
**THE EFFECTS DOCTRINE IN ACTION:
EXTRATERRITORIAL JURISDICTION, AAEC AND THE
LIMITS OF CCI'S CROSS-BORDER MERGER CONTROL
(2020-2025)**

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ABSTRACT

The Competition Act of 2002 provides a legal basis for CCI's extraterritorial jurisdiction through the Effects Doctrine in regulating cross-border mergers. This paper critically examines the doctrine's application to cross-border mergers in India during 2020-2025, a period marked by digital consolidation, the Competition (Amendment) Act, 2023, and high-value technology-sector acquisitions. The paper undertakes a doctrinal analysis of the Appreciable Adverse Effect on Competition (AAEC) standard, along with a comparative assessment of effects-based frameworks in the United States (US), European Union (EU), and China and analyses key CCI decisions such as Sun Pharma/Ranbaxy and Microsoft/Activision Blizzard. The main premise is that although India has embraced the Effects Doctrine, its application lacks logical coherence and consistency.

With effect from September 10, 2024, transactions with a Deal Value Threshold (DVT) of ₹2000 crores and Substantial Business Operations (SBO) in India must be reported, according to the Competition (Amendment) Act, 2023. This reform seeks to close the killer acquisition loophole and expand jurisdictional reach. However, the absence of a defined nexus standard to determine whether or not a foreign transaction has an AAEC in India remains a key doctrinal vacuum which the DVT and SBO fail to address.

The paper concludes with proposals for structured merger guidelines, safe harbour thresholds, strengthened international cooperation, and digital market-specific analytical tools that can be put into practice without the need for extra legislative power but are necessary to establish legitimate extraterritorial jurisdiction over merger activity.

1. INTRODUCTION

1.1 Background

The nature and size of corporations have evolved, and globalisation has significantly impacted the economy. In major economies, a significant portion of market share consists of cross-border mergers and acquisitions. India has been incorporated into the global flow of funds across sectors including technology, digital infrastructure, and pharmaceutical sectors since its economic liberalization in 1991.¹ India has become a prominent destination for foreign direct investment and a significant arena for merger control as a result of a surge in both inbound investments from international technology businesses and outbound acquisitions by Indian conglomerates.²

The digital revolution accelerated by the COVID-19 pandemic and the global expansion of the digital platforms have only made matters worse and led to several high-value platform acquisitions that altered the competitive landscape in a number of sectors, from e-commerce and fintech to gaming and cloud computing. Over 850 merger notifications were evaluated by the CCI between 2020 and 2025, most of which came from foreign acquirers or targets with cross border transactions. Geographical barriers appear to be irrelevant in a competitive market, as evidenced by the growing volume of cross-border transactions. The Indian market may be significantly impacted by mergers that occur entirely outside of India, either by removing potential domestic competitors or by control over data repositories or combining network to eliminate competition from domestic platform, all of which have significant implications for Indian consumers. Therefore, it is crucial to determine whether the framework of Indian competition law has the authority and analytical resources necessary to effectively handle this problem.³

1.2 The Effects Doctrine in Cross- Border Mergers

According to the Effects Doctrine, the Competition Act of 2002 confers extraterritorial

¹ Competition Commission of India, Annual Report 2023-24 (2024), <https://www.cci.gov.in/public/images/annualreport/en/annual-report-2023-241734695318.pdf>.

² Kartik Maheshwari & Simone Reis, Extraterritorial Application of the Competition Act and Its Impact, Competition Law Reports (2012), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Articles/Extraterritorial%20Application%20of%20the%20Competition%20Act%20and%20Its%20Impact.pdf.

³ *Supra* note 1.

authority upon the CCI to regulate cross border operations that have caused or are expected to cause AAEC in the relevant market in India.⁴ A number of factors, including but not limited to market share of persons or enterprise in combination, barriers to entry, availability of alternatives, vertical integration, anticipated price increases, and the elimination of effective competitors, must be reviewed. The prospective phrase "has or is likely to have" enables anticipatory intervention based on expected future effects, which is crucial when dealing with cross border combinations when the effects are not immediately observable in the Indian marketplace, at the same time the discretionary use of "all or any" provisions offers flexibility in the application of these factors but raises concerns about consistency.⁵

1.3 Statement of Problem

The absence of a precise definition of "appreciable" makes it impossible for the CCI to ascertain the exact degree of nexus between transactions outside of India and India's market and while the DVT and SBO expanded the jurisdiction of the CCI, but actual anti-competitive effects on reportability are not measured by the SBO.

1.4 Research Objectives and Questions

This study addresses the following questions: (1) In comparison to the US, Europe, and China, how precise is India's effects doctrine? (2) How did the CCI apply the doctrine in cross-border mergers between 2020 and 2025? and (3) What reforms are necessary to ensure consistency and efficient application of the effects doctrine?

1.5 Research Methodology and Scope

The paper employs doctrinal research by analyzing The Competition Act of 2002 and the 2023 Amendment, the decisional practice of CCI, and comparative frameworks involving the US through the FTAIA, the EU through the qualified effects test, and China through the Anti-Monopoly law. The study's timeframe is from 2020 to 2025 because of the growing development of digital markets and is limited to merger control under Sections 5, 6 and 32 of the Competition Act; excludes abuse of dominance or Anti-Competitive Agreements.

⁴ The Competition Act, 2002, § 32, No. 12 of 2003, Acts of Parliament (India).

⁵ The Competition Act, 2002, § 20(4), No. 12 of 2003, Acts of Parliament (India).

