use of Form I and the circumstances in which Form II may be appropriate. They also require disclosure of relevant business activities, overlaps and other information necessary for the Commission's assessment.<sup>6</sup> The framework thus distinguishes the preliminary question of whether a transaction is notifiable from the subsequent assessment of its likely effect on competition.

Two provisions of the 2024 Regulations are particularly relevant to the treatment of serial acquisitions. Regulation 4(1), Explanation (c), addresses the calculation of transaction value under Section 5(d). It provides for the inclusion of consideration for an acquisition made by a party to the transaction, or its group entity, in the enterprise being acquired, merged or amalgamated during the two years preceding the relevant date.<sup>7</sup> The provision is therefore directed to qualifying prior acquisitions involving the enterprise that is the subject of the transaction. Its application requires attention to the specified parties, the identity of the enterprise and the prescribed period; it should not be treated as an unrestricted instruction to add together all investments made by a sponsor in unrelated businesses.

Regulation 9(4)-(5) addresses a different issue. Regulation 9(4) concerns a business transaction whose ultimate intended effect is achieved through a series of steps or smaller individual transactions that are interconnected, while Regulation 9(5) requires the notification obligation to be determined without giving effect to components or structures designed to avoid notification of the whole combination or part of it.<sup>8</sup> These provisions address the treatment of connected steps and the substance of a transaction, rather than merely the historical consideration relevant to calculating deal value. Their application therefore calls for an inquiry

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<sup>5</sup> Competition Act, No. 12 of 2003, § 6(2), (2A) (India).

<sup>6</sup> Competition Commission of India (Combinations) Regulations, 2024, regs. 9(1)-(3), 13, sched. I (India).

<sup>7</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 2(1)(c), reg. 4(1), Explanation (c) (India).

<sup>8</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 9(4)-(5) (India).

into the relationship between the steps involved, not simply the identity of the investor behind them.

The distinction is central to the analysis of private-equity acquisitions. A subsequent investment in the same enterprise may engage the prior-acquisition rule even where the relevant question is only how transaction value should be calculated. Multiple steps forming part of an interconnected transaction may instead require consideration under Regulation 9. Acquisitions of separate targets, however, cannot be treated as one combination merely because a common sponsor pursues them as part of a broader investment strategy. The statutory and regulatory framework must be applied to the particular transaction and its legally relevant connections.

Accordingly, the framework establishes separate tests for jurisdiction, valuation and transaction interconnection. Whether these tests adequately address the cumulative competitive effects of successive acquisitions is a distinct question, requiring analysis of their scope and application rather than an assumption that they create a general obligation to aggregate sponsor-wide investments.

### **The Deal-Value Threshold and the Aggregation of Prior Acquisition**

The DVT supplement the traditional asset- and turnover- thresholds to bring into the merger control regime a select class of high-value transactions, even if the target's turnover and assets are not reflective of its commercial importance. Sometimes, a business' value comprises its technology, intellectual property, data, growth prospects or assets that may not be wholly represented in the turnover generated by the business. Therefore, even where the turnover of the target may not be reflective of its commercial contribution, Section 5(d) of the Competition Act, 2002, provide that where the value of a transaction exceeds ₹2,000 crore, it is to be treated as a combination if the enterprise being acquired, controlled, merged or amalgamated has a substantial presence of the same kind in India, subject to the conditions prescribed.<sup>9</sup> It is pertinent to note that DVT is merely a jurisdictional threshold; high value of the transaction will not per se result in a presumption that the transaction is likely to cause an appreciable adverse effect on competition.

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<sup>9</sup> Competition Act, No. 12 of 2003, § 5(d) (India), as amended by the Competition (Amendment) Act, No. 9 of 2023, § 6 (India).

With the DVT in mind, the consideration to be included in the valuation of the transaction will need to be identified. Regulation 4(1) of the Competition Commission of India (Combinations) Regulations, 2024 adopts an overall approach incorporating consideration in any form including monetary and non-monetary, whether direct or indirect, instant or deferred, and contingent considerations, and including considerations for covenants and restrictions, consideration for connected steps, consideration payable for a specified payment in an arrangement that is an integral part of or incidental to a transaction, call option, or new consideration for a specifically enumerated series of payments or a contingent future payment.<sup>10</sup> All of these are expressed to be towards the full value of the transaction, and the version of Regulation 4(1) that is referred to is to be seen through this lens of totality.

A different scenario arises where the acquirer has acquired an interest in the same enterprise in the past. The Explanation to Regulation 4(1), clause (c), states that the transaction value shall include the value of any consideration for an acquisition, by any person or persons forming a part of the same group of the acquiring party, of an enterprise that is, or is part of, the same enterprise as to which the combination relates, in the two years immediately prior to the relevant date.<sup>11</sup> The relevant date is given in Regulation 2(1)(c) by reference to the date of approval, execution of the agreement or the relevant transaction document.<sup>12</sup> Therefore, it essentially entails a transaction-specific inquiry into the identity of the enterprise and related considerations, including the context of the previous acquisition, rather than an unqualified mandate to add up all interests acquired by any one sponsor.

This distinction is especially relevant in the private equity context where the consideration paid may be paid through a chain of separate SPVs. For instance, SPV 1 which is part of a private-equity fund might acquire a security interest in Target A and within the two-year look-back period SPV 2 might make a second proposed purchase of Target A. If the look-back provision is triggered, then the consideration paid for the earlier transaction must be included in the value of the later transaction. The fact that a different vehicle is used for the acquisition will not in itself preclude including it, nor can the fact that the vehicles are described as related to the same sponsor substitute for the identity of the parties and the group relationships that are directly at

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<sup>10</sup> Competition Act, No. 12 of 2003, § 5(d) (India), as amended by the Competition (Amendment) Act, No. 9 of 2023, § 6 (India).

<sup>11</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1)(a)–(e) (India).

<sup>12</sup> Id. reg. 4(1), Explanation (c).

issue under the provision.<sup>13</sup>

The Competition Commission of India's published FAQs may be instructive. FAQ 51 asks whether an acquirer's affiliate (or other group entity) must take into account an earlier acquisition by the acquirer when reaching a deal value with a seller for a subsequent acquisition of the same target, when the acquirer's earlier investment did not include a planned follow-on investment. The Commission confirms this applies; the value of the earlier acquisition must be taken into account under the Explanation to Regulation 4(1), clause (c).<sup>14</sup> This is important because it shows the rule does not rely on the acquirer having structured the successive investments as one integrated commercial deal; the regulation's prescribed look-back rule is the legal mechanism behind including the value of the earlier consideration, not any evidence that they were a single entity through planning. Even so, the FAQ must be read with the regulation; it does not give an independent basis that any entity linked with a private-equity sponsor is an acquisition party/group entity.

