

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 3

2024

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Neo-Brandeis School, Harvard School, and Chicago School: Indian Competition Enforcement Perspectives

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ABSTRACT

This paper explores the alignment of the Indian competition enforcement approach with the perspectives put forth by the Neo-Brandeis School, the Chicago School, and the Harvard School. It further undertakes a comparative analysis of the market structures across several Indian sectors like manufacturing, services and the digital economy and then assesses their compatibility with the perspectives of these influential schools. The paper explores the institutional challenges faced by the Competition Commission of India (CCI) and highlights the need for international collaboration with an intent to tackle cross border anti-competitive practices. The paper finally concludes by providing policy recommendations for the CCI to enhance its effectiveness, acquire specialized expertise and conduct periodic reviews of merger notification thresholds. The paper adopts doctrinal and secondary doctrinal research methodology.

Keywords: *Indian competition enforcement, Neo-Brandeis School, Chicago School, Harvard School, Comparative analysis.*

I. INTRODUCTION

In the dynamic landscape of competition law, understanding the alignment of regulatory approaches with the theoretical frameworks becomes significant. This paper rummages into the Indian competition enforcement perspective through the beliefs put forth by three influential schools of thought: the Neo-Brandeis School, the Chicago School, and the Harvard School. By conducting a comparative analysis, it aims to highlight India's approach and whether it intersects or diverges from the principles laid down by these schools. Central to this is the examination of market structures across various sectors, the institutional challenges faced by the competition authorities and then proposing policy recommendations for increasing effectiveness and fostering fair competition. This research by doing so, aspires to contribute to a deeper understanding of competition enforcement dynamics in the country and its importance across the global legal arena.

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II. COMPARATIVE ANALYSIS

The comprehensive analysis of Indian market structures across multiple sectors gives away complex alignments and deviations from the principles which are supported by the Neo-Brandeis School, the Chicago School, and the Harvard School. This part focuses on the market dynamics in manufacturing, services, and the digital economy. By this, assessing their computability with the projections given by these influential schools. Additionally, it delves into the inherent trade-offs and policy implications that are related with these market structures.

(A) Market Structures across Indian sectors:

The Indian manufacturing sector showcases a mixed market structure. Certain industries like steel and automobiles are dominated by only a few large players.² For instance, in the steel industry, the top four producers which are Tata Steel, JSW Steel, SAIL, and RINL account for nearly 55% of the total market share.³ While other sectors like textiles and pharmaceuticals are more disintegrated, they consist of multiple small and medium-sized enterprises (SMEs).⁴ The pharmaceutical industry has more than 10,000 manufacturers, with the top ten players accounting for around 35% of the market share.⁵ In comparison, the service sector inclines towards a competitive market structure, which includes many players promoting competition and innovation in various sectors like that of IT, education, and healthcare.⁶ However, the sub sectors such as banking and insurance displays a propensity towards oligopoly.⁷ For example, the top five banks in India holds over 60% of the total assets in the banking sector.⁸ The digital economy in India presented us with a dynamic landscape, where e-commerce giants like Amazon and Flipkart raised concerns about possible dominance,⁹ who together hold for

² K. V. Bhanu Murthy, Renu Gupta, & Ashis Taru Deb, Market Structure of Indian Banking Industry: A Comparative Analysis, in *Journal of Business Studies* ch. 2, 5 (2017).

³ 'Development of Indian Steel Sector since 2010-11', <https://steel.gov.in/sites/default/files/DEVELOPMENT%20OF%20INDIAN%20STEEL%20SECTOR%20SINCE%202010-11.pdf> (last visited Mar. 29, 2024).

⁴ K. V. Bhanu Murthy, Renu Gupta, & Ashis Taru Deb, Market Structure of Indian Banking Industry: A Comparative Analysis, in *Journal of Business Studies* ch. 2, 5 (2017).

⁵ Indian Pharmaceuticals Industry Analysis Presentation | IBEF, India Brand Equity Foundation (2022), <https://www.ibef.org/industry/indian-pharmaceuticals-industry-analysis-presentation> (last visited Mar. 29, 2024).

⁶ Noshir Kaka et al., Digital India: Technology to Transform a Connected Nation, McKinsey & Company (Mar. 27, 2019), <https://www.mckinsey.com/capabilities/mckinsey-digital/our-insights/digital-india-technology-to-transform-a-connected-nation> (last visited Mar. 29, 2024).

