

Competition Landscape in India

Looking back on 2024, and ahead to 2025

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1 Introduction

The past year was one to watch for Indian competition law, with an overhaul of merger enforcement and numerous regulatory changes. The digital sector continued to draw attention, with debates centred around its *ex-ante* regulation and a new focus on artificial intelligence (“AI”) markets.

In this article, we summarise significant regulatory changes (in Section 2), spotlight developments in the digital sector (in Section 3), and describe key aspects of important competition cases, the Competition Commission of India (the “CCI”) orders and judgements by Indian courts (in Section 4). We also highlight the key takeaways from 2024 that we expect will continue into 2025: the CCI has, and is expected to continue to (i) increase enforcement, following from multiple regulatory changes in the past year (ii) use economic tools, arguments and evidence in its competition assessments, and (iii) prioritise competition assessments in the digital sector.

1.1 Regulatory changes expected to increase enforcement and settlements

The most closely-watched development in India’s competition landscape last year was the CCI’s publication of its new regulations. After a busy year implementing several new regulations, we and other observers expect increased enforcement activity.

The main development is the introduction of a deal-value threshold for notification. We expect that this threshold will widen the CCI’s purview over merger matters. In the context of a large and growing economy, where total deal value has been increasing by 66% per year between 2023 and 2024, far exceeding the global growth rate, 10%, we expect to see the CCI reviewing a higher number of high-value global deals with a nexus in India.²

We may also see an increase in the number of commitment and settlement decisions in cases involving abuse of dominance and anti-competitive vertical agreements. That is because the changes to the merger regulations should increase the CCI’s caseload. If so, it may look to use commitment and settlement decisions wherever possible to resolve its other cases quickly.

1.2 Use of economic tools, arguments and evidence

Last year, the CCI frequently used both economic tools and arguments to inform its competition assessments. In particular:

¹ We thank Padma Todi, Arpita Pattanaik and Tanya Patil for their assistance.

² See Economic Times. *India’s M&A deal value surges 66% in 2024, bucks global trends of just 10% uptick in value*. See Bhan, S. (2024, January 29). *India’s M&A deal value surges 66% in 2024, bucks global trends of just 10% uptick in value*. The Economic Times. <https://economictimes.indiatimes.com/news/india/indias-ma-deal-value-surges-66-in-2024-bucks-global-trends-of-just-10-uptick-in-value/articleshow/114507976.cms?from=mdr>.

- It used the *Elzinga Hogarty Test*, involving catchment area analyses, to determine the relevant geographic market in *Ultratech Cement/Kesoram Cement*.³ The CCI found that the merger would not have an adverse impact on competition, noting the parties' limited combined market shares and the relatively fragmented market.
- It assessed competitive constraints arising from factors like countervailing buyer power, presence of spare capacity and the existence of long-term agreements in *DIT/ATC*.⁴ Our team assisted DIT on this transaction and the CCI concluded that the transaction is unlikely to have an appreciable adverse effect on competition.⁵
- In a bid rigging case involving sugar mills and industry associations for the supply of ethanol to oil marketing companies (*India Glycols Ltd. and others vs Indian Sugar Mills Association and others*), the CCI noted that price parallelism alone is not sufficient to establish bid rigging. It noted that other '*plus factors*' will need to be analysed to demonstrate that price parallelism was a result of bid rigging and not driven by other factors, thereby supporting an effects-based (economic) assessment in such cases.⁶

These examples signal the CCI's greater openness to using and engaging with economic tools. This is consistent with the amendments to the Competition Act passed in 2023 which allow expert economists to appear before the CCI. The CCI is also fairly unique as a regulator in that the *only* annual conference it organises is an economics conference.⁷ In 2024, this included sessions on digital markets, competition and innovation, and AI.

1.3 Continued focus on the digital sector

The CCI prioritised the digital sector, a trend we expect to continue in 2025 and beyond.