The scope of the rule is limited to the scenario of the sponsor getting other targets. If SPV 1 acquires Target A, and some time later SPV 2 acquires Target B, the cost of acquiring Target A will not be included in the consideration for acquiring Target B, just because the two are both sponsored investments, or both constitute part of a buy-and-build. The provision refers to an earlier acquisition in the same enterprise as the current transaction.<sup>15</sup> To extend it beyond this to separate targets would require some further legal basis; it cannot be justified by commercial connection alone. It should not be inferred from this that acquisitions of different targets cannot be aggregated: in circumstances where there is more than one target being acquired simultaneously or as part of a combined transaction, the other provisions of the Regulations are potentially relevant.<sup>16</sup> The narrower point is that the provision of a pre-existing acquisition as a sponsor-wide aggregation rule is going too far.

Furthermore, an important distinction must be made between the look-back rule and Regulation 4(1) (c). Regulation 4(1)(c) only applies in respect of payment under an arrangement entered into in connection with, or incidentally to a transaction, including arrangements for technology, intellectual property, supply and related arrangements that are payable during the prescribed

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<sup>13</sup> Id. reg. 2(1)(c).

<sup>14</sup> Competition Commission of India, *Frequently Asked Questions on Combinations*, FAQ 51 (May 2025).

<sup>15</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1), Explanation (c) (India).

<sup>16</sup> Competition Commission of India, *Frequently Asked Questions on Combinations*, FAQ 63 (May 2025).

period after the date on which the transaction would, but for the regulation, have taken effect. On the other hand, the Explanation to Regulation 4(1), clause (c) deals with consideration for qualifying acquisitions in the relevant enterprise in the preceding two years.<sup>17</sup> Although both provisions are relevant for computing the value of a transaction, they concern different types of consideration and cannot be considered to be one and the same.

The DVT thus offers a tailored way to quantify the value of qualifying additional investments in the same business and indeed through separate vehicles complying with the tested regime. But it does not extend to requiring the subsidiary to be regarded as acquiring three businesses, simply because there are three acquisitions which all add up to the overall group to which the tested rule applies. Acquisition and notification remain two different questions. Nor does the look-back rule automatically merging any presponsorsised acquisition of a different business in the same group into the question of the proposed acquisition of the tested subsidiary's interest: the key question of whether the latter transactions are sufficiently integrated to require one notice remains in Regulation 9(4)-(5), not the valuation analysis<sup>18</sup>. And there is of course the other even bigger question of whether their cumulative effect and even if not, at what point it is sufficiently concentrated an acquisition to trigger the larger concern rather than extending the valuation rule.

## **Interconnected Transactions: From *Thomas Cook* to *Amazon***

### **A. The Regulatory Framework**

Regulation 9(4) of the Competition Commission of India (Combinations) Regulations, 2024, requires a party to file a single notice where the "ultimate intended effect" of a business transaction is attained through a series of steps or smaller individual acquisitions, one or more of which could qualify as a combination in itself. Regulation 9(5) in turn complements this requirement by directing the substantive inquiry to the nature of the arrangement being notified and stipulating that structures, entered into for the purpose of avoiding notification, should be ignored. Together, these two provisions require the Competition Commission of India ("CCI") to analyze the arrangement the way the commercial parties intended it to function, and not to

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<sup>17</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1)(c), Explanation (c) (India).

<sup>18</sup> Id. reg. 9(4)–(5).

analyze each step on its own merits solely because the steps were entered into separately.<sup>19</sup>

Despite their close wording, Regulation 9(4) and Regulation 9(5) perform different tasks. The first explains when interconnected steps have to be filed through a single notice; the second explains how a form of arrangement should not be manipulated to avoid a requirement to notify the entire arrangement or some part thereof. Neither provision requires all acquisitions by the same private-equity sponsor to be treated as a single combination; rather, whether the acquisitions constitute connected parts of a single arrangement depends on whether they constitute interconnected steps by which the arrangement was intended to operate, and not on whether the arrangements relate to the same investor, sector, or general commercial purpose.<sup>20</sup>

This distinction enables the nature of multiple acquisitions to be distinguished from the earlier-acquisition rule in Regulation 4(1), Explanation (c). The latter pertains to the extent to which other arrangements should be included in the transaction value of an acquisition; the former relates to whether multiple acquisitions should be notified as a single arrangement. An earlier acquisition thus may be relevant in calculating deal value without necessarily constituting part of the same interconnected arrangement as a subsequent acquisition. A series of interconnected steps, however, may be necessary to require the subsequent steps to be notified as part of a single arrangement even if some of those steps would not themselves qualify as combinations.<sup>21</sup>

The wording of Regulation 9 further persuades that to interpret Regulation 9(4) as bringing every step towards a shared commercial goal within the scope of interconnected steps as a matter of law would be problematic. Regulation 9(4) of the 2024 Regulations characterized the arrangement as "inter-connected" and "shall" hold that a single notice "shall" be given.<sup>22</sup> Under the 2011 Regulations, Regulation 9(4) referred to steps that were "inter-connected or inter-dependent" and "may" hold that a single notice "may" be given. In the present form, the provision states a non-optional requirement to provide a single notice for interconnected arrangements and no longer states that interconnectedness could be achieved through interdependence. Without further clarifications on the legislative history or authority, it would seem unnecessary to extend the interpretation of interconnection in a manner that makes the

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<sup>19</sup> Competition Commission of India (Combinations) Regulations, 2024, regs. 9(4)–(5) (India).

<sup>20</sup> Organisation for Economic Co-operation and Development [OECD], *Serial Acquisitions and Industry Roll-Ups*, OECD Competition Policy Roundtable Background Note 5–6 (2023)

<sup>21</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1), Explanation (c), reg. 9(4) (India).

<sup>22</sup> *Competition Commission of India v. Thomas Cook (India) Ltd.*, (2018) 6 SCC 549, para. 21 (India).

case of this nature inevitable.<sup>23</sup>

### **B. Competition Commission of India v. Thomas Cook (India) Ltd.**

The Supreme Court considered whether a series of acquisitions and associated steps concerning Sterling Holiday Resorts India Ltd. ("Sterling") could be considered separate acquisitions for the purposes of satisfying the merger-notification rules in *Competition Commission of India v. Thomas Cook (India) Ltd.* In 2014, the boards of the joint venture sponsors approved a scheme involving the demerger and amalgamation of Sterling along with an open-offer. Parallel share purchase agreements, subscription arrangements, and open-offers were also negotiated. Certain additional market purchases were carried out in early 2014 and 2015, before the notification of the arrangement in 2015, which disclosed the demerger and amalgamation but not the subsequent acquisitions. The subsequent acquisitions were also considered exempt from the notifications even though additional market purchases were not disclosed<sup>24</sup>.

