



**STRENGTHENING INDIA'S AAEC  
STANDARD: TOWARDS A  
PREDICTABLE, EVIDENCE-BASED  
FRAMEWORK FOR MERGER  
CONTROL**

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**Abstract**

The concept of Appreciable Adverse Effect on Competition (AAEC) is one of the quintessential concepts that ensure the free and fair movement of trade by mitigating anti-competitive agreements or any form of domination abuse. AAEC Test adopts two-pronged, effects-based approach but its shortcomings is seen in the vagueness of its provisions, persistent procedural delays and the highly unpredictable interpretation of the concept read with the provisions. This paper seeks out to not only identify the areas of lacunae but also compare the robust Indian system with established, dynamic systems of developed economies like that of EU, USA & UK, it also breezes through how the cracks in the Indian system can be fixed by drawing parallels between these systems. With evolving market structure and FTAs being carved out with various countries, India's evolving market structure calls for analytical certainty and its assessment on the same is critical. The paper concludes by calling for the amalgamation and adjustment of the Indian system in accordance to a developing economy.

**Introduction**

Mergers and Acquisitions have taken up the spot as a central strategy for business growth and market consolidation in developed, emerging economies. While such transactions can generate efficiencies,

promote innovation, and strengthen firms' competitive capacities, they also carry the risk of reducing market competition, excluding rivals, and harming consumer interests. Recognizing this dual nature, competition laws across jurisdictions impose regulatory scrutiny on mergers and acquisitions to ensure that market concentration does not undermine the competitive process.

In India, merger control is governed by the Competition Act, 2002, which subjects certain combinations to review by the Competition Commission of India (CCI). The substantive benchmark used by the CCI is whether a proposed transaction causes, or is likely to cause, an Appreciable Adverse Effect on Competition (AAEC)<sup>1</sup> in the relevant market within India. This standard reflects an effects-oriented approach, aiming to assess the actual or potential impact of a transaction on market structure, consumer welfare, and competitive dynamics rather than merely its formal characteristics. Despite its broad alignment with international competition law principles, the Indian AAEC framework has faced criticism for its interpretative ambiguity, procedural limitations, and challenges in addressing complex and evolving markets, particularly in the digital and technology sectors. Issues such as uncertainty surrounding competitive harm assessment, reliance on structural indicators, and difficulties in capturing asset-light and innovation-driven acquisitions have highlighted the need for reform.

In contrast, other jurisdictions such as the European Union and the United States apply more elaborated substantive standards—namely, the Significant Impediment to Effective Competition (SIEC) test and the substantial lessening of competition standard—supported by detailed guidelines, economic analysis, and well-developed jurisprudence. A comparative examination of these systems provides useful insights into how merger control regimes can balance regulatory certainty with effective competition

<sup>1</sup> Competition Act, 2002, § 20(4).



enforcement. This paper seeks to critically analyse the shortcomings of India's AAEC-based merger control regime and explore how these limitations may be addressed by drawing on comparative practices from other jurisdictions. Through this analysis, the study aims to contribute to the discussion on strengthening India's merger control framework in line with global best practices.

### The Primordial Defect : Lack of Definition

A key structural limitation of the framework is the absence of a clearly articulated definition of Appreciable Adverse Effect on Competition (AAEC). Although the Competition Act, 2002 identifies AAEC as the decisive standard for evaluating mergers and acquisitions, it does not specify the threshold at which competitive harm becomes "appreciable." Instead, Section 20 of the Act enumerates a broad set of factors that the Competition Commission of India (CCI) may consider, leaving the interpretation of AAEC largely to administrative discretion.<sup>2</sup>

This open-ended approach contrasts sharply with the merger control regimes of the European Union and the United States, where the substantive standards are more precisely framed and supported by detailed analytical guidance.<sup>3</sup> In the European Union, merger assessments are governed by the Significant Impediment to Effective Competition (SIEC) test. The SIEC standard expressly links competitive harm to a demonstrable impairment of effective market competition, whether through the creation or strengthening of dominance or through unilateral and coordinated effects. This clarity allows firms to assess regulatory risk with greater confidence and ensures consistency in enforcement.

Similarly, the United States applies the "substantial lessening of competition" standard under the Clayton Act, which is reinforced by comprehensive and regularly updated Merger Guidelines issued by the Department of Justice and the Federal Trade Commission<sup>4</sup>. These guidelines explain how competitive harm is evaluated, including price effects, innovation loss, and foreclosure risks. As a result, the U.S. system offers a more predictable framework in which businesses can anticipate enforcement outcomes based on established economic principles.

