DOMINANCE UNDER SCRUTINY: MARKET CONCENTRATION, OPERATIONAL CRISES AND THE EXPANDING FRONTIER OF SECTION 4 IN INDIAN AVIATION COMPETITION LAW

Sharadindu Shekhar, LL.M. (Corporate and Commercial Laws), 2025-26,
Chanakya National Law University, Patna

ABSTRACT

The Indian aviation sector stands at a critical juncture where market consolidation and operational fragility converge to test the boundaries of competition-law enforcement. Two forces have recast the domestic market into a rigid near-duopoly: the Tata Group's inorganic expansion, culminating in the Competition Commission of India's approval of the Air India–Vistara combination, and the sustained dominance of InterGlobe Aviation Limited (IndiGo), which now carries well over three-fifths of domestic passengers. That structure was brutally tested in December 2025, when IndiGo's failure to adapt crew rostering to revised Flight Duty Time Limitation norms produced a system-wide capacity shock, mass cancellations and a sharp fare spike. The Directorate General of Civil Aviation responded with a record safety penalty; the Commission, in *Kartikeya Rawal v. InterGlobe Aviation Ltd.*, found a prima facie case of abuse of dominance and directed a full investigation. This article surveys the current practice of Indian merger review and abuse-of-dominance enforcement in aviation, identifies four structural lacunae route-atomised merger analysis, the absence of a collective-dominance doctrine, grandfathered slot allocation that privatises essential infrastructure, and unresolved CCI–DGCA jurisdictional friction and offers a reconstructive reading of Section 4 of the Competition Act, 2002. It argues that, after *Competition Commission of India v. Schott Glass India Pvt. Ltd.*, systemic operational negligence by a dominant carrier can constitute actionable abuse where it restricts the provision of services and produces demonstrable consumer and competitive harm that the market cannot self-correct. The article proposes a package of reforms: resilience-sensitive combination review, slot-allocation redesign on the European new-entrant model, concurrent but bounded jurisdiction between the Commission and the aviation regulator, and a statutory special-responsibility standard for dominant firms in critical network industries.

Keywords: Competition Act, 2002; abuse of dominance; aviation law; IndiGo crisis; Air India–Vistara merger; essential facilities; airport slots; CCI–DGCA jurisdiction; Schott Glass; Flight Duty Time Limitation.

I. INTRODUCTION

India's civil aviation market has, for more than a decade, been celebrated as one of the world's fastest-growing. That narrative of expansion now sits uneasily beside a narrative of contraction on the supply side. Passenger demand continues its upward trajectory; the number of independent carriers capable of disciplining price and quality has collapsed. As of the first half of 2026, IndiGo accounted for approximately 64.3 per cent of domestic passengers, while the Air India Group held about 25.7 per cent. Together they control more than ninety per cent of the market.[1] Akasa Air, SpiceJet and a handful of regional operators occupy the remainder. The middle market that once contained Jet Airways, Go First and a more robust SpiceJet has largely evaporated.

Two concurrent forces produced this structure. The first is inorganic expansion by the Tata Group after its reacquisition of Air India in 2022: the absorption of Vistara (Tata SIA Airlines Limited) into Air India, approved by the Competition Commission of India on 1 September 2023, and the earlier combination of AirAsia India with Air India Express.[2] The second is the organic and residual dominance of IndiGo, whose low-cost model, fleet scale and slot holdings at congested airports have made it, for a large class of city-pairs, the only realistic carrier. The December 2025 operational crisis converted that statistical dominance into a lived public failure. When IndiGo could not generate crew rosters compliant with the Directorate General of Civil Aviation's revised Flight Duty Time Limitation norms, more than 2,500 flights were cancelled and nearly 1,900 delayed between 3 and 5 December 2025 alone, affecting over three lakh passengers in that window and many more as the disruption stretched across the first half of the month.[3] Fares on trunk routes rose by multiples of their ordinary range. Rival carriers

[1] Ministry of Civil Aviation passenger data for January–June 2026 record IndiGo at 64.3 per cent (555.83 lakh passengers) and the Air India Group at 25.7 per cent, taking the combined share of the two groups above 90 per cent. *See* Outlook Business, *IndiGo, Air India Group Control Over 90% of Domestic Market as Passenger Growth Slows in H1* (July 21, 2026). Parliamentary figures for calendar year 2025 placed the combined share at 91 per cent (IndiGo nearly 64 per cent; Air India Group 27 per cent). *See* Written Reply of the Minister of State for Civil Aviation, Rajya Sabha (Mar. 30, 2026), discussed in The Wire, *IndiGo and Air India Hold 91% of Domestic Aviation Market* (Mar. 31, 2026).

[2] Competition Commission of India, *In re Combination of Tata SIA Airlines Ltd. into Air India Ltd.*, Combination Reg. No. C-2023/04/1022 (Sept. 1, 2023) [hereinafter *Air India–Vistara Combination*]. The approval was granted subject to voluntary commitments, including limited slot divestitures on overlapping routes and capacity-maintenance undertakings on specified India–Singapore and domestic city-pairs.