The Supreme Court held that the Court of Competition Appeal's decision to uphold the Competition Commission of India ("CCI") penalty under Section 43A was correct. It viewed the transactions as being "intrinsically interconnected and interdependent" and therefore capable of forming a single business scheme. The Court drew support from the fact that the additional market purchases appeared in the notification of the scheme, coupled with board approval and commercial arrangements contemporaneous with the scheme, which reflected the conclusion that the partial acquisitions were part of the same arrangement. The Court then asked whether the market purchases were only possible with the market acquisitions, and whether the market acquisitions would have taken place in isolation from the scheme.<sup>25</sup>

The doctrinal significance of the Court's decision lies in the Court's insistence that the nature of the arrangement with regard to its interconnected steps, rather than their legal or commercial presentation, is decisive. The share purchase agreements, the open-offer arrangements, the approved scheme, and the various related arrangements testified that the steps were complementary and part of a single arrangement, and the steps could not be clearly identified as separate arrangements for the purposes of notifying them. To treat the acquisitions in succession and by separate arrangements alone would run contrary to the nature of the scheme.

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<sup>23</sup> *Amazon.com NV Investment Holdings LLC v. Competition Commission of India*, 2026 INSC 576, paras. 84–86, 146–49 (India); Competition Commission of India (Combinations) Regulations, 2024, reg. 9(4).

<sup>24</sup> *Thomas Cook*, (2018) 6 SCC 549, paras. 1–10, 28–31.

<sup>25</sup> *Id.* paras. 28–31.

The Court had thus identified a framework for analyzing whether steps constitute a single, interconnected arrangement and therefore constitute a single combination.

This framework is not, however, sufficient to support the Court's final conclusion. The Court's factual conclusion that the additional market acquisitions were part of the same arrangement as the other acquisitions concerns a scheme in which the acquisitions all involved the same target, were undertaken in the same manner, and were undertaken at the same time. As this test turns solely on the interaction of these factors, it cannot, without more authoritative guidance, justify disregarding all further acquisitions undertaken over a protracted period of years involving different targets or commercial objectives, or acquisitions pursued by a common private-equity sponsor.<sup>26</sup> It is unjustified to treat a series of acquisitions with such different features, and which are separated in time, as one interconnected arrangement simply because the commercial configuration existed.

### **Amazon.com NV Investment Holdings LLC v. Competition Commission of India**

In *Amazon.com NV Investment Holdings LLC v. Competition Commission of India*, the Court of Appeal revisited the scope of interconnected steps that should have been the subject of a single notification. Amazon had invested in Future Coupons Private Ltd. ("FCPL") along with various rights relating to Future Retail Ltd ("FRL"). Subsequently, the CCI found deficiencies in the notification process, suspended its prior approval, directed Amazon to submit a fresh notice, and penalized Amazon for breaching the statutory notice obligation. The case reached the Court of Appeal, which examined whether the transactions disclosed in the initial Form I and supporting instruments were clearly a single, interconnected arrangement and whether the original notice was sufficiently broad.<sup>27</sup>

The Court explained that Regulation 9(4) directs the CCI to receive "a single notice" describing the interconnected steps through which the likely ultimate impact of the arrangement is achieved. This obligation concerns not only the steps that would independently qualify as a combination but also the interconnected structure that the commercial parties are demonstrating in order to present the arrangement as a single trans-action. Regulation 9(5) reinforces the cost and substance-based approach to the required notice by directing the CCI to examine the arrangement's substance and preventing the arrangement from being artificially stretched to

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<sup>26</sup> OECD, *supra* note 2, at 13–17, 31–34.

<sup>27</sup> *Amazon*, 2026 INSC 576, paras. 4–7, 148–59.

avoid official approval.<sup>28</sup>

The Court further held that the obligation to include interconnected arrangements between the time of notifying the arrangement and the time of considering it does not preclude the submitting parties from framing their arrangements differently in the initial notification document. After examining the Form I and annexed documents, the Court found that the arrangements "are written to be closely interconnected" and had indeed been widely examined during the CCI proceedings. The Court therefore refused to draw the conclusion that Amazon's framing of its arrangements during the initial proceedings was deficient merely because Amazon refused to characterise the arrangements in the terms of the CCI's order.<sup>29</sup>

In differentiating the Thomas Cook case, the Court pointed out that the transaction steps in this case were implemented in a manner that deprived the CCI of any real chance to consider the entire combination before its implementation. In the Amazon case, on the other hand, the associated configurations were described in the notification and considered during its process. As a result, the Court dismissed the argument that flawed or contested characterization of given documents automatically results in an omission to notify the combination.<sup>30</sup>

The impact of the decision is limited. The Amazon decision was never intended to mean that disclosure of documentary filing inevitably cures any shortfall in notification and it does not speak to what is necessary to explain the collection of instruments taken together. The Court emphasized that the notice must make the interconnection understandable in itself or in the course of explaining it in the review process. Its opinion was affected by the particular regulatory record in front of it and the decision dealt with other issues on the scope of the CCI's powers, penalty for contravention, and the penalty scheme. It should therefore be relied upon for its interpretation of interconnected-step notification and substantive disclosure, rather than presented as a definitive ruling on the aggregation of successive acquisitions of separate targets.<sup>31</sup>

#### **D. Interconnection: A Fact-Sensitive Question**

Both the Thomas Cook and the Amazon cases suggest that the notification inquiry should

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<sup>28</sup> *Id.* paras. 146–47.

<sup>29</sup> *Id.* paras. 150–59.

<sup>30</sup> *Id.* paras. 84–86, 148–59; OECD, *supra* note 2, at 31–34.

<sup>31</sup> *Thomas Cook*, (2018) 6 SCC 549, paras. 28–31; *Amazon*, 2026 INSC 576, paras. 150–59, 176–78.

center on the actual structure of the transaction and how its different stages relate to each other. They demonstrate that the inquiry cannot simply be one of whether contractual concepts apply or whether the regulator prefers the way a particular instrument is characterized in that case. The key question is whether the evidence points to the different stages of a business transaction producing a single commercial end.<sup>32</sup>

Possible indicia of relevance include contractual provisions creating transactions dependent on one another; typical transaction documents; documented approvals by the company's board at the time of the arrangements; cross-references between the contractual documents; the order of the steps and the documentary evidence laying out the business case for the arrangements. These factors should be considered in the aggregate, rather than as a checklist, because the absence of an express cross-condition does not necessarily establish that the transactions are independent.<sup>33</sup> Equally, the presence of a common sponsor, financing source or holding vehicle does not by itself establish the transactional connection required by Regulation 9(4).