⁷ "Creating oligopolies: Pitfalls of neoliberal banking and agri-credit policy," *Frontline* (2022), <https://frontline.thehindu.com/cover-story/creating-oligopolies-pitfalls-of-neoliberal-banking-and-agri-credit-policy/article36294593.ece> (last visited Mar. 29, 2024); "Insights into India's Market Evolution: Oligopoly's Growing Influence," *The Wire* (2024), <https://thewire.in/economy/insights-into-indias-market-evolution-oligopolys-growing-influence> (last visited Mar. 29, 2024).

⁸ "Top 10 Banks in India by Market Cap in 2024 - Forbes India," *Forbes India* (2024), <https://www.forbesindia.com/article/explainers/top-10-banks-india-by-market-cap/87913/1> (last visited Mar. 29, 2024).

⁹ Rhea Tewary, The Regulation of E-Commerce under Indian Competition Law, 8 *Indian Pol. & L. Rev.* 36, 36-45 (2022), <https://salrj.thelawbrigade.com/uncategorized/the-regulation-of-e-commerce-under-indian->

over 60% of the Indian e-commerce market.¹⁰ Whereas, the ride hailing industry showed a more competitive structure with players like Ola, Uber, Rapido, Jugnoo, etc.

a. Alignment with Influential Schools:

Indian competition law enforcement steers towards an interesting coaction between the three schools of antitrust thought. The Competition Act, 2002 does not explicitly endorse any school but its provisions and the Competition Commission of India (CCI) practices illustrates an influence from all of them.

The Chicago school focuses on economic efficiency and minimal government intervention. The Act is in line with this perspective as it adopts a rule of reason approach¹¹, by this examining the impact of agreements on competition instead of just banning them altogether. This aligns with the school's belief in market correction. Additionally, Act prohibits agreements that cause an "adverse appreciable effect on competition" (AAEC) in the relevant market.¹² which aligns with the Chicago School's belief on avoiding practices that harm efficiency. However, CCI does not limit itself to just efficiency but goes beyond it by considering consumer welfare.¹³¹⁴

The Harvard school draws attention on the role of institutions in shaping markets.¹⁵ The Act is in line with this idea by establishing CCI as an independent regulatory body having quasi-judicial functions along with investigative powers and appellate authority, thus ensuring effective enforcement and reflective Harvard school's thoughts on strong institutions. Additionally, the recent amendment¹⁶ introduced the 'Leniency Plus'¹⁷ mechanism, which provides an incentive to cartel members to disclose information about other cartels during leniency investigations. This step enhances cartel detection and is in line with the Harvard school's emphasis on practical solutions. Furthermore, the Indian government's regulation of telecommunications is in line with the Harvard School's recognition of a need for intervention

competition-law/ (last visited Apr. 1, 2024).

¹⁰ ETtech, 'Flipkart, Amazon, Reliance to Corner Indian Ecommerce: Bernstein', The Economic Times (May 25, 2023), <https://economictimes.indiatimes.com/tech/technology/indian-ecommerce-market-to-be-split-across-flipkart-amazon-and-reliance-bernstein/articleshow/100508273.cms?from=mdr> (last visited Mar. 29, 2024).

¹¹ The Competition Act, 2002, § 3 (India).

¹² 'Competition Law in India: Top Ten Things to Know about the Enforcement Regime', Association of Corporate Counsel (ACC) (May 8, 2017), <https://www.acc.com/resource-library/competition-law-india-top-ten-things-know-about-enforcement-regime> (last visited Apr. 1, 2024).

¹³ Saakshi Agarwal & Chintan Bhardwaj, Goals of Competition Law in India, (Feb. 20, 2021), <https://ssrn.com/abstract=3789536> (last visited Apr. 1, 2024).

¹⁴ The Competition Act, 2002, § 18 (India).

¹⁵ 'Creating Emerging Markets - Harvard Business School', Harvard Business School, <https://www.hbs.edu/creating-emerging-markets/Pages/default.aspx> (last visited Apr. 2, 2024).

¹⁶ The Competition (Amendment) Act, 2023, [https://prsindia.org/files/bills_acts/acts_parliament/2023/The%20Competition%20\(Amendment\)%20Act,%202023.pdf](https://prsindia.org/files/bills_acts/acts_parliament/2023/The%20Competition%20(Amendment)%20Act,%202023.pdf).

