
THE PHANTOM OF CONTROL: REASSESSING THE "MATERIAL INFLUENCE" STANDARD UNDER THE COMPETITION (AMENDMENT) ACT, 2023 AND ITS M&A IMPLICATIONS

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ABSTRACT

The Competition (Amendment) Act, 2023 represents the most consequential overhaul of India's merger control framework in over two decades. Among its far-reaching changes, the statutory codification of "material influence" as the operative threshold for "control" under the Competition Act, 2002 is perhaps the most ambiguous and the most consequential for deal-makers. By formally recognising the lowest degree of control as the trigger for mandatory merger notification, the Amendment Act has fundamentally altered the legal calculus for minority investors, private equity funds, and venture capital players. This article critically examines the material influence standard, traces its judicial evolution under Competition Commission of India ("CCI") decisional practice, and evaluates the resulting compliance burdens and structural uncertainties for the M&A ecosystem. The author argues that without a codified, non-exhaustive list of rights constituting material influence, the standard risks becoming an instrument of regulatory overreach rather than a tool of competition protection, and proposes a framework for CCI regulation that could resolve this ambiguity in a manner consistent with global best practices.

I. INTRODUCTION

The landscape of mergers and acquisitions ("M&A") in India has witnessed a structural transformation following the Competition (Amendment) Act, 2023 ("Amendment Act"), which received Presidential assent on 11 April 2023 and whose merger control provisions came into effect on 10 September 2024, alongside the Competition (Combinations) Regulations, 2024 ("Combination Regulations"). For decades, the concept of "control" under the Competition Act, 2002 ("Act") was both foundational and frustratingly vague a term that the statute defined circularly, as controlling the "affairs or management" of an enterprise, without specifying the nature or degree of rights that could constitute such control.

In practice, the CCI had long operated on the basis that control exists on a spectrum, and that the lowest degree of control "material influence" could be established through a constellation of factors including shareholding, board representation, veto rights, and financial arrangements. What was once a principle of decisional practice has now been elevated by the Amendment Act into a statutory standard. The definition of "control" now formally encompasses the ability to exercise material influence over the management, affairs, or strategic commercial decisions of an entity or a group of entities.

This codification may appear to be a modest harmonisation of legislative text with CCI practice. In reality, it is a seismic shift with profound implications for the deal-making community implications that have not yet been fully appreciated, particularly in the context of minority investments, private equity structures, and start-up financing. This article seeks to map these implications, identify the doctrinal tensions that the Amendment Act leaves unresolved, and propose a normative framework for addressing them.

II. THE DOCTRINAL EVOLUTION OF "CONTROL" UNDER INDIAN COMPETITION LAW

Prior to the Amendment Act, the definition of control in Section 5 of the Competition Act was circular and largely definitional rather than substantive. The CCI's own FAQs acknowledged that control "may be inferred from the extent of shareholding and/or statutory rights associated with the shareholding and/or contractual rights such as veto rights, consultation rights, participation in management and affairs." However, these were not exhaustive criteria the CCI could, and did, go further.

The CCI articulated the concept of material influence most clearly in *Ultra Tech Cement Ltd v Competition Commission of India*, where it defined material influence as the "lowest level of control", implying the presence of factors that give an enterprise an ability to influence the affairs and management of another enterprise, including shareholding, special rights, status and expertise, board representation, and structural or financial arrangements. This expansive and deliberately non-exhaustive enumeration set the tone for subsequent CCI assessments.

Equally instructive is the CCI's decision in *Meru Travel Solutions Private Limited v ANI Technologies Private Limited*, where the regulator observed that common shareholders such as SoftBank, which held stakes in both Ola and Uber could, despite being minority shareholders, constitute "active investors" capable of materially influencing both entities simultaneously. This decision signalled that material influence was not confined to formal rights: commercial relationships, reputational heft, and strategic alignment could equally ground a finding of control.

The Amendment Act has now crystallised this jurisprudence into statutory text. Specifically, Section 5 has been amended so that "control" means the ability to exercise material influence, in any manner whatsoever, over the management, affairs, or strategic commercial decisions of an entity or group. The phrase "in any manner whatsoever" reflects a legislative intention to cast the widest possible net, encompassing formal and informal, direct and indirect, contractual and structural forms of influence.

III. IMPLICATIONS FOR MINORITY INVESTORS AND M&A DEAL STRUCTURING

The statutory codification of material influence as the control threshold has direct, practical consequences across several categories of transaction.

A. Private Equity and Alternative Investment Funds

The most immediate impact falls on private equity ("PE") funds and alternative investment funds ("AIFs") that routinely acquire minority stakes accompanied by investor protection rights board nomination rights, affirmative voting rights, anti-dilution clauses, and reserved matters requiring investee consent. Under the pre-Amendment framework, such rights were frequently characterised as purely protective and insufficient to establish control. Under the material

influence standard, the same rights may now trigger a mandatory notification obligation.

This creates a structuring dilemma for the PE community. Funds acquiring stakes of fifteen to twenty-five per cent accompanied by board nomination and veto rights over material decisions must carefully assess whether their investment documentation places them within the statutory definition of control and therefore within the mandatory notification regime. The practical risk of not so assessing is significant: under the Amendment Act, penalties for gun jumping can reach one per cent of the total deal value.

B. Common Ownership and Portfolio Overlaps

The Meru/SoftBank scenario highlights a related concern: common ownership. A PE fund or institutional investor holding portfolio stakes in competing enterprises even if each individual stake is modest may, in aggregate, exercise material influence over multiple market participants. India's PE and venture capital ecosystem is characterised by a small number of large funds SoftBank Vision Fund, Tiger Global, and Sequoia India (now Peak XV), among others holding simultaneous stakes in competing companies across food delivery, fintech, logistics, and edtech. The question of whether such cross-portfolio influence constitutes material influence triggering merger control obligations is one the CCI must urgently address.