Discussions continue on whether digital markets should be regulated *ex-ante* and, if so, in what shape. Following the proposals made by the Committee on Digital Competition Law ("CDCL"), the Ministry of Corporate Affairs invited public comments on a draft law. We submitted comments, arguing for a balanced framework that recognises the heterogeneity of digital markets in India, and identified areas for further consideration.⁸ The draft law was widely debated in the Indian competition community, including by us.⁹

³ See CCI order in *Ultratech Cement/Kesoram Cement*, available at <https://www.cci.gov.in/combination/order/details/order/1374/0/orders-section31>.

⁴ See CCI order in *DIT/ATC*, available at <https://www.cci.gov.in/combination/order/details/order/1393/0/orders-section31>.

⁵ This was a joint Compass Lexecon and FTI Consulting team, led by Justin Coombs and Kadambari Prasad, including Neha Georgie, Avinash Mehrotra, Jincy Francis, Nitish Lal, Sanskriti Pattnaik and Manvi Shangari.

⁶ See CCI order in *India Glycols Ltd. and others vs Indian Sugar Mills Association and others*, available at <https://www.cci.gov.in/antitrust/orders/details/1122/0>.

⁷ See CCI. 9th National Conference on Economics of Competition Law, 2024. <https://www.cci.gov.in/annual-national-economics-conferences/details/130>, summary available at <https://ccijournal.in/index.php/ccijoclp/article/download/255/91/1241>.

⁸ Compass Lexecon. (2024, January 25). *How will India's draft digital competition bill shape the future?* Compass Lexecon. <https://www.compasslexecon.com/insights/publications/how-will-indias-draft-digital-competition-bill-shape-the-future>.

⁹ (i) Justin Coombs discussed it at the Annual National Conference on Economics of Competition Law, (ii) Jincy Francis, Neha Georgie, and Avinash Mehrotra authored a paper on the use of surveys and experiments in digital markets and presented at the CCI's annual conference, and (iii) Jincy Francis discussed this topic in a panel discussion at Legal Era's India Conclave 2024.

The CCI continues investigations into this sector, including in mobile ecosystems (against Apple), e-commerce platforms (against Amazon and Flipkart) and food delivery platforms (against Zomato and Swiggy); and it has opened new investigations against Google. In addition, it has launched a market study on AI and competition to develop an understanding of the emerging competition dynamics in AI systems and their implications on competition, efficiency and innovation in key user industries.

1.4 Looking ahead to 2025

In 2025, we expect the CCI's final decisions in important digital market cases, in particular, the CCI's investigation into (i) Apple's conduct in the market for apps stores for iOS in India¹⁰; and (ii) Swiggy's and Zomato's conduct in online food delivery markets, in particular, the nature of their agreements with restaurant partners.¹¹ We should also see important court decisions, including in *Amazon/Flipkart*, where the sellers on Amazon and Flipkart platforms have challenged the CCI's investigation after their status was changed from neutral 'third-parties' to defendants.¹² An updated draft of the proposed digital competition bill on *ex ante* regulation may also be published, tying in with these developments.

The CCI may also provide its preliminary view on whether there are any concerns in AI markets, based on the findings from its ongoing market study, although we note the CCI does not have the power to impose remedies based on market studies, unlike the UK Competition and Markets Authority.

2 Regulatory changes effected in the past year

In 2024, the CCI published several new regulations, primarily to reflect the amendments to the Competition Act (2002) introduced in April 2023 (the "2023 Amendments"). These include:

- Changes to *merger enforcement*, widely considered the most significant. The introduction of 'deal-value threshold', in particular, is expected to result in a marked increase in the number of merger filings. Combined with expedited timelines for merger reviews, we could expect that the CCI may rely more heavily on clock stoppages during its Phase 1 reviews.
- *New settlement, commitment, and penalty regulations*, which offer parties a chance to avoid lengthy investigations and appeal processes in abuse of dominance and vertical agreement investigations. However, certain rules may disincentivise parties from making settlement or commitment applications (in particular because the CCI can rely on information from settlement proceedings in other circumstances).
- The '*lesser penalty plus*' mechanism, which aims to increase leniency applicants' incentives to cooperate in additional investigations, in line with other jurisdictions.