¹⁷ Competition Law Review Committee, Ministry of Corporate Affairs, Government of India, (2019), <https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf>.

by the government in specific circumstances.¹⁸ Furthermore, CCI also investigates mergers and acquisitions to assess any kind of impact on competition.¹⁹ This aligns with the Harvard School's emphasis on preventing practices that limits or attempts to limit consumer choice.²⁰ The CCI with the help of economic analysis and market studies assess these affects.²¹ Besides this the CCI considers market share and dominance at the time of evaluating mergers and anti-competitive agreements.

The Neo-Brandeis school highlights the requirement to restrain the concentration of economic power and protect small businesses as well as consumers since such concentration harms innovation and competition.²² The Act is in line with this perspective through its provisions which prohibits abuse of dominant position.²³ Under this, the CCI investigates cases where firms exploit market power which leads to detriment to consumers or competitors, by this preventing monopolistic practices and fostering a level playing field for everyone. In addition to this, the Act makes pre-merger notifications compulsory for combinations which exceeds specified thresholds.²⁴ The CCI evaluates whether such merger and acquisition harm competition, thus, aligning with the Neo-Brandeis idea of preventing excessive concentration. Furthermore, the CCI has shown increasing concern about data privacy in the recent years thus, mirroring the Neo-Brandeisian approach.²⁵

Indian competition law enforcement displays an approach which incorporates elements from all three schools. The CCI fosters competition and protects consumer welfare in order to create a dynamic and competitive marketplace.

b. Institutional Challenges faced by Indian Competition Authorities:

The institutional capabilities and structure of the Competition Commission of India (CCI) is linked with the effective enforcement of competition law in India. CCI plays a crucial role in promoting a competitive market environment, however, it faces several challenges that obstructs its ideal performance.

One of the most primary challenges faced by the CCI is the limited resources and workforce.

¹⁸ Telecommunications Act, 2023 (India), <https://egazette.gov.in/WriteReadData/2023/250880.pdf>.

¹⁹ The Competition Act, 2002, § 6 (India).

²⁰ 'Competition Law in India: Top Ten Things to Know about the Enforcement Regime', Association of Corporate Counsel (ACC), May 8, 2017, <https://www.acc.com/resource-library/competition-law-india-top-ten-things-know-about-enforcement-regime> (last visited Apr. 1, 2024).

²¹ *ibid.*

²² *ibid.*

²³ The Competition Act, 2002, § 4 (India).

²⁴ The Competition Act, 2002, § 6 (India).

²⁵ Matthew Sipe, "Covering Prying Eyes with an Invisible Hand: Privacy, Antitrust, and the New Brandeis Movement," 36 *Harv. J.L. & Tech.* 2023 (2022), <https://ssrn.com/abstract=4124372> (last visited Apr. 1, 2024).

As of 2022, the CCI had only around 197 staff members, including both DG and the commission.²⁶ It surrounds with a shortage of investigators and technical experts which leads to delay in case investigations and adjudication processes.²⁷ Additionally, certain complex sectors like technology and pharmaceuticals requires specialized knowledge that might exceed the current expertise of the staff at the commission.²⁸ The CCI's budgetary allocation for the fiscal year 2022-23 was approximately INR 46 crores.²⁹ India because of its vast and diverse federal structure poses coordination challenges for the CCI. In order to maintain effective enforcement of competition law there needs to be smooth coordination between central and the state authorities.³⁰ Inconsistencies and jurisdictional overlaps can obstruct the smooth enforcement.³¹ Besides this, the lack of established mechanisms for inter-agency communication and information sharing can lead to delays along with inconsistencies in collaboration with other regulatory bodies, this becomes significant to enforce competition law.³²

The leniency program which provides incentive to cartels to self-report any anti-competitive practices undertaken by them, this holds the potential to aid in faster detection and deterrence of anti-competitive behaviour.³³ Limited awareness among stakeholders and an assumption of not receiving full immunity if multiple parties apply simultaneously were concerns which questioned the effectiveness of the leniency program.³⁴

c. Consumer welfare v. Market Structure:

The enforcement of the Indian competition law requires navigating the traction between maintaining an ideal market structure and fostering consumer welfare. This debate draws its

²⁶ 'Competition Commission of India,' <https://cci.gov.in/public/images/annualreport/en/annual-report-2022-231703571209.pdf> (last visited Apr. 1, 2024).

²⁷ Ms. Deepika Prakash, "Understanding Leniency Program under the US, EU and Indian Competition Laws," Volume 5, Issue 4 & 5, Law Mantra (accessed Apr. 1, 2024), <https://journal.lawmantra.co.in>.