2. LEGAL FRAMEWORK

2.1 Indian Legal Framework

2.1.1 Legislative Genesis

In response to post- liberalization economic shifts, the Monopolies and Restrictive Trade Practices Act of 1969 was abolished by the Competition Act of 2002.⁶ The MRTP Commission's insufficient ability to control extraterritorial activity was one of its main shortcomings. After evaluating the MRTP regime, the Raghavan Committee (2000) came to the conclusion that it was no longer suitable for handling the present day rapidly evolving markets. The Supreme Court of India further supported this by ruling in Haridas Exports case that the MRTP Commission lacked jurisdiction over actions taken outside India unless there was a direct connection to the territory.⁷

The Competition Act of 2002 was enforced in stages; the combination provisions became operative on April 1, 2011. The Competition Act, 2002 forbids combinations that have or may have an AAEC in the relevant market in India, regardless of their location, the CCI may extend its authority beyond national borders.⁸ India's current competition law architecture is based on the AAEC norm and the extraterritorial authority it represents. The Act's construction reflects a conscious choice to base CCI jurisdiction on competitive effect rather than geographical presence. By doing so, the CCI seeks to foster competition, safeguard consumer interests and promote economic freedom.⁹

2.1.2 Section 5

The Competition Act, 2002 defines "combination" as mergers, acquisitions, and amalgamations and establishes financial thresholds for mandatory notification.¹⁰ Upon satisfaction of these thresholds jurisdiction is invoked, either at the enterprise level or at the group level provided that they have sufficient nexus with relevant market in India. At the enterprise level, for combinations within India, the threshold is combined assets of more than INR 2,500 crore or combined turnover of more than INR 7,500 crore in India. For

⁶ The Competition Act, 2002, No. 12 of 2003, Acts of Parliament (India).

⁷ M/s Haridas Exports vs All India Float Glass Mfrs. Assn. & Ors. AIR 2002 SC 2728.

⁸ The Competition Act, 2002, § 5, No. 12 of 2003, Acts of Parliament (India).

⁹ The Competition Act, 2002, § 6, No. 12 of 2003, Acts of Parliament (India).

¹⁰ The Competition Act, 2002, § 5, No. 12 of 2003, Acts of Parliament (India).

cross-border transactions, the threshold is global assets of more than USD 1.25 billion, including at least INR 1,250 crore in India, or global turnover of more than USD 3.75 billion, including at least INR 3,750 crore in India. At the group level, for domestic combinations, the threshold is assets of more than INR 10,000 crore or turnover of more than INR 30,000 crore in India. For cross-border transactions, the thresholds are global assets of more than USD 5 billion, including at least INR 1,250 crore in India, or global turnover of more than USD 15 billion, including at least INR 3,750 crore in India.¹¹ Intangible assets like goodwill and intellectual property are also considered "assets." Acquisitions of targets with less than INR 450 Crore in assets and INR 1,250 Crore in turnover in India are subject to a de minimis exception.¹² If a cross-border merger satisfies global legislative requirements than CCI has territorial jurisdiction to monitor it if the combined global asset or turnover exceeds the threshold.¹³

2.1.3 Section 6

Section 6 prohibits combinations that cause or are likely to cause AAEC within the relevant market in India and establishes a pre-merger notification system.¹⁴ Following board approval in merger or amalgamation or execution of agreement or acquiring control under acquisition, the parties are required to notify the CCI within 30 days and maintain a standstill obligation.¹⁵ The 2023 Amendment reduced the Standstill Obligation period from 210 to 150 days.¹⁶ In the event that the CCI does not render a decision during this time, the application is deemed accepted.

The Combination Regulations provide that the degree of overlap between the parties involved in the transaction for which the combination is established determines whether Form I or Form II should be used. Form I under Regulation 6 would typically be used for combinations that do not have horizontal or vertical overlaps, or that have a horizontal market share of less than 15% and a vertical market share of less than 25%.¹⁷ Form II under Regulation 9 would be required for combinations that have horizontal overlap of 15% or

¹¹ S.O. 1130(E).

¹² S.O. 1130(E).

¹³ The Competition Act, 2002, § 5, No. 12 of 2003, Acts of Parliament (India).

¹⁴ The Competition Act, 2002, § 6, No. 12 of 2003, Acts of Parliament (India).

¹⁵ The Competition Act, 2002, § 6(2), No. 12 of 2003, Acts of Parliament (India).

¹⁶ The Competition Amendment Act, 2023, § 7, No. 9 of 2023, Acts of Parliament (India).

¹⁷ Competition Commission of India (Combinations) Regulations, 2024, Reg.5 2(a) (India).

more, or vertical overlaps of 25% or more.¹⁸ As a result, they would be subject to a detailed competition review. Additionally, the Green Channel option under Regulation 5A¹⁹ offers an accelerated approval process wherein eligible Form I filings are deemed approved if certain requirements are satisfied, including the absence of cross-shareholdings, control, or previous business relationships between the parties involved in the combination, as well as any horizontal, vertical, or complementary overlaps.²⁰ A non-exhaustive list of variables such as degree of countervailing power in the market, entry barriers, substitutes, vertical integration, and the removal of effective competition, are included in the AAEC test.²¹ Although it permits contextual flexibility, the CCI's considerable latitude in allocating weights to each of the defined analytical aspects raises questions regarding the consistency of the analysis. The concept of "control" was further expanded by the 2023 Amendment to include instances of "material influence," which included minority stake transactions, which are becoming more common, especially in the technology sector.²²

2.2 Section 32

Section 32²³ fills the jurisdictional gap identified in the Haridas Exports ruling.²⁴ The non-obstante provision of the legislation gives the CCI the authority to look into any cross-border agreement, abuse of dominant position, or combination or any matter or practice or action arising out of agreement or dominant position or combination outside India that has or is expected to have AAEC within the relevant market in India. The operative jurisdictional trigger is the AAEC in India, rather than the location of the activity.²⁵ While Section 32 offers an ex post facto enforcement option for sub-threshold transactions, Sections 5 and 6 establish an ex-ante notification regime for threshold crossing combinations. However, Section 32 is legally solid but practically underdeveloped due to the lack of procedural norms for extraterritorial combination assessment, the challenges of unwinding completed

¹⁸ Competition Commission of India (Combinations) Regulations, 2024, Reg.5 2(b) (India).

¹⁹ Competition Commission of India (Combinations) Regulations, 2011, Reg. 5A (India).