¹⁰ See CCI case. Order under Section 26(1) of the Competition Act, 2002.
<https://www.cci.gov.in/antitrust/orders/details/32/0>.

¹¹ See CCI case. Order under Section 26(1) of the Competition Act, 2002.
<https://www.cci.gov.in/antitrust/orders/details/6/0>.

¹² See Mint. *Supreme Court transfers CCI's Amazon-Flipkart antitrust probe case to Karnataka High Court*.
<https://www.livemint.com/companies/company-results/sumitomo-mitsui-profit-beats-estimates-as-rate-hikes-kick-in-11738139498869.html>.

- Other *procedural changes*, including provisions that give the CCI an additional 90 days to pass final orders on antitrust cases where it has already passed an interim order, possibly signalling deeper investigations but also creating additional uncertainty for businesses.

2.1 Merger enforcement

Merger enforcement in India was overhauled as part of the wider 2023 Amendments. To reflect the changes, the CCI published the CCI (Combinations) Regulations 2024 on 9 September 2024, enforced as of 10 September 2024.¹³

The key change was the **introduction of a deal-value threshold**. This requires parties to file for approval with the CCI if (i) the value of the transaction is greater than INR 20 billion (USD 238 million); and (ii) the target company has substantial business operations in India.¹⁴ This applies even if the transaction does not meet the asset and turnover-based thresholds already in place. The deal-value threshold was introduced to enable the CCI to assess the competitive impact of transactions where the target company's assets or turnover do not appropriately capture its market potential, as in the case of 'killer acquisitions'.

Similar regulations are already in place in multiple jurisdictions, including the United States, the United Kingdom, South Korea, Germany and Austria.

Other changes to the merger regulations include measures to increase efficiency:

- Exemption of certain categories of combinations from filing requirements, including demergers, acquisitions in the ordinary course of business by underwriters, stockbrokers and mutual funds, acquisitions of shares/voting rights solely as investment, exclusions of certain additional investments by existing minority shareholders, and combinations that do not involve changes in control.
- Expedited timelines, wherein the CCI will now form a *prima facie* view on the transaction within 30 calendar days (previously 30 working days) and its final view within 150 calendar days (previously 210 calendar days).
- Revisions to financial thresholds for notifying transactions to the CCI, with party/group level asset and turnover thresholds and thresholds for the *de minimis* exemption increased by approximately 25%.

¹³ See CCI. *The Competition Commission of India (Combinations) Regulations, 2024*.
<https://www.cci.gov.in/combination/legal-framework/regulations/details/12/0>.

¹⁴ A target company will be considered to have substantial business operations if: (1) for digital sector, the number of business/end users exceeds 10% of its total global business/end users; (2) for other sectors, either (i) the gross merchandise value ("GMV") of goods sold in India exceeds 10% of global GMV *and* the GMV is higher than INR 5 billion in India; or (ii) its turnover in India exceeds 10% of its global turnover and is higher than INR 5 billion in India.

2.2 Settlement and commitment regulations

The CCI published the CCI (Commitment) Regulations 2024¹⁵ and the CCI (Settlement) Regulations 2024¹⁶, on 6 March 2024, governing the commitment and settlement regimes introduced in the 2023 Amendments. The key features of these regulations include:

- **Scope:** commitments and settlements can only be agreed in cases of anticompetitive vertical agreements and abuse of dominance, and not in those involving horizontal agreements (in particular cartels).
- **Timing:** parties need to submit their *commitment* applications before the investigative stage is completed (i.e., before the Director General of the CCI submits its report (“DG Report”)).¹⁷ However, Parties can make *settlement* applications after the submission of the DG Report but before the final order by the CCI.
- **Assessment:** the CCI will consider the nature, gravity and impact of the alleged contraventions and the effectiveness of proposals in addressing the competition concerns. This suggests a focus on effects-based analyses of the alleged contravention and the need for a focused, effective proposal of commitment/settlement terms.