[3] Directorate General of Civil Aviation inquiry figures, as recorded in the Commission's prima facie order and contemporaneous reporting, record 2,507 cancellations and 1,852 delays between 3 and 5 December 2025, affecting over three lakh passengers. *Kartikeya Rawal v. InterGlobe Aviation Ltd.*, Case No. 44 of 2025, ¶¶ 39–42 (CCI Feb. 4, 2026) [hereinafter *Rawal*]. The wider December episode, including the days immediately before and after that window, involved several thousand further cancellations.

could not absorb the displaced demand: they lacked both aircraft and peak-hour slots.

The legal response split along institutional lines. The Directorate General of Civil Aviation, acting under the Aircraft Rules, 1937 and the Bharatiya Vayuyan Adhiniyam, 2024, imposed a record penalty of ₹22.20 crore, cautioned senior management and required a winter-schedule curtailment.[4] The Competition Commission of India, seised of an information under Section 19(1)(a) of the Competition Act, 2002, rejected IndiGo's plea that sectoral regulation ousted antitrust jurisdiction, defined a network-wide relevant market for "domestic air passenger transport services in India," found prima facie dominance, and directed the Director General to investigate alleged contraventions of Sections 4(2)(a)(i) and 4(2)(b)(i).[5] That dual scrutiny poses questions that Indian competition jurisprudence has not yet answered in a reasoned final order. Can operational collapse by a dominant firm be classified as a restriction of services "to the prejudice of consumers"? Does a dominant carrier owe a special responsibility of operational resilience? How should combination review treat the risk of creating a too-big-to-fail network? And how is the Commission to live with a safety regulator whose mandate is technically intense but economically thin?

This article answers those questions in five movements. Part II reconstructs the passage from post-liberalisation fragmentation to the present duopoly and critiques the Commission's 2023 combination analysis. Part III examines the December 2025 crisis as a market-structure event rather than a mere service failure. Part IV develops a doctrinally disciplined theory of operational abuse under Section 4, tested against the Supreme Court's 2025 insistence in *Schott Glass* on an effects-based inquiry.[6] Part V treats airport slots as essential facilities and explains why merger-specific slot divestitures cannot cure a grandfathered allocation system. Part VI maps the CCI–DGCA jurisdictional conflict against *Bharti Airtel* and the Commission's reasoning in *Rawal*. Part VII draws comparative lessons from United States consumer-protection enforcement and European Union slot regulation. Part VIII concludes with a

---

[4] The penalty comprised a systemic lump-sum of ₹1.80 crore under the Civil Aviation Requirements and a daily penalty of ₹30 lakh for 68 days of continued non-compliance with the revised Flight Duty Time Limitation norms (₹20.40 crore), levied under Rule 133A of the Aircraft Rules, 1937. *See* Directorate General of Civil Aviation, Penalty Order in the matter of InterGlobe Aviation Ltd. (Jan. 2026); Outlook Business, *DGCA Levies ₹22.2 Crore Penalty on IndiGo Over Flight Disruptions in December* (Jan. 18, 2026).

[5] *Rawal*, *supra* note 3, ¶¶ 25–28, 29–38, 42–43. The Commission directed investigation under Section 26(1) of the Competition Act, 2002, and required the Director General to report within ninety days. The order is expressly preliminary and does not constitute a finding of contravention.

[6] *Competition Commission of India v. Schott Glass India Pvt. Ltd.*, 2025 INSC 668 (May 13, 2025) [hereinafter *Schott Glass*].

reconstructive agenda.

II. FROM FRAGMENTATION TO DUOPOLY: THE STRUCTURAL TRANSFORMATION

A. The Unstable Competitive Interlude

The dismantling of Air India's statutory monopoly in the early 1990s released a wave of private entry. Low-cost carriers SpiceJet, IndiGo, GoAir reset the economics of domestic travel and pulled a large middle-class cohort off the railways. That fragmentation, however, was never institutionally secured. High and volatile jet-fuel costs, rupee depreciation, airport congestion, a thin leasing and maintenance ecosystem, and episodic regulatory shock produced a pattern of boom, leverage and exit. Kingfisher Airlines collapsed in 2012. Jet Airways ceased operations in 2019. Go First entered insolvency in 2023. Each exit permanently withdrew aircraft, slots, crew and brand equity from the competitive fringe.[7] New entry has not replaced what was lost. Akasa Air, launched in 2022 with substantial capital, remains capacity-constrained by aircraft-delivery backlogs and by the inability to obtain commercially valuable slots at Delhi and Mumbai. SpiceJet's recurrent grounding of leased aircraft has reduced it from a meaningful third force to a residual constraint.

The Tata Group's return to aviation was strategically rational. The acquisition of Air India, the merger of Vistara into the full-service brand, and the combination of AirAsia India with Air India Express were designed to produce a national-champion network capable of competing with Middle Eastern and Southeast Asian carriers on long-haul routes while defending the domestic feed. From a public-interest standpoint, however, the same transactions eliminated the only independent full-service rival in the domestic market and folded a second low-cost brand into the Tata system. The competitive check that Vistara had supplied on premium domestic trunk routes Delhi–Mumbai, Delhi–Bengaluru, Mumbai–Hyderabad disappeared into an internal brand architecture. What remains is a tight duopoly whose Herfindahl–Hirschman Index, on a national passenger-share basis, sits well above conventional thresholds of high concentration. With shares of roughly 64 and 26, the two-firm HHI

---

[7] On the Kingfisher collapse and its lessons for leverage in Indian aviation, *see* Pranjal Sharma, *What Lessons Can India Learn from the Collapse of Kingfisher Airlines?*, BBC News (Oct. 22, 2012). The Jet Airways and Go First exits are treated here as capacity events rather than as adjudicated competition cases; their significance for present purposes is the structural vacuum they left.

contribution alone exceeds 4,700.