In contrast, India's reliance on an undefined AAEC standard has resulted in uncertainty regarding the relative importance of different competitive factors. The absence of structured analytical categories—such as unilateral effects, coordinated effects, or innovation harm—means that parties often struggle to determine how the CCI will assess complex transactions, particularly those involving digital platforms or emerging markets. This uncertainty can discourage legitimate business combinations or lead to excessive caution in transaction structuring.

The lack of a clearly defined AAEC benchmark limits the development of consistent merger jurisprudence in India. While EU and U.S. merger decisions benefit from extensive judicial review that refines substantive standards over time, Indian merger control remains largely administrative, with fewer opportunities for appellate courts to clarify the meaning of competitive harm. Consequently, AAEC assessments in India tend to be fact-specific rather than principle-based. A comparative analysis suggests that India could benefit from adopting elements of the EU and U.S. approaches without abandoning the flexibility of the AAEC standard<sup>5</sup>. Issuing detailed merger assessment guidelines, explicitly incorporating effects-based

<sup>2</sup> Aditya Bhattacharjya, "India's New Competition Law: A Comparative Assessment" (2008) 4(3) Journal of Competition Law & Economics 609.

<sup>3</sup> Anish Jaipuria and Sarita Rout, "Tests of SIEC and AAEC in M&A: A Comparative Study of Competition Act, 2002 and EU Competition Law" (2014) 1 NLIU Law. Rev. 84.

<sup>4</sup> Clayton Act, 15 U.S.C. § 18.

<sup>5</sup> Dheeraj Budaraju and Chetan Jayant Dixit, "Strengthening merger control framework in India: Evolving trends, challenges, and regulatory reforms", International Journal of Law, Justice and Jurisprudence 2025; 5(1): 328-334



theories of harm, and clarifying the meaning of “appreciable” competitive harm would improve predictability and transparency. Such reforms would align India’s merger control regime more closely with international best practices while preserving its adaptability to domestic market conditions.

### Inadequate Capture of Digital & Asset-Light Transactions

A significant limitation of India’s merger control regime lies in its historical inability to effectively capture digital and asset-light transactions. The Competition Act, 2002 initially relied on asset- and turnover-based jurisdictional thresholds<sup>6</sup> to determine whether a merger or acquisition required prior notification to the Competition Commission of India (CCI). While these thresholds were appropriate for traditional, asset-intensive industries, they proved inadequate in the context of digital markets, where competitive significance is often driven by data, network effects, and innovation rather than tangible assets or immediate revenue.

Digital enterprises and start-ups frequently operate with minimal physical assets and limited turnover during their early growth stages, yet may exert substantial competitive influence through user base expansion, control over data, or technological capabilities. As a result, several high-value acquisitions involving digital platforms and technology firms were not subject to merger review in India, despite their potential to eliminate future competitors or reinforce market power<sup>7</sup>. This gap raised concerns about so-called “killer acquisitions,” where dominant firms acquire nascent rivals to neutralize future competitive threats.

The inadequacy of traditional thresholds also limited the CCI’s ability to conduct forward-looking competitive assessments in innovation-driven

markets. In the absence of jurisdiction, the authority could not examine whether such transactions might reduce incentives to innovate, restrict consumer choice, or entrench dominant digital ecosystems. This regulatory blind spot undermined the effectiveness of the AAEC standard, as transactions capable of causing long-term competitive harm escaped scrutiny altogether.

In contrast, several other jurisdictions have adopted more flexible mechanisms to address similar challenges. Countries such as Germany and Austria have introduced transaction value thresholds that allow competition authorities to review high-value deals even when asset and turnover criteria are not met. The United Kingdom applies a “share of supply” test<sup>8</sup> that enables intervention in digital mergers based on competitive presence rather than financial size, while the European Union has encouraged referral mechanisms to capture strategically significant acquisitions in the digital sector.

India has recently taken steps to address this deficiency through legislative reform, including the introduction of a deal value threshold aimed at covering high-value acquisitions<sup>9</sup> with substantial business operations in India. While this represents an important shift towards aligning with global best practices, uncertainties remain regarding valuation methodologies and the interpretation of key concepts. Consequently, further clarification and guidance will be necessary to ensure that digital and asset-light transactions are consistently and effectively assessed under the merger control framework.

### Prominent Jurisprudential Dent

A fallback of the Indian merger control framework is the relatively limited role played by the judiciary in shaping substantive merger jurisprudence. Since the introduction of merger control under the Competition

<sup>6</sup> Competition Act, 2002, No. 12 of 2003, §§ 5–6.

<sup>7</sup> Kumar, Nitish & Saurabh Singh, “*Digital Markets and Merger Control in India*”, (2022) Indian Journal of Competition Law.