This change brings the Indian competition regime in line with those in the UK, EU, Singapore, among other countries, though its scope varies.¹⁸

2.3 Penalty guidelines

The CCI published the CCI (Determination of Monetary Penalty) Guidelines 2024 on 6 March 2024.¹⁹ This relates to the change, mandated in the 2023 Amendments, to the quantum of penalties that the CCI may impose for anti-competitive conduct.

The guidelines allow the CCI to now levy a penalty on the infringing party’s global turnover (i.e., revenues across all products and services in all jurisdictions) instead of the ‘relevant turnover’ (i.e., revenues derived from the sale of the product/service to which the contravention relates), if the latter cannot be determined. The guidelines also specify that CCI will consider the nature and gravity of the contravention and the nature of the sector affected by the contravention in its penalty calculations.

2.4 A ‘lesser penalty plus’ mechanism

The CCI published the CCI (Lesser Penalty) Regulations 2024 on 20 February 2024.²⁰ This regulation sets out additional incentives for existing leniency applicants in respect of a cartel (first cartel) who provide disclosures in respect of another cartel that they are part of (second cartel).

¹⁵ See CCI. *The Competition Commission of India (Commitment) Regulations, 2024*. <https://www.cci.gov.in/legal-framework/regulations/94/0>.

¹⁶ See CCI. *The Competition Commission of India (Settlement) Regulations, 2024*. <https://www.cci.gov.in/legal-framework/regulations/93/0>.

¹⁷ The Director General (“DG”) of the CCI is responsible for investigating a matter after the CCI passes a *prima facie* or preliminary order, launching an investigation.

¹⁸ For example, cartels are included within the scope of settlements in the UK and the EU but they are excluded in India.

¹⁹ See CCI. *The Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024*. <https://www.cci.gov.in/legal-framework/regulations/92/0>.

²⁰ See CCI. *The Competition Commission of India (Lesser Penalty) Regulations, 2024*. <https://www.cci.gov.in/legal-framework/regulations/95/0>.

Such applicants can get an additional reduction of 30% on penalties imposed with respect to the first cartel, in addition to a reduction of up to 100% on penalties imposed on the second cartel.

This change brings the Indian competition regime in line with those in the UK, the US and Singapore, among other countries.

2.5 Changes to general regulations

The CCI made the some key changes to the CCI (General Regulations) 2024, published on 17 September 2024, to replace the CCI (General Regulations) 2009.²¹ Most of these relate to setting up standardised procedures:

- *Access to confidential records*: the parties can now request the CCI to set up a confidentiality ring, where previously there were no standardised regulations and were subject entirely to the CCI's discretion. The changes also specify the timelines for application and inspection of confidential documents by the confidentiality ring members.
- *Appointment of monitoring agencies*: accounting firms, management consulting firms, and other professionals/organisations can now be engaged to monitor the parties' adherence to conditions imposed in merger and antitrust orders including any settlements or commitments.
- *Other procedural changes*: the CCI will now have 180 days (previously 90 days) to pass final orders in cases involving anti-competitive conduct where interim orders have already been passed.

3 Focus on digital sectors

The CCI continued to scrutinise digital markets in 2024, evidenced through its casework, additional regulations and market studies.

It launched two abuse of dominance investigations this year, both in the digital sector. It passed a final order in its investigation into Whatsapp's privacy policy and it continued existing investigations in this sector, namely *Amazon/Flipkart*, *Apple* and *Zomato/Swiggy*.

In addition, there were discussions on *ex-ante* regulation, and the CCI launched a market study into AI and competition, which we discuss below.

3.1 *Ex-ante* regulation

The Indian competition community has debated the question of whether India needs an *ex-ante* regulatory mechanism for digital markets. The CDCL was tasked with examining this issue. In its report, it supported *ex-ante* regulation, and provided a draft of the relevant legislation for public consultation.²² The key features of the proposed legislation include:

- *Scope and applicability*: it would regulate a pre-identified list of Core Digital Services ("CDS") that are susceptible to concentration. It leaves the CCI to identify these services, based on its enforcement experience, market studies, and emerging global practices.