B. The Air India–Vistara Combination: What the Commission Saw, and Missed

The Commission approved the Air India–Vistara combination on 1 September 2023 subject to voluntary commitments: limited slot divestitures on overlapping routes, undertakings not to reduce capacity on specified India–Singapore and domestic city-pairs, and a pledge to add rather than withdraw frequencies.[8] The analytical frame was orthodox and route-atomised. Consistent with international airline-merger practice, each origin–destination pair was treated as a candidate relevant market; overlaps were mapped; and remedies were addressed to those pairs on which the combined share appeared troubling. That method has genuine virtues. A passenger who must travel from Delhi to Mumbai cannot substitute a Delhi–Kolkata flight. City-pair analysis therefore captures the immediate horizontal harm of eliminating head-to-head competition on a given itinerary.

It is, however, a method that systematically under-describes network industries. In a hub-and-spoke system, market power is not only the share on a city-pair; it is the ability to assemble a schedule, to control connecting banks, to monopolise peak-hour slots and gates at the two airports that together anchor Indian business travel, and to raise rivals' costs of offering a credible frequency. Slot holdings at Indira Gandhi International Airport and Chhatrapati Shivaji Maharaj International Airport are not route-specific assets. They are network assets. A remedy that requires the parties to surrender a modest number of slots on named overlaps, often at less attractive hours and amounting on contemporary accounts to well under five per cent of the combined holding, does not recreate the possibility of independent network entry.[9] Nor did the Commission, on the public record, conduct a serious assessment of barriers to entry, of the cumulative effect of successive Tata combinations, or of the resilience consequences of reducing the number of independent operators capable of absorbing a shock to the market

[8] *Air India–Vistara Combination*, *supra* note 2; *see also* Competition Commission of India, Press Release on approval of the merger of Tata SIA Airlines into Air India (Sept. 1, 2023); Forum Gandhi & Aneesh Phadnis, *CCI Approves Vistara–Air India Merger*, Hindu Bus. Line (Sept. 1, 2023) (noting invocation of the doctrine of necessity because the Commission was then inquorate).

[9] For contemporary critiques of the depth of the remedy package, *see* Arjun Kapur & Akash Hogade, *A Multifaceted Examination of the Ramifications from CCI's Approval of the Air India and Vistara Merger*, NLIU Ctr. for Bus. & Com. L. (2024); Shreya Saswati & Sruti Patra, *Competition Concerns of the Air India–Vistara Merger in the Aviation Industry*, Ctr. for Competition L. & Regul. (Apr. 13, 2024), https://www.tcclr.com/post/competition-concerns-of-the-air-india-vistara-merger-in-the-aviation-industry; *Unveiling the Antitrust Dynamics of the Air India–Vistara Merger*, RMLNLU L. Rev. (Mar. 1, 2024), https://rmlnlulawreview.com/2024/03/01/unveiling-the-antitrust-dynamics-of-the-air-india-vistara-merger/.

leader.

Two further institutional features weakened the review. First, the Commission was then inquorate and is widely understood to have invoked the doctrine of necessity to dispose of the notification. Necessity can legitimise a decision that would otherwise be *coram non judice*; it cannot enlarge the quality of the underlying economic analysis. Second, the commitments were volunteered by the parties rather than designed by the Commission after a Phase II market test. Voluntary commitments tend to protect the assets the parties least wish to lose. In airline mergers, that almost always means retaining prime-hour slots at congested hubs. The European Commission, by contrast, has repeatedly required substantial slot packages at London Heathrow and other coordinated airports, and has often ring-fenced those slots for low-cost or new-entrant acquirers so that the remedy does not merely reshuffle assets between incumbents.[10] Indian practice has not yet internalised that discipline.

The deeper lacuna is conceptual. Combination review under Sections 5 and 6 of the Act is still organised around a static question: will the transaction cause an appreciable adverse effect on competition on identified overlaps? It is not organised around a systemic question: will the transaction leave the market unable to absorb the operational failure of a remaining dominant firm? The events of December 2025 demonstrated that the second question is not academic. A merger-control system that blesses national champions without pricing concentration risk will repeatedly manufacture too-big-to-fail airlines and then discover, in a crisis, that neither rivals nor regulators can restore service in time.

III. THE DECEMBER 2025 CRISIS AS A MARKET-STRUCTURE EVENT

A. A Foreseeable Regulatory Shock, an Unprepared Dominant Firm

In 2024 the Directorate General of Civil Aviation revised the Civil Aviation Requirements on Flight Duty Time Limitations, bringing Indian fatigue-management rules closer to International Civil Aviation Organization guidance. The revisions, phased in with the last tranche effective from 1 November 2025, tightened night-landing limits and lengthened

[10] Council Regulation (EEC) No. 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports, 1993 O.J. (L 14) 1 [hereinafter Slot Regulation], as subsequently amended. On merger remedies requiring ring-fenced slot transfers, *see*, e.g., the Commission's practice in British Airways/bmi and subsequent long-haul combinations at coordinated airports.

mandatory rest.[11] Airlines had in the order of eighteen months to hire, train and re-roster. That interval matters legally. It converts what might have been characterised as an exogenous shock into a planning failure.