The structure reveals the link with disclosure as well as interconnection. The number of interconnected steps controls the extent of the single-notice requirement; and an adequate disclosure is one which enables the CCI to grasp and analyse the whole. Regulation 9(5) plays on the underlying inquiry but cannot in itself fill the missing link between two independent transactions. An anti-avoidance condition may block the transaction holder's efforts to disguise a composite transaction, but cannot alter every acquisition forming part of an investment policy into the relevant transaction without enough facts or legal argument to connect each acquisition in the general policy with the economic transaction in question.

## **E. The Limits of Serial Private-Equity Acquisitions**

The application of Regulation 9 to serial private-equity acquisitions therefore turns on the distinction between a coordinated transaction and a sequence of independent investments. Where several acquisitions are governed by a framework agreement, made subject to cross-conditionality or designed from the outset to achieve a single commercial outcome, the evidence may support treating the acquisitions as interconnected steps requiring a single notice. Separate agreement, acquisition vehicle, or completion dates would not alone remove that

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<sup>32</sup> OECD, *supra* note 2, at 7–17.

<sup>33</sup> Fed. Trade Comm'n & U.S. Dep't of Justice, *FTC and DOJ Seek Info on Serial Acquisitions, Roll-Up Strategies Across U.S. Economy* (May 23, 2024),

possibility.<sup>34</sup>

When a sponsor makes different acquisitions through separate negotiations over a considerable time-span, the situation is even less clear. A shared investment hypothesis, comparable financing structures or a plan to pack out a fragmented market might account for the acquisitions constituting a piece of a wider plan, but these considerations alone do not determine that the acquisitions constitute stages of one commercial transaction. The analysis must distinguish evidence of a common commercial objective from evidence that the ultimate intended effect of one transaction is achieved through the several acquisitions said to be interconnected.<sup>35</sup>

A wider view might focus instead on Regulation 9's anti-fragmentation objective and the Supreme Court's ruling in *Thomas Cook and Amazon* that the CCI must examine a transaction on its merits. This may be persuasive where contemporaneous documents suggest that what appeared to be a series of independent acquisitions was in fact something more akin to a composite arrangement. But the lack of other common features in such circumstances highlights that the courts are not suggesting that the same sponsor or a master-plan style approach can ipso facto meet Regulation 9(4).<sup>36</sup>

However, the second position, where every connection needs contractual dependence, would also be too narrow. As *Thomas Cook* reminds us, one considers the interdependence of the various steps in context. And as *Amazon* shows, substance is more important than document titles; the fact that how the purchase connects to other steps is acknowledged is more important than the documents' words. So the best way of reading this requirement seems to be neither an automatic aggregation across a group of acquisitions, nor a strict contractual dependence test, but a contextual inquiry.<sup>37</sup>

This latter passage delineates a doctrinal boundary in principle, although of course its application will always be fact-specific. Regulation 9, for instance, requires joint notice where linked transactions have the effect of achieving the final consolidated effect of one business

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<sup>34</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 9(4)–(5) (India); *Competition Commission of India v. Thomas Cook (India) Ltd.*, (2018) 6 SCC 549, paras. 28–31 (India).

<sup>35</sup> Organisation for Economic Co-operation and Development [OECD], *Serial Acquisitions and Industry Roll-Ups*, OECD Roundtables on Competition Policy Papers No. 303, at 4–6 (2023)

<sup>36</sup> *Thomas Cook*, (2018) 6 SCC 549, paras. 28–31; *Amazon.com NV Investment Holdings LLC v. Competition Commission of India*, 2026 INSC 576, paras. 146–59 (India).

<sup>37</sup> *Thomas Cook*, (2018) 6 SCC 549, paras. 28–31; *Amazon*, 2026 INSC 576, paras. 150–59.

transaction, and Regulation 9(5) guards against transactional structuring to avoid such a requirement. Neither provision establishes a rule of general application requiring all acquisitions by the same private-equity sponsor to be aggregated with each other across targets. Whether the existing architecture reasonably accounts for the cumulative competitive impact of supposedly standalone acquisitions is a separate enquiry – one to be answered by the substantive competition framework and market-effects evidence, not by redrawing the notice rules.<sup>38</sup>

## Applying the Framework to Serial Private-Equity Acquisition

### A. Successive Acquisitions of the Same Target

When a private-equity fund purchases a minority position in a target company via one SPV and then wants to buy an additional stake in the same company via another SPV, a few different compliance issues come into play. Although both deals are made at different points in time via separate SPV entities, the second purchase falls within the two-year period relevant to the prior-acquisition rule.<sup>39</sup>

Regulation 4(1), clause (c) of the Competition Commission of India (CCI) Combinations Regulations, 2024 (Explanation to Regulation 4(1), clause (c)) requires inclusion of consideration paid for qualifying earlier acquisition in the value of transaction if the qualifying earlier acquisition was made by a person or his group (an 'earlier acquirer') who is a party to the combination, within two years from the relevant date to the combination.<sup>40</sup> Qualification of this provision, therefore, will depend upon the connection between the earlier acquirer and the party to the transaction, the enterprise receiving the transaction as well as the date of the earlier acquisition. The relevant date shall be determined properly and not presumed from date of closure of transaction, as per Regulation 2(1)(c).<sup>41</sup>

The CCI's FAQ reports also offer guidance on private-equity arrangements. FAQ 51 addresses whether an earlier acquisition by an acquirer must be taken into account when its affiliate subsequently acquires an interest in the same target, even where the earlier investment did not

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<sup>38</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 9(4)–(5) (India); OECD, *supra* note 2, at 31–34.

<sup>39</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1), Explanation (c) (India); Competition Commission of India, *Frequently Asked Questions on Combinations*, FAQ 51 (May 2025).

<sup>40</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1), Explanation (c) (India).

<sup>41</sup> *Id.* reg. 2(1)(c).

contemplate a further acquisition.<sup>42</sup> According to the CCI, such a situation would be relevant under the look-back rule, which in this instance would not require an inference that a series of investments was originally conceived as a single transaction.