²¹ See CCI. *The Competition Commission of India (General) Regulations, 2024*. <https://www.cci.gov.in/legal-framework/regulations/83/0>.

²² See PRS India. *Report of the Committee on Digital Competition Law*. <https://prsindia.org/files/parliamentary-announcement/2024-04-15/CDCL-Report-20240312.pdf>.

- **Designation of ‘Systemically Significant Digital Enterprises’:** it would regulate enterprises with ‘significant presence’ in the provision of a CDS in India (“SSDEs”). Significant presence will be determined by twin tests: a ‘significant financial strength’ test (based on India-specific turnover, global turnover, global market capitalisation, and gross merchandise value) and a ‘significant spread’ test (based on the number of end-users and business users). The CCI may also designate an enterprise as a SSDE based on qualitative criteria related to the ability of the enterprise to significantly influence the market in which it operates. The SSDE designation also extends to other enterprises in the SSDE’s group directly or indirectly involved in the provision of the same CDS.
- **Obligations:** it contains a general list of obligations, which includes fair and transparent business operations, data portability, allowing users to choose and change default settings, and establishing a transparent and effective complaints-handling and compliance mechanism.²³ It would also give the CCI the power to draft regulations with specific obligations on all SSDEs in an individual CDS, through a consultative process.
- **Prohibitions:** it contains a general list of prohibitions, including on self-preferencing, use of non-public data, use of personal data, restrictions on third party applications, anti-steering provisions and tying and bundling, unless integral to the provision of the CDS.²⁴ It would also give the CCI the power to draft regulations with specific prohibitions for each CDS, through a consultative process.
- **Penalties:** monetary penalties of up to 10% of the global turnover of the SSDE (in line with the penalty regime under the Competition Act) would apply for non-compliance with the *ex-ante* obligations and/or the infringement of the prohibitions.

Along with other respondents, we submitted comments on the draft digital competition law. The Ministry of Electronics and Information Technology (“MeitY”) has been meeting with stakeholders including officials from the Ministry of Corporate Affairs and the CCI, companies, think tanks and industry associations, to discuss the draft legislation.

3.2 Market study into AI

On 22 April 2024, the CCI also launched a market study on AI and competition.²⁵ It noted that the study would be a knowledge-building exercise to develop an in-depth understanding of the emerging competition dynamics in the development ecosystems of AI systems and implications of AI applications for competition, efficiency and innovation in key user industries.

The study aims to help the CCI: (i) understand the key AI markets, stakeholders, value chain and market structures; (ii) examine the possible competition issues in these markets; (iii) study the use cases of AI and assess associated opportunities, risks and impacts from a competition standpoint; (iv) understand the existing and evolving regulatory frameworks governing AI in India and other major jurisdictions; (v) identify, through stakeholder interactions, the issues at the intersection of AI and competition; and (vi) identify trends and patterns of AI and ascertain enforcement and advocacy priorities for the CCI.

²³ It is not clear whether these general obligations would apply to every CDS by default or whether the CCI will tailor them for each CDS.

²⁴ It is not clear whether these general prohibitions would apply to every CDS by default or whether the CCI will tailor them for each CDS.

²⁵ See CCI. *Competition Commission of India Launches Market Study on Artificial Intelligence and Competition*. <https://www.cci.gov.in/economics-research/market-studies/details/45/0>.

The study is expected to be completed by mid-2025.²⁶

4 Key CCI orders and court judgments issued in the past year

This section outlines the CCI's key merger and antitrust decisions in 2024. We focus on significant developments that impact the enforcement of competition law in India.

4.1 Mergers

In 2024, the CCI considered 111 mergers, all of which were cleared. Of those:

- 20 were approved under the Green Channel (an automatic system of approval adopted when the parties' activities do not overlap);
- 89 were approved without any modifications²⁷; and
- 2 were approved with modifications. These were *Viacom 18/Disney* where the CCI required the parties to divest TV channels, surrender voting rights and make commitments on pricing; and *Ruby and Singtel's acquisition of a stake in STT GDC*, where the CCI imposed restrictions on sharing of information/directors between the acquirers' portfolio companies in the same sector.