²⁰ Siddharth Chaturvedi, *Going the European Way? Defining 'Substantial Business Operation' in Competition Act, 2023*, RMLNLU Law Review Blog (Apr. 12, 2026 11: 00 AM), <https://rmlnlulawreview.com/2023/07/27/going-the-european-way-defining-substantial-business-operation-in-competition-act-2023/>.

²¹ The Competition Act, 2002, § 20(4), No. 12 of 2003, Acts of Parliament (India).

²² The Competition Act, 2002, § 20(4), No. 12 of 2003, Acts of Parliament (India).

²³ The Competition Act, 2002, § 32, No. 12 of 2003, Acts of Parliament (India).

²⁴ M/s Haridas Exports vs All India Float Glass Mfrs. Assn. & Ors. AIR 2002 SC 2728.

²⁵ M/s Haridas Exports vs All India Float Glass Mfrs. Assn. & Ors. AIR 2002 SC 2728.

overseas transactions and insufficient international coordination methods.²⁶

3. PRE-AMENDMENT FRAMEWORK

3.1 Structural features of Pre-Amendment Framework

The pre-amendment framework under the Competition Act, 2002 had certain structural features that made cross-border merger review possible even before the 2023 Amendment. First, the definition of “combination” under Section 5 was broad enough to cover mergers, acquisitions, and amalgamations across sectors and jurisdictions. Second, the AAEC standard under Section 20(4) was flexible and allowed the CCI to assess transactions through a multi-factor analysis rather than through a rigid statutory formula. Third, the use of global asset and turnover thresholds, read with Section 32, gave the framework an extraterritorial orientation by allowing the CCI to review cross-border transactions that could affect competition in India.²⁷

3.2 Key CCI Decisions

3.2.1 Sun Pharmaceutical/Ranbaxy (2014)

The CCI’s 2014 review of *Sun Pharmaceutical Industries Ltd. v. Ranbaxy Laboratories Ltd.*²⁸ remains the most analytically significant AAEC assessment in Indian cross-border merger history. The USD 3.2 billion transaction which created India’s largest pharmaceutical company was scrutinised across fifty-one relevant product markets defined at the molecular level.

The CCI determined that AAEC was present in seven relevant product markets, where the combined market shares of the merger parties ranged from 90 to 95%. This was the first instance of mandatory divestiture being ordered in an Indian merger review. The divestiture order covered one compound, included on the National List of Essential Medicines and subject to price regulation, where the combined market share approached 95%. The US FTC’s parallel assessment of the same transaction produced overlapping but not identical

²⁶ Yogesh Rai & Taru Mishra, *An Analysis of Extra-Territorial Jurisdiction of Competition Commission of India*, 11 JETIR, (2024), <https://www.jetir.org/view?paper=JETIR2404087>.

²⁷ Siddharth Chaturvedi, *Supra* note 20.

²⁸ Competition Commission of India, Combination Registration No. C-2014/05/170, *Notice under Section 6(2)* (DEC. 5, 2014), http://164.100.58.95/sites/default/files/C-2014-05-170_0.pdf (Apr. 15, 2026, 11:00 AM).

remedial orders, illustrating the coordination deficits characteristic of decentralized multi-jurisdictional merger review.²⁹

3.2.2 Tata Sons/Air India (2021)

The CCI approved Talace Private Limited's acquisition of Air India Limited for ₹18,000 crore on December 20, 2021. The proposed combination envisaged the acquisition of 100% equity share capital of Air India Limited and Air India Express Limited, and 50% equity share capital of Air India SATS Airport Services Private Limited (AISATS). On January 27, 2022, Talace Private Limited completed the acquisition of Air India.³⁰ Due to Tata Sons' pre-acquisition shareholding structure in Vistara (a 51:49 joint venture with Singapore Airlines Limited, a foreign company) and AirAsia, the acquisition raised serious anti-competitive concerns under Section 20(4) of the Competition Act.³¹ With a pre-acquisition HHI of 3,509; well above the 2,500 threshold for high concentration and many areas of horizontal overlap through 91 overlapping domestic origin - destination routes between AirAsia India and Air India and nine overlapping international routes between Vistara and Air India, respectively, the new entity would have a combined passenger market share of over 25.2 percent domestically after the merger. Additionally, it created significant competition problems for ground and freight handling services, charter flights, and air cargo services. CCI approved the acquisition under Sec. 31(1) of the Competition Act³² without limitations or revisions concluding that the combination would not likely result in an AAEC in India. Critics contend that the approval reflected insufficient application of the Sec. 20(4)³³ analytical approach to assess the AAEC potential in an oligopoly with exceptionally high entry barriers in the aviation sector.

Vistara is a joint venture with Singapore Airlines (SIA), a non-Indian airline, and the combination involves the consolidation of international network routes from Singapore to

²⁹ Kalpana Tyagi, *Mergers Between Generics: How Competition Commission of India Promotes Innovation and Access Through Merger Control*, QMUL 33 (2018) <https://www.qmul.ac.uk/icc/media/icc/gar/gar2018/Mergers-between-generics---How-Competition-Commission-of-India-promotes-innovation-and-access-through-merger-control.pdf>.

³⁰ Competition Commission of India, Combination Registration No. C-2021/11/883, *Notice under Section 6(2)* (DEC. 20, 2021), http://164.100.58.95/sites/default/files/Notice_order_document/Order-883.pdf (Apr. 15, 2026, 09:00 AM).

³¹ The Competition Act, 2002, § 20, No. 12 of 2003, Acts of Parliament (India).

³² The Competition Act, 2002, § 31(1), No. 12 of 2003, Acts of Parliament (India).