The connection between the SPVs requires careful legal analysis. The connection to the common fund alone does not necessarily mean that the earlier consideration is of the prescribed type of acquisition by a party or its group entity. This is a matter of analyzing the statutory definition(s) and the underlying facts as to fund-management and control, prior to including the earlier consideration. If those factors are met, however, using a different SPV or negotiating the subsequent investment separately does not necessarily mean that the earlier consideration is excluded from the transaction value calculation.<sup>43</sup>

Similarly, the valuation inquiry must be kept separate from the notification inquiry. The look back rule could require that previous consideration be included in the valuation even if the second investment was not considered at the time the first stake was acquired. That should not, by itself, make the earlier acquisition a step in the later combination, or provide, on its own, the foundation for the conclusion that the two acquisitions should have been notified under Regulation 9(4). The position might be otherwise if the evidence shows that the investments formed part of a composite transaction whose intended effect was achieved through successive steps, particularly where the sequencing or implementation of those steps would otherwise have frustrated prior scrutiny under the principles in *Thomas Cook*.<sup>44</sup>

This case reveals the discrete yet important role performed by the look-back rule: it demands that valuation of qualifying new investments in the same enterprise is treated according to the prescribed prior consideration, and separates the matter of transaction interconnection as a matter of regulation 9.

## **B. Variety of Targets in a Coordinated Acquisition Initiative**

The further complication comes when a private-equity sponsor makes two or more separate

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<sup>42</sup> Competition Commission of India, *Frequently Asked Questions on Combinations*, FAQ 51 (May 2025); *id.* FAQ 65(c) (addressing a prior acquisition by one SPV of a private-equity fund followed by an acquisition by the same or another SPV).

<sup>43</sup> Competition Act, No. 12 of 2003, § 2(b) (India); Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1), Explanation (c) (India). The application of the relevant group relationship must be assessed against the applicable statutory definitions and the facts of the fund structure.

<sup>44</sup> *Competition Commission of India v. Thomas Cook (India) Ltd.*, (2018) 6 SCC 549, paras. 28–31 (India); Competition Commission of India (Combinations) Regulations, 2024, regs. 4(1), Explanation (c), 9(4)–(5) (India).

acquisitions of companies that are competing in the same or similar markets. For example, maybe the sponsor buys Targets A, B and C under a single "framework" agreement that conditions each company's closing on that of the others; acquires Target D through a shared holding company on the same terms as to the financing deal struck at the outset; and separately agrees to acquire Target E.

Acquisitions A, B, and C illustrate a strong reason to treat certain acquisitions as stages of a linked acquisition. Their cross-conditionality provides direct evidence that the parties have structured the acquisitions to operate as components of a coordinated transaction. Where party evidence shows that the ultimate reason, or the ultimate effect, is that of the one transaction being achieved by linked acquisitions, Regulation 9(4) applies to achieve a single acquisition notice. Such linked acquisition value shall be ascertained according to transaction-value rules, including Regulation 4(1)(b), if the rule's condition can be satisfied. The fact that separate contracts, or separate times of completion, do not establish separate notices because of the substantive unity of the arrangement is reinforced by Regulation 9(5) which prevents parties from circumventing reporting requirements by partitioning acquisitions into separate acquisitions.<sup>45</sup>

Target D will require a more textured inquiry. If a common holding vehicle and fundamental financing terms were created at the outset, this would suggest a transactional intention behind acquisition, especially if the financing, board approval or transaction documentation tied it to other acquisitions. However, these attributes could equally be indicative of private-equity-style financing, which are used for acquisitions that remain commercially and legally independent. Thus the analysis should be based upon the interconnectedness and intention behind the business transaction, not the identity of the sponsor or finance.<sup>46</sup>

Target E should not be aggregated with the other elements solely because, for instance, E falls within the wider investment programme of the sponsor or because E operates in a related market. An overlap in markets may be relevant to a legal assessment of effects on competition, but this will not automatically mean that E's acquisition is part of the A, B and C transaction. This position would change if contemporaneous documents, acquisition commitments, or other

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<sup>45</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1)(b), regs. 9(4)–(5) (India).

<sup>46</sup> *Id.* reg. 9(4)–(5); *Thomas Cook*, (2018) 6 SCC 549, paras. 28–31.

evidence, supported the contention that E was part of an integrated transaction.<sup>47</sup>

Guidance on multiple target acquisitions is also addressed in the CCI's FAQs. The CCI in FAQ 63 considers what happens when a single acquirer acquires multiple target enterprises in a single transaction. As relevant to threshold calculations, the consideration paid for all of the target enterprises should be combined and relevant numbers taken into account.<sup>48</sup> It reflects that in the context of a one-time, simultaneous acquisition, the fact that there are multiple target enterprises does not require separate threshold calculations.

This distinction is also relevant when applying the concept of a "buy-and-build" strategy in the context of a private-equity purchase. In this case, a sponsor may purchase an existing platform company and then acquire other companies to the same end. Such a buy-and-build strategy might be commercially coordinated, even if not every acquisition is part of a legally linked "combination."<sup>49</sup>

### C. Independent Acquisitions of Different Targets

Consider a sponsor that acquires several businesses over three years under separate agreements. Each acquisition is independently negotiated and financed, none is conditional on another, and no common transaction documents link their completion. The sponsor nevertheless describes the acquisitions as part of a broader buy-and-build strategy intended to consolidate a fragmented market.

On these assumptions, the prior-acquisition look-back and Regulation 9 do not of themselves mandate aggregation of consideration for each acquisition. The Explanation to Regulation 4(1), clause (c), addresses qualifying earlier acquisitions into the enterprise which comprises the subject of the current transaction, and does not speak to any general rule for combining consideration paid for different targets simply because they have a common sponsor.<sup>50</sup> Regulation 9(4) then necessitates an identifiable link between the steps said to constitute a single combination, and while an overarching commercial investment thesis may account for a

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<sup>47</sup> *Thomas Cook*, (2018) 6 SCC 549, paras. 28–31; Competition Commission of India (Combinations) Regulations, 2024, reg. 9(4)–(5) (India).

<sup>48</sup> Competition Commission of India, *Frequently Asked Questions on Combinations*, FAQ 63 (May 2025).