²⁸ Vincent S. Abraham & Catarina Marvao, "Leniency of the Competition Commission of India," Working Paper presented at 7th National Conference on Economics of Competition Law, Competition Commission of India, March 4, 2022.

²⁹ PTI, 'Corporate Affairs Ministry Gets Rs 756 Cr Budgetary Allocation,' The Economic Times (Feb. 2023), <https://economictimes.indiatimes.com/news/economy/policy/corporate-affairs-ministry-gets-rs-756-cr-budgetary-allocation/articleshow/97525621.cms> (last visited Apr. 1, 2024).

³⁰ Reetika Rana, "Leniency program in Indian competition law: A study on CCI (Lesser Penalty) regulations, 2009," 6 Int'l J.L., Pol'y & Soc. Rev. 6-11 (2024), available at www.lawjournals.net.

³¹ Vincent S. Abraham & Catarina Marvao, "Leniency of the Competition Commission of India," Working Paper presented at 7th National Conference on Economics of Competition Law, Competition Commission of India, March 4, 2022.

³² Ms. Deepika Prakash, "Understanding Leniency Program under the US, EU and Indian Competition Laws," Volume 5, Issue 4 & 5, Law Mantra (accessed Apr. 1, 2024), <https://journal.lawmantra.co.in>.

³³ *ibid*.

³⁴ Reetika Rana, "Leniency program in Indian competition law: A study on CCI (Lesser Penalty) regulations, 2009," 6 Int'l J.L., Pol'y & Soc. Rev. 6-11 (2024), available at www.lawjournals.net.

influence from the three schools. The Chicago school gives priority to consumer welfare through increased efficiency and lower prices.³⁵ This school is of the belief that competition candidly leads to these results and favours a permissive merger review process. It basically focuses on anti-competitive practices that directly affect the consumers; one such example can be of price-fixing.³⁶ The trade-off of this approach is the possibility of market concentration if the overly permissive mergers create dominant players, this will at last harm consumers by limiting their choice and by lack of innovation.³⁷ Besides this, the focus on consumer welfare might lead to neglecting the potential future harms from market dominance which are difficult to measure in the short term.³⁸

The Harvard school focuses on balancing consumer welfare and maintaining an optimal market structure.³⁹ The school while considering potential harm to innovation and long-term competition, believes that competition promotes innovation and economic growth and henceforth, advances for a more minute approach to merger reviews.⁴⁰ However, the trade-off of this approach is increased complexity and time-consuming nature of enforcement at the time of balancing several factors.⁴¹ There also exists a risk of hampering innovation and deterring potential beneficial mergers if the merger reviews become excessively cautious.⁴²

The Neo-Brandeis perspective highlights the significance of market structure and power dynamics.⁴³ It further focuses on the belief that concentrated markets create societal problems which are beyond immediate consumer welfare affects. Therefore, it vocalises for preventing excessive market concentration and fosters a more diverse competitive landscape.⁴⁴ Howsoever, the trade-off of this focus is the possibility of increased intervention in the market which ultimately can hinder efficiency.⁴⁵ Moreover, the term “excessive concentration” and determining the apt level of market concentration for intervention can be very challenging as well as subjective.⁴⁶

³⁵ G.I. Zekos, "Chicago School, Harvard School, and New Brandeis Movement," in *Artificial Intelligence and Competition* (Springer, Cham, 2023), https://doi.org/10.1007/978-3-031-48083-6_7.

³⁶ *ibid.*

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ Lina Khan, "The New Brandeis Movement: America's Antimonopoly Debate," *Journal of European Competition Law & Practice* vol. 9, issue 3, March 2018, 131-132, <https://doi.org/10.1093/jeclap/lpy020> (last visited Apr. 3, 2024).

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ *ibid.*

The CCI, however, has adopted a pragmatic approach to competition enforcement wherein it balances between consumer well-being and the need for innovation. This balanced outlook is evident across official statements, academic literature, and media analysis of the CCI's practices. The speech given by CCI Chairperson Ashok Kumar Gupta in 2022, he put a spotlight on the significance of competition policy in "fostering an environment that encourages both consumer well-being and innovation".⁴⁷ Another instance where the merger of Bayer and Monsanto in 2018 was approved by CCI, subject to certain modifications and the disinvestment of certain businesses to preserve both competition and innovation in the Indian market.⁴⁸ Further CCI's minute consideration of immediate consumer affects and long-term market dynamics is very important in a developing country like India.⁴⁹ It's developing stance can be seen in the merger reviews which go beyond evaluating just short-term pricing effects but also assess the potential effects on future innovation competition.⁵⁰