³³ The Competition Act, 2002, § 20, No. 12 of 2003, Acts of Parliament (India).

the Middle East, Asia, and Europe. According to India's merger control laws and Sec. 32³⁴ of the Competition Act, the merger is so obviously cross-border. The merger of Vistara and Air India was approved by the CCI in September 2023; wherein SIA acquired 25.1% share in the combined business of Air India subject to voluntary commitments on route capacity. Pre-DVT, Vistara/Air India showed aviation-specific scrutiny via commitments.³⁵

3.2.3 Meta/Kustomer and the Data Concentration Gap

Meta's acquisition of Kustomer conditionally approved by the EU Commission in 2022 following an analysis centred on data concentration and its implications for competitive dynamics in customer service software markets³⁶ never received substantive CCI examination despite Meta's commanding dominance in India's social messaging markets. Kustomer had no significant asset footprint in India, placing the transaction below mandatory notification thresholds. The Meta/Kustomer case illustrates the data concentration gap in India's merger control framework: the CCI has no established methodology for assessing competitive harm arising from the aggregation of data assets by dominant platform operators and no jurisdictional instrument to capture asset-light, data-rich acquisitions below the Section 5 thresholds.³⁷

3.2.4 Microsoft/Activision Blizzard (2023)

The Microsoft/Activision Blizzard³⁸ transaction valued at USD 68.7 billion and reviewed across thirty-seven jurisdictions represents the most diagnostically significant case study of the CCI's digital market analytical limitations. The European Commission conditionally approved, requiring cloud-streaming licensing. The UK Competition and Markets Authority initially blocked the transaction before conditionally clearing a restructured deal. The US

³⁴ The Competition Act, 2002, § 32, No. 12 of 2003, Acts of Parliament (India).

³⁵ Competition Commission of India, Combination Registration No. C-2023/04/1022, *Notice under Section 6(2)* (SEPT. 1, 2023), <https://www.cci.gov.in/images/caseorders/en/order1695297548.pdf> (Apr. 15, 2026, 11:00 AM).

³⁶ Kabir Singh, Khushbu Singh and Sarvika Singh, *Analysing CCI's Order on WhatsApp's 2021 Privacy Policy-A New Era for Data Protection and Competition Law Enforcement in India*, KLUWER COMPETITION LAW BLOG, (Apr. 15, 2026, 10:00 AM), <https://competitionlawblog.kluwercompetitionlaw.com/2025/01/06/analysing-ccis-order-on-whatsapps-2021-privacy-policy-a-new-era-for-data-protection-and-competition-law-enforcement-in-india/>.

³⁷ Competition Commission of India, *Market Study on the Telecom Sector in India*, at 27-30 (2021), <https://www.cci.gov.in/images/whatsnew/en/market-study-on-the-telecom-sector-in-india1652177923.pdf>.

³⁸ Eddie Makuch, *37 Countries Have Now Approved Microsoft's Deal to Buy Activision Blizzard*, GAMESPOT (Apr. 15, 2026, 9:00 AM), <https://www.gamespot.com/articles/37-countries-have-now-approved-microsofts-deal-to-buy-activision-blizzard/1100-6514380/>.

FTC pursued litigation but failed to obtain a preliminary injunction.

The CCI granted unconditional Phase I clearance following a minimal substantive review, primarily because Activision's Indian assets and revenues fell below the then-applicable notification thresholds.³⁹ This outcome demonstrates two critical systemic failures: (i) the pre-DVT threshold gap allowed a USD 68.7 billion transaction with substantial exposure to Indian gaming consumers and content distribution networks to escape meaningful CCI evaluation; and (ii) the CCI had not developed an analytical framework capable of assessing competitive harm in multi-sided platform markets, network-effects-driven industries, or cloud-gaming ecosystems. The Microsoft/Activision case is the clearest empirical demonstration of the CCI's digital market analytical deficit.⁴⁰

3.3 Limitations of the Pre - Amendment Framework

However, these structural features did not translate into consistently effective enforcement. The term "appreciable" remained undefined, unlike the more structured nexus standards used in the US and the EU, which reduced predictability in cross-border review. The framework also failed to adequately capture high-value, asset-light digital acquisitions because notification thresholds were primarily linked to assets and turnover rather than transaction value, data concentration, or user-base significance. In addition, the relationship between Sections 5 and 6 on the one hand and Section 32 on the other remained underdeveloped for sub-threshold foreign combinations, since the statute conferred jurisdiction in theory but offered limited procedural guidance, limited information-gathering capacity, and weak international coordination in practice. Accordingly, the pre-amendment regime provided a workable legal foundation, but not a sufficiently precise or modern enforcement framework for digital and cross-border merger control.⁴¹

4. POST 2023 AMENDMENT FRAMEWORK

4.1 The Competition (Amendment) Act, 2023: DVT, SBO and Critical Assessment

The Competition (Amendment) Act, 2023 introduced a significant jurisdictional reform

³⁹ Nardeep Chawla, *Microsoft's Acquisition of Activision Blizzard: Indian Outlook*, IRCCL, (Apr. 10, 2026), <https://www.irccl.in/post/microsoft-s-acquisition-of-activision-blizzard-indian-outlook>.

⁴⁰ *Id.*

⁴¹ Siddharth Chaturvedi, *Supra* note 20.

through the DVT, which became effective from September 10, 2024. Under this framework, combinations valued above ₹2,000 crore must be notified to the CCI where the target enterprise has SBO in India.⁴²

The de minimis exception, which previously allowed high-value digital acquisitions to avoid required notice, is effectively eliminated by the DVT, which operates independently and overrides it. As a result, digital purchases valued at more than ₹2,000 crore can no longer be conducted without CCI approval. The SBO requirement determines whether the target has a sufficient operational nexus with India. For non-digital sectors, the target's Indian turnover must exceed 10% of global turnover and ₹500 crore, or the target's Indian Gross Merchandise Value (GMV) must exceed 10% of global GMV and ₹500 crore. The same percentage thresholds apply to digital sectors without the floor, and Indian users must make up at least 10% of the target's worldwide user base in every sector.⁴³ The DVT-SBO framework therefore strengthens the practical reach of India's extraterritorial merger control regime by enabling review of offshore transactions that have substantial commercial relevance in India even where traditional thresholds are not met. Two limitations still exist, though: the framework addresses the threshold question without addressing the underlying doctrinal deficit i.e. SBO determines when notification is required, not when Indian markets are actually harmed in the AAEC sense and in borderline situations where multiple jurisdictions contribute to the target's income, the SBO's percentage limits raise some questions and make it more difficult to attribute such profits to India.⁴⁴

4.2 Key CCI Decisions

4.2.1 Yes Bank/SMBC (2025)

On September 2, 2025, the CCI authorised Sumitomo Mitsui Banking Corporation (SMBC) to purchase a 20% stake in YES Bank for about US\$1.6 billion (about ₹13,483 crore).⁴⁵ This is both the first significant cross-border banking transaction authorised by the CCI under the

⁴² George Cyriac and Rahul Kapoor, *Competition Commission of India provides updated Deal Value Threshold*, MORGAN LEWIS LAWFLASH (Apr. 10, 2026, 07:29 PM), <https://www.morganlewis.com/pubs/2024/09/competition-commission-of-india-provides-updated-deal-value-threshold>.