<sup>49</sup> Organisation for Economic Co-operation and Development [OECD], *Serial Acquisitions and Industry Roll-Ups*, OECD Roundtables on Competition Policy Papers No. 303, at 7–17 (2023),

<sup>50</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1), Explanation (c), and reg. 9(4)–(5).

sponsor's motivation, this does not of itself result in an inference of interconnectedness.<sup>51</sup>

However, the conclusion must be approached in a manner that is consistent with the evidence. Internal investment memoranda, framework agreements, contemporaneous approval documents, financing commitments or acquisition documents may demonstrate that transactions presented as independent were actually components of a pre-arranged composite arrangement. That none of the steps is explicitly cross-conditioned is relevant, but is not necessarily determinative where the broader circumstances suggest one transaction. As Thomas Cook shows, the question is whether the steps are effectively part of one transaction, not whether they are cross-conditioned.<sup>52</sup>

Question of competitive significance is of a different nature. Combinations that are likely to have an appreciable adverse effect on competition in the relevant market in India are prohibited by Section 6(1) of the Competition Act, 2002, and factors that are relevant to the determination of the CCI as to whether such an effect exists are set out in Section 20(4). In the case of a notifiable subsequent acquisition, the relevant market configuration, horizontal overlaps, vertical relationship and other factors that influence the likely competitiveness of the transaction can be reviewed. The prescribed notification materials also require information concerning relevant overlaps and the activities of the parties and their group entities, allowing the CCI to assess the transaction within its broader commercial and market context.<sup>53</sup>

These rules do not however, imply that all previous independent acquisitions are to be regarded as one transaction. And, a more expansive buy-and-build approach per se would not automatically generate a filing requirement for the acquisition of a target below the jurisdictional thresholds. These questions can be examined from two perspectives. One, the ability of CCI to examine the competitive impact of a transaction under its jurisdiction and, two, how well do the rules of jurisdiction and notification cater to a series of independent acquisitions on a cumulative basis.

There is more of an issue where markets are concentrated or consolidating. Successive acquisitions might eliminate any number of rivals, reinforce a platform business, or eliminate

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<sup>51</sup> *Competition Commission of India v. Thomas Cook (India) Ltd.*, (2018) 6 SCC 549, paras. 28–31.

<sup>52</sup> Competition Act, No. 12 of 2003, §§ 6(1), 20(4); Competition Commission of India (Combinations) Regulations, 2024.

<sup>53</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1), Explanation (c); Competition Commission of India, *FAQs on Combinations* (May 2025), FAQ 51. See also id. FAQ 65(c)

potential future competition even if each transaction looks small on its own. Accordingly, it is appropriate to consider the cumulative effect of a series of acquisitions as a competition policy matter. But that does not, by itself, establish that the current law requires the acquisitions to be notified together or that a regulatory gap has been demonstrated. A claim that the framework is deficient must be supported by evidence that the relevant competitive risks are not adequately addressed through existing jurisdictional rules, notification requirements or substantive review.

#### **D. Comparison Results**

The three scenarios show that in deciding what the treatment of serial acquisitions should be the determining factor is what sort of deal it is and what rule is being applied. In the first scenario, the prior-acquisition rule may require consideration paid for an earlier acquisition in the same target to be included in the value of a later transaction, provided the statutory conditions are satisfied. The requirement does not depend on the acquisitions being interconnected, and it does not automatically make them one combination for notification purposes.<sup>54</sup>

The second scenario -- the cross-conditional acquisitions of Targets A, B and C -- offers the strongest possibility for using a single notice, because the transactions appear to form components of a coordinated arrangement. How Target D fits in depends on the connection found to link the acquisition to the others, while Target E should not be included solely because it shares the sponsor's investment strategy or operates in a related market. The at the same time acquisitions guidelines also suggest that multiple targets may be reviewed as a group without establishing any broad rule for successive acquisitions.<sup>55</sup>

But the third scenario generates the core situation of unresolved issue for serial-acquisition analysis. Independent acquisitions of different targets may cumulatively alter market structure even where neither the prior-acquisition rule nor the interconnection provisions require their aggregation. This critical feature merits diligent and significant inquiry but not to equate the acquisitions with being one acquisition or to conclude that any framework cannot accommodate them.

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<sup>54</sup> Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1), Explanation (c); Competition Commission of India, *FAQs on Combinations* (May 2025), FAQ 51. See also id. FAQ 65(c)

<sup>55</sup> Competition Commission of India, *FAQs on Combinations* (May 2025), FAQ 63; Competition Commission of India (Combinations) Regulations, 2024, regs. 4(1)(b), 9(4)–(5).

Thus the separator is between aggregation for valuation, joint notification of linked steps, and the substantive inquiry into aggregated competitive effects. Each inquiry addresses a different aspect of merger control, and none should be extended beyond its legal basis merely to address concerns arising under another. Section VI examines whether the boundaries identified here disclose a material limitation in the Indian framework and considers what forms of clarification or reform could address any demonstrated gap without creating an overbroad sponsor-wide aggregation rule.

## **Boundaries of the Present Framework and a Measured Reaction**

### **A. The Reach and Limits of the Existing Provisions**

Merger-control law in India handles transaction aggregation via several different procedural thresholds. Section 5(d) of the Competition Act, 2002 sets a deal-value based (at just ₹2000 crore) threshold, on the condition that the acquired enterprise has considerable business presence in India. Regulation 4(1), Explanation (c) of the Competition Commission of India (Combinations) Regulations, 2024 requires the consideration of certain previous acquisitions in the same enterprise in the last 2 years. Regulation 9(4)-(5), in turn, addresses transactions implemented through interconnected steps and requires their treatment in accordance with the applicable notification framework.<sup>56</sup> Each can be said to serve a different purpose, but there is no general requirement of aggregating acquisitions by a private-equity sponsor of different targets, just because they are linked by a common investment strategy.

This difference is anything but technical. While the pre-acquisition rule applies to the calculation of qualifying investments in the same enterprise, the interconnected-transaction provisions apply where a number of steps may ultimately represent a single transaction. Accordingly, neither tool should be automatically read to apply to every acquisition carried out by the same sponsor. The fact that sponsors will not be aggregated automatically across acquisitions does not, in the absence of any other evidence, signal a flaw in the rules, but simply defines the scope of the current rule, which in turn may or may not create a significant problem in actual application.<sup>57</sup>

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<sup>56</sup> Competition Act, No. 12 of 2003, § 5(d) and Explanation thereto; Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1), Explanation (c), and reg. 9(4)–(5).

<sup>57</sup> Competition Act, No. 12 of 2003, § 5 and Explanation (b) thereto; Competition Commission of India (Combinations) Regulations, 2024.

Similarly, in considering the scope of the notification regime, statutory deal-value, the treatment of the relevant persons, interests or interests or groups, and any exemption must be considered. An acquisition not reaching the transaction-specific value threshold alone may still be notified under some other threshold or be subject to a different aggregation rule. It would be a mistake to conclude from this that any acquisition below a certain size will not attract merger review. Conversely, the simple fact that a number of investment vehicles are sponsored by one and the same provider cannot by itself be used to determine which persons or interests should be ascribed to a single party or group for statutory purposes. The treatment of fund structures, special-purpose vehicles, and portfolio companies must be informed by their applicable definitions, as derived from the relevant legal rights and obligations, rather than an assumption that a number of funds or investments sponsored by the same party necessarily constitute one economic or legal entity.