III. FINDINGS AND IMPLICATIONS

(A) Competition framework of India in a Global Landscape:

The Competition Commission of India's enforcement practice draws from major schools of thought while also adapting to the country's unique economic landscape. The consumer welfare has always remained as a core objective while in line with the Chicago school principles. However, the CCI acknowledges that optimal market structures help in promoting innovation and are equally significant.⁵¹ This perspective can be seen in the CCI's merger scrutiny which extends beyond just pricing affects with an intent to examine long-term effects on competition and innovation.⁵² The commission also centres on preventing excessive concentration that

⁴⁷ 'COMPETITION COMMISSION of INDIA NATIONAL CONFERENCE on ECONOMICS of COMPETITION LAW', https://cci.gov.in/public/images/advocacy_speeches/en/speech-economics1652264449.pdf (last visited Apr. 3, 2024).

⁴⁸ Competition Commission of India, Combination Registration No. C-2017/08/523, Notice under sub-section (2) of Section 6 of Competition Act, 2002, dated June 14, 2018, <https://www.cci.gov.in/images/caseorders/en/order1654513106.pdf> (last visited Apr. 2, 2024).

⁴⁹ Co Law and others, 'TALKING POINTS CCI-ASSOCHAM 7th ANNUAL INTERNATIONAL CONFERENCE on "COMPETITION LAW -ENFORCEMENT in INDIA: THE PAST, the PRESENT and the FUTURE"' (2022), https://www.cci.gov.in/images/advocacy_speeches/en/speech1666090284.pdf (last visited Apr. 3, 2024).

⁵⁰ 'India: CCI Increases Enforcement Activity and Scrutiny of Merger Control', [globalcompetitionreview.com](https://globalcompetitionreview.com/review/the-asia-pacific-antitrust-review/2023/article/india-cci-increases-enforcement-activity-and-scrutiny-of-merger-control) (2023), <https://globalcompetitionreview.com/review/the-asia-pacific-antitrust-review/2023/article/india-cci-increases-enforcement-activity-and-scrutiny-of-merger-control> (last visited Apr. 4, 2024).

⁵¹ Bhattacharya, S., & Khandelwal, P., "Indian Competition Law in the Digital Markets: An Overview of National Case Law," (July 29, 2021), SSRN, <https://ssrn.com/abstract=3897291> (last visited Apr. 4, 2024);

Singh, V. K., "Competition Law and Policy in India: The Journey in a Decade," 4 NUJS L. Rev. 523 (Oct. 22, 2011), SSRN, <https://ssrn.com/abstract=2971805> (last visited Apr. 4, 2024).

⁵² Makam, G., "A Comparative Analysis of the Competition Act in India and Other Jurisdictions' Competition Laws: Assessing Frameworks, Similarities, and Best Practices," (June 27, 2023), SSRN, <https://ssrn.com/abstract=4493345> (last visited Apr. 4, 2024).

could obstruct other new entrants thus, reflecting upon the Neo-Brandeisian influence.⁵³ It also ensures that fair competition is set for emerging firms.⁵⁴

The CCI's approach in some crucial areas differ from the traditional schools. The Chicago school's primary focus is on consumer welfare through pricing; however, India considers innovation's long-term effects.⁵⁵ Though being similar to the Harvard School in reviewing mergers for anti-competitive effects, the CCI's extends its scope to other anti-competitive practices also such as abuse of dominance. While the Neo-Brandeis perspective focuses on preventing all sort of concentration, India on the other hand believe some concentration is beneficial for achieving economies of scale in certain specific industries.⁵⁶ Most importantly, CCI customises its approach according to the specific dynamics of different sectors. In the fast-moving technology markets wherein balancing innovation and competition becomes crucial, CCI evaluates both short term and long-term competitive influence.⁵⁷ This helps it to build strategies which are suitable for a developing country like India while also promoting a robust competitive environment in order to support future growth.

The comparative analysis of the Indian competition enforcement approach with the three influential schools: the Neo-Brandeis, Chicago, and Harvard schools of thought shows some unique facets. The Competition Act 2002 and the Competition Commission of India (CCI) even though incorporate elements from these schools, they had made their own way by this adapting to India's dynamic terrain and balancing multiple objectives.