⁴³ Competition Commission of India (Combinations) Regulations, 2024, Reg. 5 (India).

⁴⁴ Siddharth Chaturvedi, *Supra* note 20.

⁴⁵ Press Information Bureau, *CCI Approves Acquisition of Certain Share Capital and Voting Rights of YES Bank by Sumitomo Mitsui Banking Corporation*, PRESS INFORMATION BUREAU (Sept. 2, 2025), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2163146>.

post-September 2024 DVT/SBO regime and the largest cross-border banking combination since the amendment. The State Bank of India (SBI) and other institutional shareholders sold shares to SMBC, which the CCI categorised as a secondary share acquisition under Section 5(a) of the Competition Act.⁴⁶

With this acquisition, SMBC became an associate of Sumitomo Mitsui Financial Group (SMFG) and the primary shareholder of YES Bank.⁴⁷ The deal led to horizontal overlaps in related banking categories between SMBC's Indian branches in New Delhi, Mumbai, Chennai, and GIFT City.⁴⁸ The deal was approved by the CCI on September 2, 2025, and the Reserve Bank of India (RBI) on August 22, 2025 (up to 24.99%).⁴⁹ After the transaction closed on September 17, 2025, SMBC anticipates acquiring an extra 4.2% of the company, increasing its overall ownership to 24.2%.⁵⁰

This transaction has been evaluated and applied under the asset and turnover thresholds (not DVT) for the secondary acquisition of shares from the perspective of an effects doctrine evaluation. Despite the fact that the acquisition covers overlapping markets, the deal received unconditional CCI approval due to the degree of market fragmentation and regulatory restrictions.⁵¹ Nonetheless, there are legitimate worries regarding the growing amount of foreign capital consolidated in India, the suitability of the Competition Act's Section 20(4) provisions for depository institutions, and the CCI's actions to guarantee that adequate rigour is applied in the examination of transactions already involving the acquirer's presence (SMBC).⁵²

4.3 Digital Markets and Key Limitations

Digital market dynamics and the CCI jurisdictional framework were structurally

⁴⁶ *Id.*

⁴⁷ Sumitomo Mitsui Financial Group & Sumitomo Mitsui Banking Corporation, *Completion of Initial Acquisition of Stake in YES BANK and Execution of Agreement for Additional Stake*, SMBC NEWS RELEASE (Sept. 17, 2025), https://www.smbc.co.jp/news_e/pdf/e20250917_02.pdf.

⁴⁸ Press Information Bureau, *supra* note 45.

⁴⁹ *Japan's SMBC Completes Acquisition of 20% Stake in YES Bank, Becomes Largest Shareholder*, MONEYCONTROL (Apr. 17, 2026, 06:30 PM), <https://www.moneycontrol.com/news/business/companies/japan-s-smbc-completes-20-stake-acquisition-in-yes-bank-becomes-largest-shareholder-13557537.html>.

⁵⁰ Sumitomo Mitsui Financial Group & Sumitomo Mitsui Banking Corporation, *supra* note 47.

⁵¹ *Merger of YES Bank: SBI Bailout, SMBC Acquisition & Legal Hurdles*, THE LEGAL SCHOOL (Apr. 20, 2026, 08:30 PM), <https://thelegalschool.in/blog/merger-of-yes-bank>.

⁵² *SMBC Picks Up Additional 4.22% Stake in YES Bank*, THE HINDU (Apr. 22, 2026, 06:00 PM), <https://www.thehindu.com/business/smbc-picks-up-additional-422-stake-in-yes-bank/article70086060.ece>.

incompatible between 2020 and 2025. Data accumulation, network effects, and platform ecosystems are the main drivers of digital market competitiveness; these factors are not captured by asset-based and turnover-based thresholds under Section 5 hence Section 20(4) methodological adjustments are required. The threshold gap was closed by the 2024 DVT and SBO provisions, but the underlying analytical gap persists. Four interrelated limitations constrain the efficacy of the current framework: 1) nexus ambiguity arising from the lack of a definition for "appreciable"; 2) inconsistent application across decisions of similar significance; 3) enforcement constraints because of weak cooperation mechanisms and limited disclosure powers over foreign entities; 4) inadequate methodological adaptation to data-driven markets.⁵³

5. COMPARATIVE FRAMEWORK: THE US, EU AND CHINA

5.1 United States

Learned Judge Hand articulated what is now known as the "Intended Effects Test" in the *United States v. Aluminium Company of America*⁵⁴, which gave rise to the Effects Doctrine. According to this test, a state may impose liability on foreign actors for actions taken outside of its borders if those actions are intended to and do result in anticompetitive effects in the relevant domestic market. Alcoa's involvement in an international cartel wherein an agreement was reached to limit the supply of aluminium to the US was the basis for the case's adjudication; in other words, actions taken in a foreign jurisdiction that had direct and intended effects within the relevant domestic market warranted jurisdiction under the Sherman Act. By refocusing the jurisdictional examination on the economic impact of the conduct, the Court decided to abandon the previous rigid territoriality. Section 32 of the Indian Competition Act is grounded in this Alcoa principle: a country's geography does not shield it from the implementation of another nation's competition laws where a domestic market is harmed.⁵⁵

The Foreign Trade Antitrust Improvements Act (FTAIA) was passed by Congress in 1982.⁵⁶

⁵³ George Cyriac and Rahul Kapoor, *Supra* note 37.