The CCI did not prohibit any mergers in 2024. In fact, it has not prohibited any merger since India's merger control regime came into force in 2011.

Of the 111 mergers the CCI considered, 31 were in the Banking and Finance sector, 12 in the manufacturing sector and 8 in the IT and digital sector.

Below, we provide further details on three mergers, where the CCI published detailed orders.

4.1.1 Kesoram Cement/UltraTech

The CCI approved the INR 75 billion (USD 865 million) proposed acquisition of the cement business of Kesoram Industries Limited by UltraTech Cement Limited ("UltraTech") which included two integrated grey cement units, a cement packing plant, and land in Solapur.²⁸

Based on the overlap in the activities of the parties, the CCI defined the relevant product market as the market for grey cement. Precedents in the cement sector apply the Elzinga Hogarty Test to delineate the relevant geographic market. UltraTech applied this test in a modified manner, relying on the actual dispatch data of the parties. The acquirer applied the test considering Karnataka and Telangana as the base states (since the two cement plants are in these states) – both separately and as a cluster.

The CCI analysed the parties' plant-wise dispatch data, the dynamics of cement production clusters in India and the likely consumption centres of these clusters based on transportation costs. Accordingly, the CCI defined the relevant geographic market as the narrow relevant market proposed by UltraTech (which also aligns with the CCI's decisions).

²⁶ See Business Standard. *AI has potential to aid fair competition for sustainable growth: CCI chief* https://www.business-standard.com/industry/news/ai-has-potential-to-aid-fair-competition-for-sustainable-growth-cci-chief-124122900221_1.html.

²⁷ We use 'modifications' to refer to the voluntary commitments offered by the parties in a Phase 1 merger investigation.

²⁸ See CCI case order. <https://www.cci.gov.in/combination/order/details/order/1374/0/orders-section31>.

The CCI concluded that the proposed acquisition was unlikely to raise competition concerns since:

- there were more than 30 competitors in the market;
- the combined market share of the parties would be 22-26%, with an increment of 5-6%; and
- the market will remain fragmented after the acquisition (HHI less than 1,000 and four-firm concentration ratio of 45%) and the increase in concentration will be insignificant (less than 250).

4.1.2 Viacom18/Disney

The CCI granted a conditional Phase 1 clearance to the INR 736 billion (USD 8.5 billion) merger of Viacom18 Media Private Limited (“Viacom18”), Star India Private Limited (“Disney”), and certain related businesses.²⁹ The merger has led to the creation of the largest media and entertainment company in India, with 120 TV channels and two streaming platforms, among other businesses.

The CCI expressed concerns about: (i) high market shares in certain genres of TV channels; and (ii) the concentration of sports broadcasting rights, particularly cricket, where the merged entity would hold exclusive rights for at least the next three years. To allay these concerns, the parties offered, and the CCI accepted, the below modifications:

- Divestment of TV channels: the merging parties agreed to sell seven TV channels across select segments where the combined market shares were higher than 50% and/or the parties did not face a sufficient competitive constraint from other broadcasters.
- Surrender of voting rights: the Reliance group (which controls Viacom18) agreed to surrender its voting rights in a related party, which operates in certain TV channel genres, where the combined entity would have high market shares.
- Pricing of advertisement slots during cricket events: the merging parties committed not to (i) bundle the advertisement slots for different cricket events; (ii) bundle the TV and OTT advertisement slots for a particular cricket event (Indian Premier League); and (iii) increase the prices of advertisement slots on TV and OTT ‘to an unreasonable level’ for select cricket events for the duration of their existing cricket broadcasting rights.

4.1.3 DIT/ATC

The CCI granted an unconditional Phase 1 clearance to the acquisition of ATC Telecom Infrastructure Private Limited by Data Infrastructure Trust.³⁰

The CCI observed that the merging parties have combined market shares of 35-45% in the market for macro telecom towers/sites in India, with the market share of the closest competitor being 30-50%. However, it eventually concluded that this will not lead to an appreciable adverse effect on competition based on the submissions by the parties and the Compass Lexecon-FTI team advising them, which included the following arguments:

- the downstream (telecom) market is dominated by three big players, which exercise significant buying power. Moreover, telecom companies can self-build passive infrastructure;

²⁹ See CCI case order. <https://www.cci.gov.in/combination/order/details/order/1434/0/orders-section31>.