A crucial finding is that the India's competition policy has an aim to strike a balance between consumer welfare, market structure considerations and at the same time promoting innovation. The CCI recognizes the significance of avoiding excessive market concentration which even though is in line with the Neo-Brandeis perspective, it differs from the Chicago school's narrow focus on mere allocative efficiency. But again, it deviates from the Neo-Brandeis stance by acknowledging the fact that some sort of concentration is beneficial in certain sectors which can help achieve economies of scale. Very similarly while the Harvard school highlights the

⁵³ Amarnath, A. B., "THE OLIGOPOLY PROBLEM: STRUCTURAL AND BEHAVIOURAL SOLUTIONS UNDER INDIAN COMPETITION LAW," 55 *J. Indian L. Inst.* 283–306 (2013), available at <http://www.jstor.org/stable/43953671> (last visited Apr. 4, 2024).

⁵⁴ Pingali, V. et al., "Competition Law in India: Perspectives," 41 *Vikalpa: The Journal for Decision Makers* 168 (2016).

⁵⁵ Bhattacharya, S., & Khandelwal, P., "Indian Competition Law in the Digital Markets: An Overview of National Case Law," (July 29, 2021), SSRN, <https://ssrn.com/abstract=3897291> (last visited Apr. 4, 2024).

⁵⁶ Makam, G., "A Comparative Analysis of the Competition Act in India and Other Jurisdictions' Competition Laws: Assessing Frameworks, Similarities, and Best Practices," (June 27, 2023), SSRN, <https://ssrn.com/abstract=4493345> (last visited Apr. 4, 2024).

⁵⁷ Bhattacharya, S., & Khandelwal, P., "Indian Competition Law in the Digital Markets: An Overview of National Case Law," (July 29, 2021), SSRN, <https://ssrn.com/abstract=3897291> (last visited Apr. 4, 2024).

involvement of institutions, the CCI customizes its approach based on the sector specific dynamics. By this fostering competition and innovations through targeted interventions.

(B) Policy Recommendations:

The findings highlighted above have some significant policy implications, both domestically and internationally. At the domestic level, due to this increasingly dynamic and technology driven economy, the CCI can acquire specialized expertise which are customised to complex sectors like that of digital markets, pharmaceuticals, and emerging technologies. The CCI can enhance its ability to conduct comprehensive market studies and economic analyses by investing in training programs, capacity building and collaborations with industry experts. Further, economic analysis is significant for determining consumer harm, designing effective remedies, and conducting cost benefit assessments of enforcement practices. The CCI, with the help of collaboration with academic institutions, using unconventional techniques and staying updated with developing market trends, can enhance its economic analysis capabilities. This empirical approach will aid CCI in strengthening its credibility and effectiveness at the time of its interventions. In order to ensure comprehensive scrutiny of relevant transactions, the CCI can undertake periodic reviews of merger notification thresholds, specifically in the rapidly strengthening sectors like technology. Such reviews should take into consideration multiple factors such as the potential effects on innovation, consumer choice, market structures, data accumulation, network effects, and other sector-specific dynamics, instead of simply relying on traditional criterion like asset or revenue thresholds. Strict antitrust regulations aim to safeguard markets but at the same time an overly aggressive approach creates a risk of deterring legitimate business activities and hindering innovation.⁵⁸ The CCI must evaluate short-term competitive effects against the long-term innovation, consumer welfare goals and economic efficiency.⁵⁹

On the international level CCI can focus on international collaboration among competition authorities which can be critical for tackling cross-border anti-competitive behaviour and maintaining fair competition for Indian businesses. The need for global cooperation arises when there are conflicting policy objectives which can ultimately undermine effective oversight.⁶⁰ International platforms such as International Competition Network (ICN) and OECD facilitate dialogue along with best practice sharing and coordinated enforcement approaches.⁶¹ By

⁵⁸ Lipsky, A., "Overdeterrence, Non-Competition Policy Goals, and Inadequate Defense Rights—Identifying (and Fixing) Antitrust Constraints on International Trade," *Journal of Antitrust Enforcement* 10(1), 5-43 (2021).

⁵⁹ Singh, V. K., "Competition Law and Policy in India: The Journey in a Decade," 4 *NUJS L. Rev.* 523 (Oct. 22, 2011), SSRN, <https://ssrn.com/abstract=2971805> (last visited Apr. 4, 2024).

⁶⁰ Lipsky, A., "Overdeterrence, Non-Competition Policy Goals, and Inadequate Defense Rights—Identifying (and Fixing) Antitrust Constraints on International Trade," *Journal of Antitrust Enforcement* 10(1), 5-43 (2021).