C. The Deal Value Threshold and Digital Markets

The Amendment Act also introduces a deal value threshold ("DVT"), mandating notification to the CCI where the total transaction value exceeds INR 2,000 crore and the target has "substantial business operations in India." This threshold was primarily designed to capture acquisitions of digital economy targets start-ups with significant user bases and data assets but minimal tangible assets and turnover that would otherwise escape scrutiny under traditional asset/turnover thresholds.

The intersection of the DVT with the material influence standard creates a novel doctrine of staged or creeping control. A digital start-up may be acquired through a series of minority investments each individually below the traditional threshold while the acquirer simultaneously accumulates board rights, information rights, and veto powers that, taken together, constitute material influence. Under the Amendment Act, the cumulative acquisition of control through material influence could still be notifiable even where individual tranches fall below the DVT.

IV. THE CENTRAL AMBIGUITY: THE ABSENCE OF A REGULATORY FRAMEWORK

The gravest structural deficiency in the Amendment Act's treatment of material influence is the absence of any codified criteria for its determination. Both the Competition Law Review Committee and the Parliamentary Standing Committee on Finance specifically recommended that the CCI publish an indicative though non-exhaustive list of rights constituting material influence. This recommendation was not implemented: the Combination Regulations, 2024 came into force on 10 September 2024 without resolving the definitional vacuum.

The consequences are threefold. First, transacting parties face substantial uncertainty in assessing their notification obligations: absent a safe harbour or indicative list, legal advisors are compelled to recommend notification out of abundant caution for even modest minority investments accompanied by standard investor protection rights. This over-notification burden risks overwhelming the CCI with notifications of benign transactions.

Second, the absence of regulatory clarity disadvantages smaller investors domestic angel investors, family offices, and micro-VC funds who may lack the resources to obtain sophisticated competition law advice before completing investments. The cost of regulatory ambiguity is disproportionately borne by the ecosystem's smaller participants, not by well-resourced multinationals or large PE funds.

Third, and most fundamentally, legal uncertainty in the definition of control affects the enforceability of investment documentation itself. If parties cannot determine *ex ante* whether a given package of rights crosses the material influence threshold, they cannot be confident that their transaction is lawful until the CCI either clears it or its statutory timeline runs. This chilling uncertainty is inimical to deal-making velocity a stated objective of the Amendment Act's streamlined procedural timelines.

V. A PROPOSED FRAMEWORK: RESOLVING THE DEFINITIONAL VACUUM

The author submits that the CCI should, at the earliest opportunity, promulgate regulations specifying an indicative list of rights that would individually or in combination constitute material influence. Such a framework should be modelled, with appropriate adaptations, on comparator jurisdictions.

The European Commission's approach under the EU Merger Regulation is instructive. In its assessment of "decisive influence" a standard higher than material influence but conceptually proximate the Commission has developed a practice of identifying specific veto rights over strategic decisions as capable of conferring control, including decisions on the appointment of senior management, the annual budget, and business plans. An analogous non-exhaustive list of rights constituting material influence in the Indian context could include: (i) the right to nominate or veto the appointment of one or more directors; (ii) veto rights over material transactions above a specified threshold; (iii) access to competitively sensitive information through information rights; (iv) rights conditioning the investee company's ability to enter significant commercial agreements; and (v) rights imposing exclusivity or non-compete obligations constraining the investee's strategic options.

Crucially, such a list should operate as a presumptive, rebuttable framework not a mechanical checklist. Whether a given right, or combination of rights, constitutes material influence must remain a contextual judgment. The value of codification lies in providing predictive certainty, not in mechanising inherently fact-specific assessments. The CCI could usefully adopt a tiered approach, distinguishing between rights that standing alone suffice to establish material influence, and rights that are relevant but require reinforcing factors.

The author further argues that the CCI should provide specific guidance for the common ownership context an issue with significant implications for India's PE and VC ecosystem. Additionally, the Combination Regulations should include a "passive investor" safe harbour exempting from the definition of control those rights held purely for the protection of financial return, without conferring any strategic influence over commercial decisions. Such a safe harbour, calibrated to clear conditions, would meaningfully reduce compliance burdens without undermining the regulatory objective of capturing genuinely competition-sensitive transactions.

VI. CONCLUSION

The Competition (Amendment) Act, 2023 is, in many respects, a landmark achievement in Indian competition law streamlining procedural timelines, introducing a DVT fit for the digital economy, and formally codifying decades of CCI decisional practice. The statutory entrenchment of material influence as the operative control standard reflects a mature recognition that control is not a binary concept but a spectrum.

Yet the Amendment Act's greatest strength is also its greatest weakness. By articulating the lowest possible threshold of control in the broadest possible language "in any manner whatsoever" without accompanying regulatory guidance, the legislature has created a standard that is simultaneously expansive and unworkable. The phantom of control haunts every PE term sheet, every venture capital side letter, and every cross-portfolio investment: present everywhere in theory, identifiable nowhere in practice.

Resolving this ambiguity is a prerequisite for India realising the full potential of its M&A ecosystem. As India positions itself as a premier destination for global capital with M&A activity surging sixty-six per cent in 2024 and the government's own investment targets requiring sustained deal-making legal certainty in the foundational concept of control is not a luxury but a necessity. The CCI has both the authority and the institutional competence to provide this certainty through well-calibrated regulation. It should do so without further delay.