IndiGo's model is built on high aircraft utilisation, short turnarounds and thin crew buffers. Those choices are legitimate competitive strategies for a non-dominant low-cost carrier. They become a public-risk strategy when the same carrier holds more than three-fifths of domestic capacity and is the sole operator on hundreds of city-pairs. The inquiry that followed the collapse found over-optimised rosters, heavy reliance on dead-heading and tail swaps, software and planning gaps, and a conscious decision to stretch existing crew rather than recruit to the new constraint.[12] The crisis began to surface on 2 December 2025, peaked around 5 December with nationwide cancellations, and receded only after the regulator granted temporary exemptions and the airline launched emergency hiring, including from overseas. On-time performance, previously a brand asset above ninety per cent, collapsed into single digits.

B. Why the Market Could Not Self-Correct

In a workably competitive airline market, a sudden withdrawal of one carrier's capacity is an invitation. Rivals ferry in spare aircraft, lease short-term capacity, and raise frequency on the affected city-pairs. Prices rise, but the rise rations scarce seats while calling forth supply. That mechanism failed in December 2025 for reasons that are structural rather than incidental. First, the remaining carriers did not have parked aircraft on the scale required to replace roughly three-fifths of domestic seats. Second, even if they had, they could not have used them at the hours and airports that matter, because peak slots at Delhi and Mumbai are held, under grandfather rights, by the very incumbents whose interaction defines the duopoly. Third, IndiGo is the only operator on a large set of thinner city-pairs; on those routes there was literally no substitute flight. The Commission later recorded that the airline operates exclusively on more than 330 city-pair routes and controls around sixty per cent of domestic available seat

[11] Directorate General of Civil Aviation, Civil Aviation Requirements, Section 7, Series J, Part III (Flight Duty Time Limitations) (as revised 2024–2025). The night-landing restriction and enhanced rest obligations were the operationally binding changes for a high-utilisation, short-haul network.

[12] The Directorate General of Civil Aviation's four-member enquiry identified over-optimisation of crew, aircraft and network resources, inadequate buffers, and delayed implementation of the revised norms as principal causes. Senior officers, including the Chief Executive Officer and the Accountable Manager, were cautioned; a senior vice-president was directed to be removed from operational duties. *See* sources cited *supra* note 4.

kilometres, with a fleet exceeding four hundred aircraft.[13]

The price evidence is consistent with a supply shock in a market without elastic competitive response. Trunk-route fares that ordinarily traded in the range of ₹3,000 to ₹5,000 were widely reported in the ₹15,000 to ₹20,000 band an increase of 200 to 300 per cent.[14] Passengers who had already paid IndiGo were, in the Commission's later language, "locked in" and compelled to repurchase at inflated yields. Hotels, wedding travel and time-sensitive business and medical journeys absorbed a second-round social cost that no airfare statistic fully captures. The episode is therefore best read not as a customer-service scandal that happens to involve a large firm, but as the moment at which a concentrated market revealed that it had no redundant capacity at the network level. That is a competition problem, even if it is also a safety-compliance problem and a consumer-protection problem.

IV. OPERATIONAL FAILURE AS ABUSE: A DISCIPLINED READING OF SECTION 4

A. Dominance and the Relevant Market

Section 4 of the Competition Act does not prohibit dominance. It prohibits its abuse. Dominance is "a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to (i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour."[15] Section 19(4) supplies an open-ended list of indicators: market share, size and resources, economic power and commercial advantages, vertical integration, dependence of consumers, entry barriers, countervailing buying power, and the contribution of the enterprise to economic development. Market share is not conclusive, but shares persistently above fifty per cent have always attracted close scrutiny.[16] IndiGo's passenger and capacity shares, exclusive city-pair coverage, fleet and slot endowment, and the demonstrated inability of rivals to constrain it in a

---

[13] *Rawal*, *supra* note 3, ¶¶ 30–38 (prima facie dominance analysis: sustained market share, exclusive city-pair coverage, fleet scale and financial strength).

[14] Reuters, *India's IndiGo Extends Slump After Aviation Watchdog Sends Show-Cause Notice* (Dec. 8, 2025), https://www.reuters.com/world/india/indias-indigo-extends-slump-after-aviation-watchdog-sends-show-cause-notice-2025-12-08/.

[15] Competition Act, 2002, § 4, Explanation (a), No. 12 of 2003 (India).

[16] *See Competition Commission of India v. Steel Auth. of India Ltd.*, (2010) 10 SCC 744 (India) (market share a significant though not determinative indicator; the Act is to be construed in light of its consumer-welfare and competition-process objectives).

crisis, satisfy any orthodox test.

The legally interesting move in *Rawal* is the market definition. Airline cases ordinarily disaggregate by origin–destination pair. The Commission declined to do so. Because the December cancellations struck many city-pairs at once and produced a "system-wide capacity shock," the harm was not "this route versus that route" but a constraint on "the overall ability of consumers to use domestic air travel as a mode of transport." The relevant market was therefore "the market for domestic air passenger transport services in India."[17] That definition is controversial and, in the author's view, justified on the facts of a network shock even if it would be too broad for a routine fare-abuse case on a single trunk route. It has two doctrinal payoffs. It captures IndiGo's ability to affect consumers across the domestic system. And it prevents a dominant network carrier from defeating an investigation by pointing to residual rivalry on a handful of thick city-pairs while the rest of the map is captive.