⁵⁴ *United States v. Aluminum Co. of America*, 148 F.2d 416 (2d Cir. 1945).

⁵⁵ Dover Robert and Frosini Justin, *The Extraterritorial Effects of Legislation and Policies in the EU and US*, EUROPEAN PARLIAMENT, 5 (2010),

[https://www.europarl.europa.eu/RegData/etudes/STUD/2012/433701/EXPO-AFET_ET\(2012\)433701_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2012/433701/EXPO-AFET_ET(2012)433701_EN.pdf).

⁵⁶ 15 U.S.C. § 6a (2018).

Unless there is a "direct, substantial, and reasonably foreseeable effect" on domestic business in the US, the FTAIA prohibits the use of extraterritorial jurisdiction over foreign activity. Compared to Alcoa, the FTAIA has a stricter formal connection bar for extraterritorial jurisdiction. The US Supreme Court upheld the plaintiff's claim of broad jurisdiction in *Hartford Fire Insurance Co. v. California*⁵⁷ to the extent that a domestic effect was demonstrated. The Federal Trade Commission's challenge to Microsoft/ Activision Blizzard's proposed merger is an example of this forward-looking perspective of potential competitive harm based on the use of digital platforms. Since the beginning of 2020, the US government's focus on competition law enforcement has expanded to include digital markets and emerging competition.⁵⁸ The 2023 US Merger Guidelines issued by the DOJ and FTC⁵⁹ explicitly address multi-sided platforms and data accumulation as a barrier to entry, and the elimination of nascent competitors analytical categories absent from existing CCI guidelines.⁶⁰

5.2 European Union

The General Court decided that it had jurisdiction over a merger of South African companies in *Gencor Ltd v. Commission* because the transaction would have immediate, substantial, and predictable effects within the European Economic Area.⁶¹ The "qualified effects test," which the court developed, was upheld in *Intel Corp. v. European Commission*.⁶² Compared to India's AAEC requirements, the Qualified Effect Test is a three-part test that offers more doctrinal clarity. In order to address competitive concerns that standard merger reviews would not be able to address through exit plans, the Digital Markets Act (DMA) of 2022 imposes requirements and adds an additional layer of monitoring to these enterprises without requiring any proof of harm an approach that India currently lacks.⁶³

5.3 China

The 2008 Chinese Anti-Monopoly Law (AML) as amended in 2022 applies to conduct that

⁵⁷ *Hartford Fire Insurance Co. v. California*, 509 U.S. 764 (1993).

⁵⁸ Antitrust, VERTICAL MERGERS - NORTHERN DISTRICT OF CALIFORNIA REITERATES STANDARD FOR SUBSTANTIALLY LESSENERED COMPETITION. - *FTC v. Microsoft Corp.*, 137, *Harvard Law Review*, 1011 (2024), <https://harvardlawreview.org/print/vol-137/ftc-v-microsoft-corp/>.

⁵⁹ U.S. Department of Justice & Federal Trade Commission, Merger Guidelines (2023), <https://www.justice.gov/atr/2023-merger-guidelines>.

⁶⁰ *Id.*

⁶¹ *Gencor Ltd v. Commission of European Communities* (T-102/96) EU:T:1999:65, (25 March 1999).

⁶² *Intel Corp. Inc. v. European Commission*, (C-413/14 P) EU:C:2017:632, (06 September 2017).

⁶³ *Intel Corp. Inc. v. European Commission*, (C-413/14 P) EU:C:2017:632, (06 September 2017).

affects domestic competition regardless of whether the conduct occurred within China, mirroring the effects doctrine. Consequently, China is now one of the four major international merger control authorities, along with the US, EU and UK.⁶⁴

5.4 India

The nexus threshold issue, the regulatory sovereignty issue brought up by the effects doctrine, and the overreach by emerging economy regulators who might not have the institutional capacity to handle their jurisdictional claims are the three main topics of the Indian analysis. The nexus threshold problem arises because Indian regulators lack definitional standards under Indian law, whereas the effects test under US law requires the adverse effect to be "direct," "substantial," and "reasonably foreseeable" or, under EU law, "immediate," "substantial," and "reasonably foreseeable. The sovereignty dimension of the effects doctrine is both legitimate and contested. Emerging economy regulators, including the CCI, face criticism that jurisdictional assertions against foreign transactions reflect protectionist impulses rather than genuine competitive harm analyses. International comity principles-embodied in the Hartford Fire balancing test-provide a theoretical framework for resolving such tensions, but operate in the absence of binding institutional coordination mechanisms.⁶⁵

6. REFORMS AND CONCLUSION

6.1 Reforms

6.1.1 Jurisdictional Conflicts and International Comity

The current decentralized system for international mergers is inherently flawed in the Microsoft/Activision merger case since four different countries evaluated the same competitive facts using four different standards. Four essentially distinct results were thus attained. Although some degree of international comity provides a theoretical framework for collaboration, it is inadequate due to the lack of institutionally coordinated enforcement mechanisms among countries. Both domestic and foreign parallel merger reviews operate independently of one another, leading to conflicting standstill obligations, uneven remedies,

⁶⁴ Anti-Monopoly Law of the People's Republic of China (2022 Amendment), Art. 2.