<sup>8</sup> Enterprise Act 2002 (UK), § 23

<sup>9</sup> Competition (Amendment) Act, 2023



Act, 2002, the assessment of combinations has largely remained within the administrative domain of the Competition Commission of India (CCI)<sup>10</sup>. While the CCI has developed a substantial body of decisional practice, the scarcity of appellate review has constrained the evolution of well-defined legal principles governing merger analysis.

Most merger notifications in India are cleared either unconditionally or subject to negotiated remedies, leaving few opportunities for contested decisions to reach appellate forums such as the National Company Law Appellate Tribunal (NCLAT) or the Supreme Court of India<sup>11</sup>. As a result because of this crucial concepts such as the interpretation of Appreciable Adverse Effect on Competition (AAEC), standards of proof, and the appropriate weight to be given to economic evidence have not been extensively examined or refined through judicial scrutiny. This contrasts with jurisdictions where courts play a central role in clarifying merger control standards.

In the European Union, merger decisions of the European Commission are frequently subject to review by the General Court and the Court of Justice of the European Union. Judicial oversight has contributed significantly to the development of merger law by refining analytical frameworks, clarifying evidentiary thresholds, and reinforcing procedural fairness<sup>12</sup>. Similarly, in the United States, merger enforcement is deeply rooted in judicial proceedings, with federal courts adjudicating challenges brought by competition authorities. Landmark judicial decisions have shaped the interpretation of the “substantial lessening of competition” standard and provided authoritative guidance on market definition, competitive effects, and efficiencies<sup>13</sup>.

The limited involvement of Indian courts has implications for legal certainty and predictability. In the absence of robust judicial precedents, businesses must rely primarily on administrative practice and informal guidance to assess merger risks. This can lead to uncertainty, particularly in novel or complex transactions where regulatory discretion plays a significant role. Furthermore, the lack of judicially articulated standards may constrain the ability of parties to effectively challenge regulatory decisions or seek clarity on unsettled areas of law. Strengthening the role of judicial review in merger control could enhance the credibility and consistency of India’s competition law framework, this can be ensured through detailed and reasoned decisions by the CCI, coupled with active appellate scrutiny by NCLAT, would facilitate the development of principled jurisprudence on merger control. Over time, such judicial engagement would contribute to a more transparent, predictable, and balanced system that aligns administrative expertise with judicial oversight.

#### Exhaustion of Factors in Assessment

There always exists the tendency to place disproportionate emphasis on market share and other structural indicators when assessing the competitive impact of mergers and acquisitions in the Indian ecosystem. While market concentration levels, barriers to entry, and the number of competitors are relevant considerations under the Competition Act, 2002, excessive reliance on these factors may lead to an incomplete understanding of competitive dynamics, particularly in rapidly evolving markets.

Market share, by its nature, offers only a static snapshot of competitive conditions at a given point in time<sup>14</sup>. In several merger assessments, high combined market shares or increased concentration have been treated as strong indicators of potential competitive

<sup>10</sup> Competition Act, 2002, No. 12 of 2003, §§ 5–6, 20–31

<sup>11</sup> Competition Act, 2002, §§ 53A–53T.

<sup>12</sup> Case T-5/02 *Tetra Laval BV v Commission* [2002] ECR II-4381.

<sup>13</sup> *United States v. Philadelphia National Bank*, 374 U.S. 321 (1963).

<sup>14</sup> U.S. Department of Justice & Federal Trade Commission, *Horizontal Merger Guidelines* (2010)



harm. However, such an approach risks overlooking the actual behaviour of firms, the intensity of competitive rivalry, and the ability of market forces to discipline post-merger conduct. Markets characterized by technological change, innovation, or low switching costs may remain competitive despite high concentration levels.

An overly structural approach also tends to undervalue factors such as potential competition, countervailing buyer power, and the role of innovation in shaping market outcomes. In digital and technology-driven sectors, competition often occurs “for the market” rather than “within the market,” making traditional structural indicators less reliable predictors of competitive harm. As a result, mergers that appear problematic based on concentration metrics alone may, in practice, generate efficiencies or promote innovation without diminishing consumer welfare.

In contrast, competition authorities in other jurisdictions increasingly adopt an effects-based analysis that focuses on how a merger is likely to influence prices, output, quality, and innovation over time. The European Union, for example, supplement structural indicators with detailed economic analysis of unilateral effects, coordinated effects, and dynamic competition<sup>15</sup>. Structural measures are treated as starting points rather than decisive conclusions whilst the Indian approach on the other hand when overly anchored in market share thresholds, may also discourage efficiency-enhancing transactions or lead to conservative enforcement outcomes. Without sufficient consideration of economic evidence and market realities, there is a risk of regulatory intervention that is not proportionate to the actual competitive harm posed by a transaction. To address this limitation, the Indian merger control regime would benefit from a more balanced methodology that integrates structural indicators with robust effects-based analysis. Greater emphasis on behavioural

evidence, innovation incentives, and long-term consumer impact would enable a more nuanced assessment of competitive harm and bring Indian merger review closer to global best practices.