B. The Statutory Hooks: Unfair Price and Restriction of Services

The Commission's prima facie theory is not a free-floating "negligence is abuse" slogan. It is anchored in two enumerated clauses. Section 4(2)(a)(i) prohibits a dominant enterprise from imposing unfair or discriminatory conditions or prices in the purchase or sale of goods or services. Section 4(2)(b)(i) prohibits it from limiting or restricting the production of goods or provision of services or the market therefor.[18] The factual sequence the Commission emphasises is specific: mass cancellation of scheduled capacity created an artificial scarcity; consumers who had already chosen IndiGo, or who faced empty rival inventories, were forced to rebook at sharply higher yields charged by the same dominant firm. Scarcity and price are two faces of one capacity withdrawal.

Traditional applications of Section 4(2)(b) have concerned strategic output restriction withholding capacity to raise price, or refusing to supply in order to discipline a downstream rival. The IndiGo facts invite a modest but important extension: a dominant firm that, with long notice of a binding regulatory constraint, elects a crew and rostering configuration that it knows or ought to know cannot sustain advertised schedules, thereby withdraws services from the market as surely as if it had cancelled the flights by board resolution. The *mens rea* that the statute requires is not a gleeful intent to strand passengers. It is a conscious commercial choice,

[17] *Rawal*, *supra* note 3, ¶ 29.
[18] Competition Act, 2002, §§ 4(2)(a)(i), 4(2)(b)(i).

made from a position of dominance, that foreseeably limits the provision of services to the prejudice of consumers. Internal planning that treats regulatory compliance as a residual to be managed by software optimisation, rather than by hiring to the new constraint, is such a choice.

Comparative law supplies a supporting vocabulary without needing to be transplanted wholesale. The Court of Justice of the European Union has long held that a dominant undertaking has a "special responsibility" not to allow its conduct to impair genuine, undistorted competition.[19] That responsibility has never been a general duty to be a good firm. It is a duty not to use the latitude that independence from competitive forces confers in ways that the competitive process cannot correct. A non-dominant airline that under-hires crew is punished by the market: passengers migrate, and the firm shrinks. A dominant airline that under-hires crew is not so punished, because passengers have nowhere to migrate and because slots, gates and brand lock in the next season's share. Special responsibility is simply the legal name for that asymmetry.

C. Schott Glass and the Effects Filter

Any expansion of Section 4 must now pass through *Schott Glass*. In May 2025 the Supreme Court held that the clauses of Section 4(2) are not per se offences. Abuse requires an effects-based demonstration of actual or likely appreciable adverse effect on competition; business justifications are relevant; and structural facts such as high share cannot substitute for evidence of harm to the competitive process.[20] The judgment is a discipline, not a bar. It tells the Commission that it cannot leap from "IndiGo is large and flights were cancelled" to "Section 4 is contravened." It does not tell the Commission that capacity withdrawal by a dominant network carrier is immune.

An effects case on the December facts would look like this. First, the conduct restricted output in the relevant market: thousands of scheduled sectors were not flown. Second, because of slot and fleet constraints, rivals could not expand, so the restriction was not competed away. Third, prices on substitute remaining seats rose several-fold, which is the textbook welfare harm of an output restriction. Fourth, on exclusive city-pairs the restriction was a literal foreclosure of the market for the duration of the shock. Fifth, the episode is likely to have raised entry barriers further, by demonstrating to lessors, pilots and passengers that only two networks

[19] Case C-52/09, *Konkurrensverket v. TeliaSonera Sverige AB*, 2011 E.C.R. I-527, ¶ 24; *see also* Case 322/81, *NV Nederlandsche Banden-Industrie Michelin v. Commission*, 1983 E.C.R. 3461, ¶ 57.

[20] *Schott Glass*, *supra* note 6, ¶¶ 59–67. The Court located the effects requirement in the Preamble, in the statutory definition of dominant position as a capacity to affect the market, and in Section 19(4)(l).

are systemically relevant. None of these propositions is a form-based inference from size. Each is an empirical claim about what the market did, and failed to do, in December 2025. That is precisely the "hard evidence" *Schott Glass* demands.

The business-justification limb of *Schott Glass* will be IndiGo's strongest defence and should be met squarely. Compliance with fatigue rules is not merely legitimate; it is obligatory, and no competition authority should punish an airline for refusing to fly unsafe pairings. The answer is temporal and scalar. The justification would be compelling if the regulations had been sprung with days of notice, or if the cancellations had been the minimum necessary to restore legal rest. It is far weaker where the firm had eighteen months, chose not to staff to the known constraint, continued to sell a schedule it could not lawfully operate, and then charged scarcity rents on the seats that remained. Safety explains why a non-compliant pairing must not fly. It does not explain why a dominant firm may design a system in which lawful pairings are structurally unavailable at the advertised scale.