⁶¹ *ibid.*; 'OECD/ICN Report on International Co-Operation in Competition Enforcement 2021 - OECD,' [Oecd.org](https://www.oecd.org)

engaging with these forums, CCI can enhance its ability to tackle cross-border anti-competitive behaviour, by this aligning with the global policy advisories.⁶² Entering into bilateral agreements with countries and adherence to OECD recommendations further solidifies such partnerships thus, enabling action against complicated issues like international cartels.⁶³ For example, the CCI can enter bilateral agreements with major trading partners or regional blocs to accommodate information sharing, joint investigations, and enforcement cooperation. Such collaboration will at the end ensure that Indian businesses can compete internationally.

While this paper provides insights into India's competition enforcement approach there remains a need for ongoing research with an intent to keep pace with the evolving market conditions and regulatory landscapes. The potential areas for any future research can include firstly, evaluating the effectiveness of the CCI's leniency program in detecting cartels and prosecuting them. Additionally, also identifying opportunities for enhancement. Secondly, assessing the impact the India's competition policy has on traditional brick and mortar businesses which get affected due to the emerging e-commerce and digital platforms. And lastly, inspecting sector-specific challenges and tailoring enforcement strategies for certain industries like pharmaceuticals, telecommunications, and other emerging technologies.

IV. CONCLUSION

The Indian competition enforcement framework shows a mixture of elements from the Neo-Brandeis School, the Chicago School, and the Harvard School, while at the same time adapting to the country's economic landscape. The CCI recognizes the importance of both consumer welfare and ideal market structures in fostering innovation and economic growth. Furthermore, to further enhance its effectiveness, the CCI should look forward to actively engage in international collaboration and adhere to global policy advisories. Such collaborations will help in taking coordinated action against critical issues like international cartels and ensuring level playing field competition for Indian businesses in the global market. In addition to this, the CCI should focus on acquiring specialized expertise customised to complex sectors. Moreover, the CCI should also undertake periodic reviews of merger notification thresholds, considering

(2021), <https://www.oecd.org/competition/oecd-icn-report-on-international-cooperation-in-competition-enforcement-2021.htm> (last visited Apr. 4, 2024).

⁶² 'International Cooperation in Antitrust Enforcement,' Federal Trade Commission (July 18, 2013), <https://www.ftc.gov/news-events/news/speeches/international-cooperation-antitrust-enforcement-0> (last visited Apr. 4, 2024).

⁶³ Askin, M., Maskin@ftc Gov, & Tritell, R., 'Antitrust in Emerging and Developing Countries International Antitrust Cooperation: Expanding the Circle', <https://www.ftc.gov/system/files/attachments/key-speeches-presentations/141024expandthecircle-askin-tritell.pdf> (last visited Apr. 4, 2024); Lipsky, A., "Overdeterrence, Non-Competition Policy Goals, and Inadequate Defense Rights—Identifying (and Fixing) Antitrust Constraints on International Trade," *Journal of Antitrust Enforcement* 10(1), 5-43 (2021).

factors such as potential effects on innovation, consumer choice, market structures, data accumulation, and sector-specific dynamics. By addressing these recommendations and steering the trade-offs between consumer welfare and market structure, the CCI will be able to promote a competitive environment which supports both innovation and economic growth while also protecting the interests of consumers.

V. BIBLIOGRAPHY

(A) Primary Sources

- Competition Commission of India, Combination Registration No. C-2017/08/523, Notice under sub-section (2) of Section 6 of Competition Act, 2002, dated 14 June 2018, (<https://www.cci.gov.in/images/caseorders/en/order1654513106.pdf>).
- COMPETITION COMMISSION of INDIA NATIONAL CONFERENCE on ECONOMICS of COMPETITION LAW, (https://cci.gov.in/public/images/advocacy_speeches/en/speech-economics1652264449.pdf).
- Telecommunications Act, 2023 (India), (<https://egazette.gov.in/WriteReadData/2023/250880.pdf>).