### **B. Cumulative Competitive Harm: A Plausible Concern Requiring Evidence**

Serial acquisitions can also give rise to competitive effects that are difficult to identify on a case-by-case basis. Successive acquisitions might raise concentration gradually, by continually eliminating small competitors before they emerge as an effective competitive constraint; or might allow a company to consolidate assets, customer relationships or distribution channels, or to combine data in a way that strengthens its competitive position. In some circumstances these risks might be especially relevant in markets where competition depends on product and process innovation, local presence, distribution access, or the ability of small companies to grow over time. Their existence, however, must be established through market-specific analysis rather than inferred from the number of acquisitions or the identity of the investor alone.

The Competition Act already contains a substantive lens through which a number of these concerns can be viewed, provided that the combination is otherwise within the scope of the Commission's jurisdiction to review. Section 20(4) mandates that the Competition Commission of India (CCI) consider factors like market concentration and barriers to entry, the probability of removing a tough and efficient competitor, and effects on innovation.<sup>58</sup> These considerations allow the Commission to examine competitive consequences beyond the immediate change in market shares and to assess the significance of the parties' positions within the relevant market.

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<sup>58</sup> Competition Act, No. 12 of 2003, § 5 and Explanation (b) thereto; Competition Commission of India (Combinations) Regulations, 2024.

Their availability does not, however, resolve the prior jurisdictional question of whether an acquisition must be notified. A substantive assessment cannot automatically cure a gap in notification coverage if the transaction falls outside the applicable jurisdictional requirements.

It is thus critical to distinguish a potential theory of cumulative harm from evidence of actual enforcement failure. That multiple acquisitions can in fact have a cumulative effect on competition would not, by itself, be evidence that Indian merger control has missed out on a harmful sequence. It would require evidence that such transactions in specific markets consistently escaped the threshold-based review, that their cumulative impact undermined competition substantially, and that competition-law institutions proved lacking in remedy. The materials reviewed for this paper have not demonstrated the latter from any Indian enforcement instance that has been publicly reported. This limitation should be acknowledged as a gap in the available evidence, rather than treated as proof that the problem does not exist.<sup>59</sup>

As a result, the defensible conclusion is less sweeping than a demand for reform. The Indian law on controlling mergers does not even explicitly authorize aggregation of independent acquisitions of multiple targets solely because each forms part of a single private-equity investment scheme. The competitive significance of this policy choice is the subject of much further empirical work, but whether the lack of sponsorwide aggregation constitutes a meaningful oversight remains unclear.

### **C. The Protections Already in Place and Their Restrictions**

By the same token, lack of a general norm combining acquisitions throughout a private-equity portfolio does not mean that the current regime ignores the overall commercial nature of a deal. The statutory provisions governing groups and control determine which entities and interests must be considered for the relevant legal purposes, while the information requirements in the prescribed notification forms enable the CCI to examine relevant horizontal overlaps, vertical relationships and complementary activities. In cases that are notifiable, such information can help the Commission understand the relevant transaction in the competitive situation of the parties.<sup>60</sup>

These safeguards serve different purposes and cannot be equated. Information about a market

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<sup>59</sup>OECD, *Serial Acquisitions and Industry Roll-Ups*, OECD Roundtables on Competition Policy Papers No. 303, at 7–17 (2023).

<sup>60</sup> Competition Act, No. 12 of 2003, §§ 6, 20

position of a portfolio company may be relevant information for substantive analysis of a notifiable combination, but there cannot be notification obligations to define jurisdiction over an acquisition which does not meet the notification criteria. Similarly, the substantive factors under Section 20(4) operate within the statutory framework governing the Commission's review of combinations; they do not themselves establish a general power to aggregate otherwise independent acquisitions across different targets. Any reliance on enforcement post-completion must also be supported by the particular statutory authority, triggers and time limits. Such enforcement may be able to combat certain types of anticompetitive conduct, but it cannot necessarily parallel information, timing and remedial opportunities of pre-merger review.<sup>61</sup>

The practical significance of these limitations can be determined only by examining the transactions most likely to fall outside the existing framework. If most independent purchases of various targets are well below the relevant threshold, if most occur in concentrated markets, and if they combine to eliminate a significant competitive constraint, then the case for targeted intervention would appear stronger. But if such acquisitions are less common, if most occur in markets that have other effective constraints, or if they can be addressed effectively under existing law, then a sweeping aggregation rule could impose significant costs without providing much in the way of a competitive remedy. The applicable response should take into account the scope, nature, and demonstrated impact of the problem, not the speculative possibility that serial acquisitions can cause harm.

#### **D. Comparative Experience and Its Limits**

Europe offers a useful, if only partial, comparison. Article 5(2) of the EU Merger Regulation contains a defined aggregation rule under which specified transactions involving the acquisition of parts of one or more undertakings by the same persons or undertakings within a two-year period are treated as a single concentration arising on the date of the last transaction.<sup>62</sup> Under that article, certain acquisitions of parts of various undertakings by the same persons or undertakings within a two-year period shall constitute a single concentration for the purposes of the Regulation, as from the date of the last acquisition. This provision illustrates that legislation can identify particular acquisitions for aggregation in a specific period of time and define their relevant date (here, the "closing date" of the last acquisition in a set). It does not

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<sup>61</sup> Council Regulation (EC) No. 139/2004 of 20 January 2004 on the Control of Concentrations Between Undertakings, art. 5(2), second subparagraph, 2004 O.J. (L 24) 1.

<sup>62</sup> Joined Cases C-611/22 P & C-625/22 P, *Illumina Inc. v. Commission*, ECLI:EU:C:2024:677 (Sept. 3, 2024).

establish a general requirement to aggregate every acquisition of a different target made by a common investor, nor does it resolve the broader question of how independent acquisitions within a private-equity portfolio should be assessed. Its main lesson is institutional: if aggregation is to be used beyond a single transaction, the scope and rules can be stated explicitly.

The Court of Justice judgment in *Illumina v Commission* also engages with the issue of the scope of merger-control jurisdiction but on a different footing. This was whether the Commission was precluded from accepting a referral pursuant to Article 22 of the EU Merger Regulation in cases where the national competition authorities making the referral lacked competence under their national law to examine the relevant concentrations.<sup>63</sup> This judgment does not address the question of how serial acquisitions are to be aggregated, and should not be understood as doing so. Its direct implications for the current case are more limited – concerns about potentially inadequate merger review cannot, without an appropriate legal basis, justify an expansion of jurisdiction beyond the authority conferred by the governing legislation.