⁶⁵ Hartford Fire Insurance Co. v. California, 509 U.S. 764 (1993).

redundant resources and disrespect for one another's decisions. According to the CCI, effective coordination in transactions where multi-jurisdictional alignment is crucial is hampered by the lack of legally binding cooperation agreements with the US, EU and UK.⁶⁶

6.1.2 Clarify the AAEC Nexus

The exact definition of a nexus standard is among the most significant innovations. Formal merger regulations defining the methodology for assessing AAEC in international transactions should be created by CCI. The following should be included in cross-border merger guidelines: HHI limitations for assessing concentration, as well as a potential safe harbour for combined Indian market shares of less than 15%; a method for identifying the geographical markets where multijurisdictional transactions take place; Particular recommendations on weighing factors that apply to digital combinations as given in Section 20(4). In addition to limiting administrative discretion and lowering compliance uncertainty while permitting more flexibility in the analysis, such a framework would make clear the acceptable methodology for analysing an AAEC and improve consistency in the application of the AAEC across transactions involving multiple jurisdictions.⁶⁷

6.1.3 Safe Harbours and International Cooperation

Instead of depending only on deal value to determine jurisdiction for CCI's investigation and analysis, establishing formal safe harbour thresholds for low-risk cross-border mergers—either based on the target's market share in India or no significant competitive overlap—would help redirect CCI's resources to investigate and analyse transactions with legitimate risks of harming competition.⁶⁸ International cooperation is encouraged in the context of Section 18. The following steps should be taken to build on this: creating legally binding bilateral cooperation agreements for coordinated investigations and remedy design; stepping up participation in the International Competition Network's Merger Working Group to attain procedural convergence and legislative to permit the sharing of sensitive company data with foreign authorities while maintaining confidentiality protections.⁶⁹

⁶⁶ European Commission, Guidelines on the Assessment of Horizontal Mergers, 2004 O.J. (C 31) 5.

⁶⁷ *Id.*

⁶⁸ Siddharth Chaturvedi, *Supra* note 20.

⁶⁹ International Competition Network, Recommended Practices for Merger Notification and Review Procedures (2018), https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/MWG_NPRecPractices2018.pdf.

6.1.4 Analytical Tools for Digital Market-Specific

CCI should develop methods for evaluating data concentration, network effects and platform interdependence as AAEC factors; conduct a prospective analysis of competition from an acquired business in the absence of acquisition; and create a separate digital markets unit with platform economics expertise to perform independent assessments during digital sector transactions instead of depending on information supplied by parties.⁷⁰

6.2 Conclusion

Section 32 of the Competition Act of India, which is based on the Alcoa Effects Doctrine and operationalized through the AAEC standard, is a legitimate jurisdictional foundation for implementing extraterritorial merger regulation. The 2023 modification to the DVT and SBO criteria strengthens India's Competition Act, allowing it to exercise jurisdiction over high-value digital acquisitions that were not covered by the previous threshold framework. However, there are two different aspects of extraterritorial merger control: jurisdictional coverage and substantive analytical rigour. Although there are currently no standardised merger rules or particular procedures for altering a merger's competitive impact, the AAEC standard establishes an "appreciable" criterion that must be reached for merger review. Additionally, Sun Pharma/Ranbaxy and Microsoft/Activision have both shown inconsistent use of regulatory scrutiny, and mergers are subject to evidential limitations brought on by information asymmetries. The combined effects of these shortcomings show that the AAEC is being used without the necessary doctrinal foundation for consistent and predictable cross-border mergers.

Reform is required to guarantee that CCI moves from merely extending its jurisdiction to making coordinated efforts to broaden the analytical base of its merger reviews by giving members access to (1) established merger review guidelines, (2) safe harbour thresholds, (3) higher levels of international collaboration, and (4) assessment methodologies specific to digital markets. Legislative action is not necessary to accomplish many of these regulatory reforms because they can be done using existing authorities. They are essential prerequisites for the CCI to carry out its function as a global merger regulator for M&A involving India,

⁷⁰ Competition & Regulatory Newsletter: CMA Clears Microsoft's Acquisition of Activision Blizzard, Slaughter and May, (Apr. 25, 2026, 02:00 PM), <https://www.slaughterandmay.com/insights/importedcontent/competition-regulatory-newsletter-cma-clears-microsoft-s-acquisition-of-activision-blizzard/>.

which involves more than just having extraterritorial jurisdiction; it also involves conducting AAEC analyses based on thorough yet consistent analyses to reach the degree of international verifiability that will support the extension of that claim to its findings regarding the competitive effects of the current digital economy.⁷¹

⁷¹ Competition Commission of India, Annual Report 2023-24, *Supra* note 1.

BIBLIOGRAPHY

1. Competition Commission of India, Annual Report 2023-24 (2024), <https://www.cci.gov.in/public/images/annualreport/en/annual-report-2023-241734695318.pdf>.
2. Kartik Maheshwari & Simone Reis, Extraterritorial Application of the Competition Act and Its Impact, Competition Law Reports (2012), https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Articles/Extra%20territorial%20Application%20of%20the%20Competition%20Act%20and%20Its%20Impact.pdf.
3. The Competition Act, 2002, No. 12 of 2003, Acts of Parliament (India).
4. M/s Haridas Exports vs All India Float Glass Mfrs. Assn. & Ors. AIR 2002 SC 2728.
5. S.O. 1130(E).
6. S.O. 1131(E).
7. The Competition Amendment Act, 2023, No. 9 of 2023, Acts of Parliament (India).
8. Competition Commission of India (Combinations) Regulations, 2024, (India).
9. Siddharth Chaturvedi, *Going the European Way? Defining 'Substantial Business Operation' in Competition Act*, 2023, RMLNLU Law Review Blog (Apr. 12, 2026 11:00 AM), <https://rmlnlulawreview.com/2023/07/27/going-the-european-way-defining-substantial-business-operation-in-competition-act-2023/>.
10. Yogesh Rai & Taru Mishra, *An Analysis of Extra-Territorial Jurisdiction of Competition Commission of India*, 11 JETIR, (2024), <https://www.jetir.org/view?paper=JETIR2404087>.
11. Competition Commission of India, Combination Registration No. C-2014/05/170, *Notice under Section 6(2)* (DEC. 5, 2014), http://164.100.58.95/sites/default/files/C-2014-05-170_0.pdf (Apr. 15, 2026, 11:00 AM).
12. Kalpana Tyagi, *Mergers Between Generics: How Competition Commission of India Promotes Innovation and Access Through Merger Control*, QMUL 33 (2018) <https://www.qmul.ac.uk/icc/media/icc/gar/gar2018/Mergers-between-generics---How-Competition-Commission-of-India-promotes-innovation-and-access-through-merger-control.pdf>.
13. Competition Commission of India, Combination Registration No. C-2021/11/883, *Notice under Section 6(2)* (DEC. 20, 2021),