(B) Secondary Sources

- Abraham, V. S., & Marvao, C., "Leniency of the Competition Commission of India" (Working Paper presented at 7th National Conference on Economics of Competition Law, Competition Commission of India, March 4, 2022).
- Agarwal, S., & Bhardwaj, C., "Goals of Competition Law in India" (20 February 2021) SSRN, (<https://ssrn.com/abstract=3789536>).
- Amarnath, A. B., "THE OLIGOPOLY PROBLEM: STRUCTURAL AND BEHAVIOURAL SOLUTIONS UNDER INDIAN COMPETITION LAW" (2013) *Journal of the Indian Law Institute* vol. 55, no. 3, 283–306, (<http://www.jstor.org/stable/43953671>).
- Bhattacharya, S., & Khandelwal, P., "Indian Competition Law in the Digital Markets: An Overview of National Case Law" (29 July 2021) SSRN, <https://ssrn.com/abstract=3897291>.
- 'Competition Commission of India' Annual Report 2022, <https://cci.gov.in/public/images/annualreport/en/annual-report-2022-231703571209.pdf>.
- 'Competition Law in India: Top Ten Things to Know about the Enforcement Regime' (Acc.com 8 May 2017), (<https://www.acc.com/resource-library/competition-law-india-top-ten-things-know-about-enforcement-regime>).
- ETtech, 'Flipkart, Amazon, Reliance to Corner Indian Ecommerce: Bernstein' (The Economic Times 25 May 2023), <https://economictimes.indiatimes.com/tech/technology/indian-ecommerce-market-to-be-split-across-flipkart-amazon-and-reliance-bernstein/articleshow/100508273.cms?from=mdr>).

- 'India: CCI Increases Enforcement Activity and Scrutiny of Merger Control' (Globalcompetitionreview.com2023), (<https://globalcompetitionreview.com/review/the-asia-pacific-antitrust-review/2023/article/india-cci-increases-enforcement-activity-and-scrutiny-of-merger-control>).
- 'Insights into India's Market Evolution: Oligopoly's Growing Influence' (2024) The Wire, (<https://thewire.in/economy/insights-into-indias-market-evolution-oligopolys-growing-influence>).
- 'International Cooperation in Antitrust Enforcement' (Federal Trade Commission18 July 2013), <https://www.ftc.gov/news-events/news/speeches/international-cooperation-antitrust-enforcement-0>.
- 'Top 10 Banks in India by Market Cap in 2024 - Forbes India' (Forbes India2024), (<https://www.forbesindia.com/article/explainers/top-10-banks-india-by-market-cap/87913/1>).
- 'The Regulation of E-Commerce under Indian Competition Law' by Rhea Tewary (2022) 8 Indian Politics & Law Review 36, 36-45, (<https://salrj.thelawbrigade.com/uncategorized/the-regulation-of-e-commerce-under-indian-competition-law>).
- 'Understanding Leniency Program under the US, EU and Indian Competition Laws' by Ms. Deepika Prakash (Volume 5, Issue 4 & 5) Law Mantra, (<https://journal.lawmantra.co.in>).
- Khan, L., "The New Brandeis Movement: America's Antimonopoly Debate" Journal of European Competition Law & Practice vol 9, issue 3, March 2018, 131-132, (<https://doi.org/10.1093/jeclap/lpy020>).
- Lipsky, A., "Overdeterrence, Non-Competition Policy Goals, and Inadequate Defense Rights—Identifying (and Fixing) Antitrust Constraints on International Trade" (2021) Journal of Antitrust Enforcement 10(1), 5-43.
- Makam, G., "A Comparative Analysis of the Competition Act in India and Other Jurisdictions' Competition Laws: Assessing Frameworks, Similarities, and Best Practices" (27 June 2023) SSRN, (<https://ssrn.com/abstract=4493345>).
- Matthew Sipe, "Covering Prying Eyes with an Invisible Hand: Privacy, Antitrust, and the New Brandeis Movement" (1 May 2022) Harvard Journal of Law & Technology vol 36, no 2, 2023, (<https://ssrn.com/abstract=4124372>).
- Molly Askin, Maskin@ftc Gov and Randolph Tritell, 'Antitrust in Emerging and

Developing Countries International Antitrust Cooperation: Expanding the Circle' (<https://www.ftc.gov/system/files/attachments/key-speeches-presentations/141024expandtheircle-askin-tritell.pdf>).

- Pingali, V., et al., 'Competition Law in India: Perspectives' (2016) *Vikalpa: The Journal for Decision Makers* 41, 168.
- Reetika Rana, "Leniency program in Indian competition law: A study on CCI (Lesser Penalty) regulations, 2009" (2024) *International Journal of Law, Policy and Social Review* vol 6, issue 1, 6-11, (<http://www.lawjournals.net>).
- Singh, V. K., "Competition Law and Policy in India: The Journey in a Decade" (22 October 2011) *NUJS L. Rev.* 4, 523, (<https://ssrn.com/abstract=2971805>).
- 'Understanding Leniency Program under the US, EU and Indian Competition Laws' by Ms. Deepika Prakash (Volume 5, Issue 4 & 5).