A US example also demonstrates how acquisition patterns may have a role to play in a substantive antitrust case. The US 2023 Merger Guidelines recognise an acquirer's pattern or strategy of acquisitions as potentially relevant to the competitive analysis. In *FTC v U.S. Anesthesia Partners, Inc.* The district court permitted the FTC's allegations against the operating company to proceed while dismissing *Welsh Carson* from the Federal case with the reasons set out in the court's order. The FTC subsequently pursued a separate administrative resolution with *Welsh Carson*, resulting in a consent order addressing specified aspects of its future involvement and acquisitions and investments.<sup>64</sup> The case demonstrates how successive acquisitions may form part of a wider antitrust argument, although the procedural outcome does not constitute a finding that each individual acquisition or strategy was unlawful.

The American approach does not, however, provide precedent for India that a test of a sponsor-wide notification is appropriate. Acquisition patterns may be significant to underlying enforcement concerns, but they are not directly related to questions about whether individual

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<sup>63</sup> U.S. Department of Justice & Federal Trade Commission, *Merger Guidelines* guidelines 7–8 (Dec. 18, 2023). The Guidelines state the agencies' enforcement approach and are not themselves legally binding.

<sup>64</sup> *FTC v. U.S. Anesthesia Partners, Inc.*, No. 4:23-cv-03560, Memorandum Opinion and Order (S.D. Tex. May 13, 2024); *In the Matter of Welsh, Carson, Anderson & Stowe XI, L.P.*, FTC File No. 201 0031, Agreement Containing Consent Order (Jan. 17, 2025), and Decision and Order (May 20, 2025).

acquisitions should be aggregated and treated as one notifiable transaction. While there may be implications for competition or competitive behavior, for instance, in a pattern of acquisitions, there need not be a similar implication for jurisdictional treatment of the acquisitions at the time they are proposed.

### **E. A Calibrated Regulatory Response**

The analysis supports clarification of the existing framework before any general legislative extension is considered. The CCI could issue guidance explaining how the current rules apply to private-equity investments structured through multiple fund vehicles or special-purpose entities. Such guidance should identify the evidence relevant to determining whether apparently separate steps form part of an interconnected transaction, including cross-conditionality between agreements, common transaction documents, interdependent completion obligations and contemporaneous records indicating that the steps were designed to achieve a defined transactional outcome. It should also explain the application of the statutory group provisions to fund structures and clarify how qualifying prior acquisitions are treated under Regulation 4(1), Explanation (c), of the 2024 Regulations.<sup>65</sup>

Any such advice would need to delineate between different existing rules and a new rule to expand those rules. Guidance can help lead the parties to the legal implications of a structure of transactions, but can't create a notification requirement on its own for a provision in the statute or regulation. To that end, the CCI should clarify what the guidance says about the legal position, but not indicate that common sponsorship, sector overlap, or even a broad buy-and-build strategy are alone enough to amount to an interconnected set of otherwise independent acquisitions. There may be a factual connection, but there may be no need to conclude there is a single, legally recognisable arrangement.

A wider rule based simply on the investments objective could risk capturing run of the mill commercial transactions, raising compliance costs and deterring investments in smaller businesses without reference to the risk of competition being negatively affected. Common ownership and repeated acquisitions may warrant closer scrutiny when backed up by the necessary evidence, but neither should serve as an automatic substitute for a defined jurisdictional test. Any expansion of aggregation should be tailored to the individual problem

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<sup>65</sup> Competition Act, No. 12 of 2003, § 5 and Explanation (b) thereto; Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1), Explanation (c), and reg. 9(4)–(5).

it is trying to solve.

Mechanism(s) to correct this gap should still be available if new empirical work confirms the problem, namely that material competitive harm escapes review due to the current thresholds. Perhaps congressional action could set forth a definition of look-back period, agreed-upon marketplace proxies, rules of attribution and a prohibition on an aggregative scheme that would include related investments that did not constitute separate mergers merely because they had the same sponsor. The criteria for the triggers, which would require further analysis of the economic and legal issues, would include a study of the market concentration effects of a new rule and the transaction burden it would impose. Selecting a trigger before establishing the nature and extent of the problem would risk producing an overinclusive regime without adequately addressing the transactions of greatest concern.<sup>66</sup>

The critical takeaway must therefore be one of proportionality. Indian merger control makes a distinction between qualifying prior acquisitions, the notification of interconnected steps and the substantive assessment of combinations. They are not the basis for a wholesale system of aggregation of independent acquisitions across a portfolio of private equity investments; nonetheless their narrow scope cannot in itself support the conclusion that such a system is required. The immediate priority should be to clarify the operation of the existing rules and develop empirical evidence about transactions that may escape review despite producing material cumulative competitive effects. A broader legislative response would be justified only if that evidence demonstrates a significant problem that the existing framework cannot adequately address.

## Conclusion

Indian merger-control law recognizes the difference between aggregating the value of a deal, aggregating multiple interconnected steps as a single combination, and analyzing the effects of serial acquisitions. Regulation 4(1), Explanation (c) of the Competition Commission of India (Combinations) Regulations, 2024 relates to aggregating qualifying prior acquisitions within the same enterprise for deal-value purposes, and Regulations 9(4)-(5) relate to interconnected transaction steps, while neither presents a general requirement that loosely-connected acquirers of different targets be forced to aggregate solely because they are sponsored by the same private

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<sup>66</sup> See OECD, *Serial Acquisitions and Industry Roll-Ups*, OECD Roundtables on Competition Policy Papers No. 303, at 7–17 (2023).

equity firm.

While successive acquisitions could raise concentration, push out a nascent competitor, or increase a portfolio company's share of the market, there is no normative reason for a broad rule requiring the aggregation of multiple acquisitions of different targets based on common investment strategy. Nor is there a normative reason that the mere possibility of accumulated harm should suffice to show that the competition regime is not functioning properly. The experiences of the European Union and the United States show that it is vital to separate jurisdictional aggregation from an evaluation of the competitive effects. The current discussion has not shown via Indian enforcement data that serial acquisitions systematically avoid effective review.

The most immediate focus, therefore, should be on clarifying issues such as fund structures, qualifying prior acquisitions, and the proxies for interconnectedness. Legislative change should be considered only if empirical evidence establishes that a significant amount of material harm is escaping review, and such intervention is narrowly tailored to the identified concern.

The objective should not be to combine everything without any selecting process, but to establish when separate acquisitions should be combined on the basis of an explicit and legally defensible criterion. Empirical data must be coupled with doctrinal clarity to ensure proportionate application.