³⁰ See CCI case order. <https://cci.gov.in/combination/order/details/order/1393/0/orders-section31>.

- prices and other relevant terms are agreed for longer periods and therefore will unlikely be affected by the transaction;
- there is significant spare capacity at the existing passive infrastructure sites which the parties and other competitors have the incentive to fill (which would apply a downward pressure on prices, as the marginal cost of adding a tenant on existing sites is minimal); and
- there are low barriers for entry with capital costs being low, regulatory requirements being benign and economies of scale being limited.

4.2 Antitrust

In 2024, the CCI ordered seven new antitrust investigations. Two of these are public and relate to abuse of dominance allegations against Google: one for unfair and discriminatory terms of its updated Play Store payment policies and the second for alleged and denial of market access for certain real money game mobile applications.

The CCI also issued final orders in four ongoing investigations

- Three of these related to abuse of dominance investigations: *IREL*, *WhatsApp (Meta)* and *Table Tennis Federation of India*. Of these, the CCI levied a penalty of INR 2.1 billion (USD 25.2 million) on WhatsApp and made a ‘cease and desist’ order in *Table Tennis Federation of India*. In *IREL*, the CCI concluded that IREL did not abuse its dominant position.
- One related to a cartel investigation (bid rigging): *India Glycols Ltd. and others vs Indian Sugar Mills Association and others*, where the CCI did not find an infringement.

The CCI also closed 36 cases without finding *prima facie* contraventions and denied interim relief in one case (*Google’s Updated Play Store Payment Policies*). The closed investigations covered a wide range of sectors: automobile, atomic energy, consumer goods, digital, entertainment, finance, glass products, healthcare, logistics, pharmaceuticals, property maintenance, software technology and steel.

Below, we discuss in detail select cases where the CCI’s orders have been made public.

4.2.1 Google

The CCI asked the DG to investigate Google’s updated payment policies on 15 March 2024, based on *prima facie* concerns.³¹

Three abuse of dominance complaints were filed before the CCI in relation to Google’s updated Play Store payment policies (“UCB”).³² The complainants were: (i) People Interactive India Private Limited (which provides matchmaking services through Shaadi.com and Sangam.com); (ii) Mebigoo Labs Private Limited (which provides audio content through apps and websites); and (iii) Indian Broadcasting and Digital Foundation (an association for Indian television industry and the digital media industry) and its subsidiary, Indian Digital Media Industry Foundation.

Google previously required that all payments for paid app downloads and in-app purchases on digital service apps (“IAP”) be processed through Google’s own payment processing system (i.e., Google Play Billing System (“GPBS”)), and that app developers pay a 15%-30% commission to Google for processing such transactions. The CCI ruled that this conduct amounted to an abuse of

³¹ See CCI case order. <https://www.cci.gov.in/antitrust/orders/details/1160/0>.

³² See CCI case order. <https://www.cci.gov.in/antitrust/orders/details/1107/0>.

Google's dominance in 2022.³³ In the same year, Google revised its policy allowing app developers to offer alternative billing systems ("ABS") alongside GPBS, with a 4% reduction in commission charged for purchases when ABS are used.

The key allegations against UCB were that: (i) commissions have no reasonable relation to the services offered, (ii) costs incurred and the prices charged differ significantly, and (iii) commissions charged across competitors for similar services differ significantly.

The CCI *prima facie* concluded that Google had abused its dominant position through pricing, which was:

- unfair (disproportionate to the economic value of services provided); and
- discriminatory ((i) different commissions for developers offering free apps with no IAP compared to those offering paid downloads and IAP, and (ii) different treatment of apps for physical goods and services compared to apps for digital goods and services).