D. Three Objections, and Their Limits

The first objection is that Section 4 addresses anticompetitive strategy, not incompetence. If every delayed monsoon roster or bird-hit grounding became an antitrust case, the Commission would become a super-ombudsman for service quality. The distinction is scale, foreseeability and structure. Weather and technical faults are exogenous; eighteen-month regulatory lead time is not. A hundred cancellations in a competitive market are a service failure; several thousand cancellations by a firm that is the market, in a setting where slots prevent substitution, are a limitation of services within Section 4(2)(b)(i). The Commission can, and should, articulate a threshold: systemic, reasonably foreseeable, and non-substitutable disruption by a dominant enterprise. Below that line, consumer-protection and sectoral rules suffice.

The second objection is jurisdictional and is treated in Part VI. The third is statutory and under-discussed. Indian law does not recognise collective dominance. Section 4 speaks of "an enterprise or group," and "group" is defined by control, not by oligopolistic interdependence.[21] The Commission has repeatedly refused to treat independent firms as jointly

[21] Competition Act, 2002, §§ 4(1), 5, Explanation (b) (definition of "group" by voting rights, board control or controlling influence). *See also* the Commission's consistent refusal to import an EU-style collective-dominance doctrine, recently reaffirmed in the copper-market closure against Hindalco and Vedanta. The Supreme Court's effects framework in *Schott Glass* makes any judicial implication of collective dominance still less likely; the cure is legislative.

dominant, and nothing in *Rawal* suggests a change. That is a real lacuna. A market in which two unaffiliated groups hold ninety per cent can inflict duopoly harms parallel pricing, mutual forbearance, shared interest in keeping slots closed that Section 4 cannot reach if neither firm is attacked individually. The IndiGo investigation can proceed because IndiGo is individually dominant. A future crisis at the Air India Group, or a pattern of tacit fare parallelism, would expose the gap. Legislative attention to collective dominance, long deferred, is now a structural necessity in aviation and in other network industries.

V. AIRPORT SLOTS AS ESSENTIAL FACILITIES

A. Grandfather Rights and the Privatisation of Public Capacity

No account of aviation competition in India is complete if it stops at airline shares. The binding constraint is the slot: the permission to use a runway at a specified time. Delhi and Mumbai operate at or near capacity in the commercially valuable banks. Expansion is limited by urban density, environment and airspace. Allocation follows International Air Transport Association worldwide slot guidelines, administered through the Ministry of Civil Aviation's policy: historic incumbency is protected if the holder maintains a utilisation threshold of eighty per cent.[22] The rule has an operational logic. Airlines cannot plan a network if last season's 8:00 a.m. departure is re-auctioned every six months. Its competitive logic is harsher. It converts a public permission into a de facto property right, concentrates that right in the two groups that already fly the most, and consigns new entrants to off-peak hours that cannot support a business-traffic schedule.

The economic rent attached to a peak Delhi or Mumbai slot far exceeds the administrative fee charged for it. In jurisdictions that permit secondary trading, such slots have changed hands for tens of millions of pounds. India does not have a transparent secondary market; it has administrative assignment plus grandfathering. The result is not the avoidance of commercialisation but its occlusion. Rents accrue to incumbents, barriers remain invisible on the Commission's city-pair spreadsheets, and the December 2025 shock could not be repaired by entry because entry, at the hours that would have helped, is physically impossible without displacing an incumbent.

[22] Ministry of Civil Aviation, Policy on Slot Allocation (2013) (as applied at Level 3 coordinated Indian airports), implementing the IATA Worldwide Airport Slot Guidelines and an 80 per cent "use-it-or-lose-it" threshold.

B. Section 4(2)(c) and a Doctrine India Has Not Quite Adopted

The essential-facilities doctrine, originating in *United States v. Terminal Railroad Association* and developed in European access case-law, holds that a dominant firm controlling a bottleneck that competitors cannot reasonably duplicate must grant access on reasonable and non-discriminatory terms.[23] Indian statute does not enact the doctrine by name. Section 4(2)(c), which prohibits a dominant enterprise from indulging in a practice that results in denial of market access "in any manner," is the natural vessel, and the Commission has on occasion reasoned in essential-facilities terms. Airport slots fit the classic conditions. They are indispensable to scheduled competition. They cannot be duplicated by a rival. Incumbent concentration forecloses access. And more equitable allocation is technically feasible without compromising safety.

There is, however, a category mistake in treating airlines as the owners of the facility. Slots are administrative permissions, not private property. The primary duty-bearer is therefore the State in its allocative capacity, not IndiGo or Air India as a putative monopolist of its own historic holdings. Essential-facilities reasoning is most powerful when it is aimed at the allocation rule, and at merger remedies that reallocate the rule's fruits, rather than at a standalone Section 4 duty on an airline to hand a competitor next Tuesday's 7:00 a.m. departure. That is why slot reform and combination remedies, discussed below, are better instruments than an unbounded duty to deal.

C. Why Existing Divestiture Remedies Do Not Work

The Air India–Vistara commitments illustrate the four recurring defects of Indian slot remedies. The package is small relative to the combined holding. The hours surrendered tend not to be the hours that make a competing schedule viable. There is no effective purchaser restriction that prevents the other duopolist from absorbing what is given up. And the remedy is transaction-specific: it does not touch the stock of grandfathered rights accumulated over decades. A reconstructive policy would do four things the present Ministry guidelines do not. It would create, on the European model, a reserved pool under which a defined fraction Europe uses fifty per cent of slots that become available at coordinated airports is offered first to new entrants, defined by a low share of existing holdings at that airport.[24] It would tighten use-it-

[23] *United States v. Terminal R.R. Ass'n of St. Louis*, 224 U.S. 383 (1912); *see also* Case C-7/97, *Oscar Bronner GmbH v. Mediaprint Zeitungs- und Zeitschriftenverlag GmbH*, 1998 E.C.R. I-7791 (imposing a stringent indispensability test).