- http://164.100.58.95/sites/default/files/Notice_order_document/Order-883.pdf (Apr. 15, 2026, 09:00 AM).
14. Competition Commission of India, Combination Registration No. C-2023/04/1022, *Notice under Section 6(2)* (SEPT. 1, 2023), <https://www.cci.gov.in/images/caseorders/en/order1695297548.pdf> (Apr. 15, 2026, 11:00 AM).
 15. Kabir Singh, Khushbu Singh and Sarvika Singh, *Analysing CCI's Order on WhatsApp's 2021 Privacy Policy-A New Era for Data Protection and Competition Law Enforcement in India*, KLUWER COMPETITION LAW BLOG, (Apr. 15, 2026, 10:00 AM), <https://competitionlawblog.kluwercompetitionlaw.com/2025/01/06/analysing-ccis-order-on-whatsapps-2021-privacy-policy-a-new-era-for-data-protection-and-competition-law-enforcement-in-india/>.
 16. Competition Commission of India, Market Study on the Telecom Sector in India, at 27-30 (2021), <https://www.cci.gov.in/images/whatsnew/en/market-study-on-the-telecom-sector-in-india1652177923.pdf>.
 17. George Cyriac and Rahul Kapoor, *Competition Commission of India provides updated Deal Value Threshold*, MORGAN LEWIS LAWFLASH (Apr. 10, 2026, 07:29 PM), <https://www.morganlewis.com/pubs/2024/09/competition-commission-of-india-provides-updated-deal-value-threshold>.
 18. Eddie Makuch, *37 Countries Have Now Approved Microsoft's Deal to Buy Activision Blizzard*, GAMESPOT (Apr. 15, 2026, 9:00 AM), <https://www.gamespot.com/articles/37-countries-have-now-approved-microsofts-deal-to-buy-activision-blizzard/1100-6514380/>.
 19. Nardeep Chawla, *Microsoft's Acquisition of Activision Blizzard: Indian Outlook*, IRCCCL, (Apr. 10, 2026), <https://www.irecl.in/post/microsoft-s-acquisition-of-activision-blizzard-indian-outlook>.
 20. United States v. Aluminum Co. of America, 148 F.2d 416 (2d Cir. 1945)
 21. Dover Robert and Frosini Justin, *The Extraterritorial Effects of Legislation and Policies in the EU and US*, EUROPEAN PARLIAMENT, 5 (2010), [https://www.europarl.europa.eu/RegData/etudes/STUD/2012/433701/EXPO-AFET_ET\(2012\)433701_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2012/433701/EXPO-AFET_ET(2012)433701_EN.pdf).
 22. 15 U.S.C. § 6a (2018).
 23. Hartford Fire Insurance Co. v. California, 509 U.S. 764 (1993).

24. Antitrust, VERTICAL MERGERS - NORTHERN DISTRICT OF CALIFORNIA REITERATES STANDARD FOR SUBSTANTIALLY LESSENE COMPETITION. - FTC v. Microsoft Corp., 137, Harvard Law Review, 1011 (2024), <https://harvardlawreview.org/print/vol-137/ftc-v-microsoft-corp/>.
25. U.S. Department of Justice & Federal Trade Commission, Merger Guidelines (2023), <https://www.justice.gov/atr/2023-merger-guidelines>.
26. Gencor Ltd v. Commission of European Communities (T-102/96) EU:T:1999:65, (25 March 1999).
27. Intel Corp. Inc. v. European Commission, (C-413/14 P) EU:C:2017:632, (06 September 2017).
28. Anti-Monopoly Law of the People's Republic of China (2022 Amendment), Art. 2.
29. European Commission, Guidelines on the Assessment of Horizontal Mergers, 2004 O.J. (C 31) 5.
30. International Competition Network, Recommended Practices for Merger Notification and Review Procedures (2018), https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/MWG_NPRecPractices2018.pdf
31. Competition & Regulatory Newsletter: CMA Clears Microsoft's Acquisition of Activision Blizzard, Slaughter and May, (Apr. 25, 2026, 02:00 PM), <https://www.slaughterandmay.com/insights/importedcontent/competition-regulatory-newsletter-cma-clears-microsoft-s-acquisition-of-activision-blizzard/>.
32. Press Information Bureau, *CCI Approves Acquisition of Certain Share Capital and Voting Rights of YES Bank by Sumitomo Mitsui Banking Corporation*, PRESS INFORMATION BUREAU (Sept. 2, 2025), <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2163146>.
33. Sumitomo Mitsui Financial Group & Sumitomo Mitsui Banking Corporation, *Completion of Initial Acquisition of Stake in YES BANK and Execution of Agreement for Additional Stake*, SMBC NEWS RELEASE (Sept. 17, 2025), https://www.smbc.co.jp/news_e/pdf/e20250917_02.pdf.
34. *Japan's SMBC Completes Acquisition of 20% Stake in YES Bank, Becomes Largest Shareholder*, MONEYCONTROL (Apr. 17, 2026, 06:30 PM), <https://www.moneycontrol.com/news/business/companies/japan-s-smbc-completes-20-stake-acquisition-in-yes-bank-becomes-largest-shareholder-13557537.html>.

35. *Merger of YES Bank: SBI Bailout, SMBC Acquisition & Legal Hurdles*, THE LEGAL SCHOOL (Apr. 20, 2026, 08:30 PM), <https://thelegalschool.in/blog/merger-of-yes-bank>.
36. *SMBC Picks Up Additional 4.22% Stake in YES Bank*, THE HINDU (Apr. 22, 2026, 06:00 PM), <https://www.thehindu.com/business/smbc-picks-up-additional-422-stake-in-yes-bank/article70086060.ece>.