### Lacunae in Merger Analysis

One of the notable limitations of the Indian merger control framework is the relatively limited depth of economic analysis employed in assessing the competitive impact of mergers and acquisitions. While the Competition Commission of India (CCI) considers economic factors such as market shares, concentration levels, and entry barriers, the analytical approach often remains largely structural rather than effects-based.

In many cases, merger review in India relies heavily on static indicators like post-merger market concentration and the number of competitors operating in the relevant market. Although these factors provide a preliminary understanding of market power, they do not always capture the actual or likely competitive outcomes of a transaction. As a result, dynamic elements such as price effects, consumer welfare changes, innovation incentives, and strategic firm behaviour may not receive sufficient attention.

Advanced quantitative tools—such as price simulation models, counterfactual analysis, and innovation impact assessments—are used only extensively in the jurisdictions of EU & USA<sup>16</sup> whilst they are selectively in Indian merger investigations. This limits the ability of the competition authority to accurately predict whether a merger would result in higher prices, reduced output, diminished quality, or slower innovation. The absence of consistent econometric analysis also makes it difficult to distinguish between mergers that are genuinely harmful and those that may enhance efficiency without restricting competition.

<sup>15</sup>European Commission, *Guidelines on the Assessment of Horizontal Mergers under the Council Regulation on the Control of Concentrations between Undertakings* [2004] OJ C31/5.

<sup>16</sup> OECD, *Merger Control and the Use of Economic Evidence* (OECD Policy Roundtables, 2011).



By contrast, competition authorities in jurisdictions such as the European Union and the United States increasingly adopt effects-based economic methodologies. These include the use of concentration indices, pricing pressure tests, and merger simulation techniques to evaluate the real-world consequences of transactions. Such tools allow regulators to move beyond formal market structures and assess how firms and consumers are likely to respond post-merger. The limited integration of advanced economic analysis in India may lead to both over-enforcement and under-enforcement. Transactions that pose minimal competitive risk may face unnecessary scrutiny, while mergers with subtle but significant long-term effects—particularly in innovation-driven or digital markets—may escape rigorous examination<sup>17</sup>. Strengthening the economic foundation of merger review by institutionalizing quantitative tools and expanding technical expertise would therefore enhance the accuracy, credibility, and consistency of AAEC assessments in India.

### Conclusion & Way Forward

The Appreciable Adverse Effect on Competition (AAEC) standard occupies a pivotal position in India's competition law framework, acting as the decisive test for identifying anti-competitive conduct and market-distorting combinations. While the adoption of an effects-based approach reflects a progressive legislative intent, its practical implementation in India remains uneven. The absence of clear thresholds, inconsistent application of economic reasoning, and limited judicial guidance have diluted the certainty and predictability that a competition regime demands.

A comparative examination reveals that mature jurisdictions such as the United States, European Union, and United Kingdom have succeeded in operationalizing similar standards by embedding them within structured analytical frameworks supported by

economic evidence and well-defined safe harbours. In contrast, India's AAEC framework continues to rely heavily on discretion, often at the cost of transparency and business confidence. Consequently, AAEC has not fully evolved into a robust tool capable of balancing market efficiency, innovation, and consumer welfare.

For AAEC to function as an effective and credible competition assessment standard, a shift from discretionary evaluation to structured analysis is essential. The Competition Commission of India should formulate comprehensive guidelines clarifying the meaning of "appreciable" by introducing indicative thresholds and market share benchmarks. Such guidance would not only enhance legal certainty but also reduce unnecessary regulatory intervention in cases with negligible competitive impact.

Greater integration of economic analysis must form the core of future AAEC assessments. The use of counterfactual reasoning, demand-side substitution analysis, and quantification of consumer harm would align Indian practice with international standards. At the same time, efficiency defences should be meaningfully evaluated through a transparent balancing exercise, ensuring that pro-competitive collaborations are not inadvertently discouraged. Institutional capacity building is equally critical. Strengthening economic expertise within the CCI and expediting adjudicatory timelines would improve both the quality and relevance of AAEC determinations, particularly in fast-evolving digital markets. Finally, consistent judicial interpretation by appellate bodies can play a decisive role in refining the contours of AAEC and establishing authoritative precedents. By adopting these reforms, India can transform AAEC from an abstract statutory standard into a predictable, evidence-based, and business-friendly competition test that effectively safeguards market competition while promoting economic development.

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<sup>17</sup> Massimo Motta, *Competition Policy: Theory and Practice* (CUP 2004).