[24] Slot Regulation, *supra* note 10, art. 10 (new-entrant priority as to fifty per cent of the pool). A "new entrant"

or-lose-it, perhaps to seventy per cent, so that thinly flown historic rights return to the pool. It would require independent slot coordinators, insulated from airport operators who have commercial relationships with dominant carriers. And it would, in combination cases, empower the Commission to order prime-hour, network-relevant packages ring-fenced for non-duopoly acquirers, with reversion to the public pool if no such acquirer appears.

VI. ONE CONDUCT, TWO MANDATES: THE CCI AND THE DGCA

A. What Bharti Airtel Actually Held

IndiGo's first line of defence in *Rawal* was jurisdictional. The Bharatiya Vayuyan Adhiniyam, 2024, read with Rule 135 of the Aircraft Rules, 1937, was said to be a complete code governing cancellations, tariffs, excessive or predatory pricing and oligopolistic behaviour. On that view the Commission was a trespasser, and *Competition Commission of India v. Bharti Airtel Ltd.* required it to wait.[25] *Bharti Airtel* arose from an interconnection dispute in telecommunications. The Supreme Court held that where a sectoral regulator has explicit jurisdiction over the technical predicate of a competition complaint, considerations of comity and expertise ordinarily require that regulator to act first. The Commission's jurisdiction is not ousted, but it is sequenced.

Two features of aviation make mechanical transplantation of that sequence unsafe. The Telecom Regulatory Authority of India is an economic regulator. It has a statutory competition mandate, tariff powers and a vocabulary that overlaps the Commission's. The Directorate General of Civil Aviation is a safety and airworthiness authority. Its parent statute is concerned with the airworthiness of aircraft, the licensing of personnel and the security of operations. It does not delineate relevant markets, assess dominance, or evaluate appreciable adverse effect on competition. In *Rawal* the Directorate General said so in terms. It informed the Commission that airfares are not regulated by it and that the Bharatiya Vayuyan Adhiniyam confers no economic-regulatory powers over air-transport services.[26] Rule 135(4), which permits directions where an airline has established an excessive or predatory tariff or indulged in oligopolistic practices, was held to be corrective and supervisory concerned with tariff

---

is defined by reference to a low share of slots at the airport concerned, not by corporate infancy.

[25] *Competition Commission of India v. Bharti Airtel Ltd.*, (2019) 2 SCC 521 (India).

[26] *Rawal*, *supra* note 3, ¶¶ 11, 25–27 (recording the Directorate General's communication of 13 January 2026 and rejecting the ouster argument). The Commission also relied on the principle that statutes occupying different fields do not impliedly repeal one another. *See Haridas Exports v. All India Float Glass Mfrs. Ass'n*, (2002) 6 SCC 600 (India).

formulation and disclosure not an adjudicatory competition jurisdiction. The mere appearance of the words "predatory" and "oligopolistic" in a safety-era rule does not repeal the Competition Act.

B. Concurrent Jurisdiction with Bounded Tasks

The better reading, and the one *Rawal* provisionally adopts, is concurrency with distinct remedial aims. The Directorate General punishes the safety and facilitation breach: non-compliant rostering, failure of passenger care, schedule that cannot be flown. Its ₹22.20 crore penalty and management directions occupy that field. The Commission asks a different question: whether the same facts, set in a dominant position, restricted services and imposed unfair prices in a manner that harmed the competitive process. Those inquiries can proceed in parallel because they do not decide the same issue estoppel. A finding that fatigue rules were broken does not answer whether consumers were prejudiced by a dominant firm's capacity withdrawal; a finding of abuse does not answer whether a pairing was legal under the Civil Aviation Requirements.

Concurrency without protocol, however, is an invitation to conflict. Four institutional reforms would convert *Rawal*'s holding into a workable settlement. First, major operational regulations Flight Duty Time Limitation revisions, fleet-induction rules, slot-policy changes should carry a short competition-impact annex, prepared by the Ministry with the Commission's comments, identifying how the change interacts with existing concentration. Safety remains paramount; the annex exists so that complementary measures (phased implementation, reserved slots, temporary wet-lease facilitation) can be designed, not so that fatigue science is traded off against fares. Second, a standing consultation channel should exist between the two bodies, with timelines that do not allow either to stall the other. Third, information obtained in a safety enquiry that is relevant to dominance and effects should be transmissible to the Director General of the Commission, subject to use restrictions. Fourth, the Ministry should convene a standing aviation-competition group to watch concentration, slot holdings and operational buffers before the next crisis, not after it.

VII. COMPARATIVE PERSPECTIVES

A. The United States: Punishing the Meltdown without Proving Monopoly

Southwest Airlines' December 2022 collapse approximately 17,000 cancellations over ten days, more than two million passengers stranded, a crew-scheduling system that could not recover from a winter storm is the closest foreign analogue. The United States Department of Transportation did not proceed under Section 2 of the Sherman Act. It proceeded under its consumer-protection authority and imposed a civil penalty of 140 million dollars, many times any previous aviation consumer fine, for failures of notification, rebooking and refunds.[27] The model has an obvious attraction. It does not require proof of dominance or of anticompetitive effects. It targets the passenger-facing breach, and it can be calibrated to turnover so that it actually deters.

India cannot copy the model without statutory work. The Directorate General's consumer-protection toolkit is thin: Civil Aviation Requirements on denied boarding, cancellation and delay prescribe modest, ticket-linked compensation and do not speak to systemic network failure or to the wider welfare loss of a capacity shock. Enhancing that toolkit civil penalties keyed to domestic turnover, mandatory cash refunds within a short period, a duty to procure reasonable alternative transport, and public reporting of operational buffers would give the safety regulator a passenger-welfare instrument that complements, rather than pretends to replace, Section 4. The Southwest precedent is therefore not an argument against the IndiGo investigation. It is an argument against asking competition law to do all of the work.

B. The European Union: Slots as a Public Resource

Council Regulation 95/93 remains the most complete legislative recognition that slots at congested airports are scarce public resources. Historic rights are preserved, but half of the pool of available slots is reserved for new entrants, coordinators are independent, and the European Commission can intervene where allocation restricts competition. Merger control has used that architecture to impose slot packages far larger, and more carefully purchaser-restricted, than anything seen in C-2023/04/1022. The lesson is not that India must abandon grandfathering. Operational certainty has value. The lesson is that grandfathering without a serious new-entrant reservation, without independent coordination, and without merger remedies that bite on prime-hour inventory, will reproduce the December 2025 problem whenever the next dominant roster fails.

[27] U.S. Dep't of Transp., *DOT Penalizes Southwest Airlines $140 Million for 2022 Holiday Meltdown* (Dec. 17, 2023), https://www.transportation.gov/briefing-room/dot-penalizes-southwest-airlines-140-million-for-2022-holiday-meltdown.

VIII. CONCLUSION AND RECOMMENDATIONS

The transformation of Indian aviation into a rigid near-duopoly, and the December 2025 demonstration of what that structure does under stress, require a recalibration of competition law's ambition in critical network industries. Dominance is not the offence. The offence is the use of the independence that dominance confers in ways the market cannot correct. A dominant airline that, with long notice, staffs and rosters below the legal constraint, withdraws a system-wide slice of capacity, and then sells the residual seats at scarcity prices, is within the text of Sections 4(2)(a)(i) and 4(2)(b)(i). *Schott Glass* requires the Commission to prove effects; the December record supplies them. *Rawal* is only a prima facie order. It is, even so, the most important aviation-competition document the Commission has issued, because it accepts a network-wide market, refuses a sectoral ouster, and treats capacity withdrawal as a candidate abuse rather than as a matter exclusively for the Directorate General.

Enforcement of Section 4, however, cannot carry the whole reform. Five institutional recommendations follow from the lacunae identified above.

First, combination review in aviation should become resilience-sensitive. The Commission ought to ask, as a regular Section 20 / Section 6 inquiry, whether the merged entity will be too large for the residual market to absorb its failure, and whether slot and fleet remedies recreate a credible third network rather than a token presence on named city-pairs. Prime-hour, purchaser-restricted slot packages should be the default structural remedy at Level 3 airports, with reversion to a public pool.

Second, the Ministry of Civil Aviation should amend the slot-allocation policy to introduce a European-style new-entrant reservation, a tighter use-it-or-lose-it threshold, independent coordinators, and a published inventory of holdings at Delhi, Mumbai, Bengaluru and Hyderabad. Slots should be expressly characterised as public permissions, not as airline assets capable of indefinite private appropriation.

Third, Parliament should clarify concurrent jurisdiction. A short amendment to the Competition Act, or a coordinated amendment of the Bharatiya Vayuyan Adhiniyam, should provide that the existence of safety, tariff-disclosure or passenger-facilitation powers in the aviation regulator does not oust Sections 3, 4 and 6, and should authorise compulsory information-sharing. *Bharti Airtel* sequencing should be confined to sectors whose regulator is itself an economic regulator.

Fourth, the Directorate General's consumer-protection mandate should be enlarged on the Department of Transportation model: turnover-linked civil penalties for systemic operational collapse, a duty of alternative carriage, accelerated refunds, and an obligation on carriers above a specified domestic share to maintain demonstrated crew and aircraft buffers. That regime would catch service failures that ought not to be forced into Section 4, and would leave the Commission free to pursue the subset of failures that are also abuses of dominance.

Fifth, the collective-dominance gap should be closed. So long as Section 4 cannot reach parallel conduct by independently controlled duopolists, Indian law will be blind to the characteristic harm of a 90–10 market. A carefully drawn amendment, limited to markets that are highly concentrated and marked by high barriers, would be preferable to asking the Commission to invent a doctrine the Supreme Court has not endorsed.

None of these recommendations asks competition law to fly the aeroplane or the safety regulator to draw a relevant market. They ask only that Indian public law stop treating those tasks as strangers to each other. In a market where two groups carry nine out of ten domestic passengers, operational resilience is a dimension of consumer welfare, and consumer welfare is the statutory object of the Competition Act. The events of December 2025 showed what happens when that object is pursued only after the aircraft have been cancelled. The task now is to write it into combination review, slot policy and the everyday supervision of firms that have become, in fact if not in statute, critical public infrastructure.