Accordingly, the CCI has directed the DG to investigate the matter.

In a different case, Winzo, a game publisher, has alleged that Google has:

- denied access to real money games ("RMG") apps on its Play Store; and
- discriminated against and denied market access to certain categories of RMG apps. This includes allowing only select categories (fantasy sports and Rummy) of RMG apps on its Play Store during its pilot programme, preventing Winzo from running search ads on Google using its trademarks, and showing warnings when side loading and making in-app payments on RMG apps.

In response, the CCI noted that Google has been found dominant in the following relevant markets in India: (i) licensable Operating System for smart mobile devices, (ii) app stores available on devices with licensable OS; and (iii) online search advertising services. On Winzo's first allegation, the authority stated that the conduct is driven by existing government policy on RMGs in India and therefore it would not be appropriate to investigate this further. On Winzo's second allegation, the CCI launched an investigation on the basis that the alleged conduct could result in discrimination against and denial of market access to the sub-categories of RMG apps that are not part of Google's pilot programme and therefore its Play Store.

4.2.2 **WhatsApp (Meta)**

The CCI investigated WhatsApp for privacy-related competition concerns.³⁴ As background, in January 2021, WhatsApp updated its terms of service and privacy policy. As part of this update, users were mandatorily required to agree to share their collected data with other Meta companies to continue using WhatsApp's services and were not given an option to opt out of this data sharing. The CCI's investigation centred around whether WhatsApp's 'take it or leave it' policy amounted to an abuse of dominance.

The CCI delineated two relevant markets: (i) the market for Over-the-Top ("OTT") messaging apps through smartphones in India; and (ii) the market for online display advertising in India.

³³ See CCI. *CCI imposes a monetary penalty of Rs. 936.44 crore on Google for anti-competitive practices in relation to its Play Store policies.* <https://www.cci.gov.in/antitrust/press-release/details/266/0>.

³⁴ See CCI case order. <https://www.cci.gov.in/antitrust/orders/details/1158/0>.

The CCI concluded that Meta, operating through WhatsApp and Facebook, is dominant in the market for OTT messaging apps through smartphones in India. Subsequently, it found that Meta abused its dominant position by:

- forcing users to accept the terms of its privacy policy and thereby imposing unfair conditions on them;
- creating barriers to entry for competitors in the market for online display advertising by aggregating user data across its platforms (data unavailable to other advertisement platforms). This allowed Meta to offer more targeted ads, and had the effect of denying market access to smaller competitors; and
- leveraging its position in the market for OTT messaging apps to protect its position in the market for online display advertising.

The CCI levied a penalty of INR 2.1 billion (USD 25.2 million) on Meta and ordered WhatsApp to comply with the following directions:

- it should not share user data with other Meta companies for advertising purposes for five years;
- its policy should include details of the data and the reason for sharing it, when data is shared for purposes other than advertising;
- it should not make sharing of user data for purposes other than providing WhatsApp services a condition to access WhatsApp in India; and
- it should allow users to manage such data sharing, and review or modify their data sharing choice.

Meta has appealed the CCI's decision, with the National Company Law Appellate Tribunal due to hear the matter in January 2025.

The above decision adds to findings of antitrust infringement against Meta in other jurisdictions. Notably, Meta has been fined EUR 798 million by the EC in 2024 for tying Facebook, its personal social network, with Facebook Marketplace, an online ads service.³⁵ It was also: (i) fined for abusing its dominant position in South Africa in 2022³⁶; (ii) fined for certain improper practices relating to user data in Italy in 2021³⁷; and (iii) found to be abusing its dominance in Germany in 2019 for merging user data between its subsidiaries without user consent³⁸.

4.2.3 IREL

The CCI showed willingness to consider objective justifications in this case against IREL (India) Limited ("IREL"). The CCI found IREL dominant in the market for mining and sale of beach sand

³⁵ See European Commission. *Commission fines Meta €797.72 million over abusive practices benefitting Facebook Marketplace*. https://ec.europa.eu/commission/presscorner/detail/en/ip_24_5801.

³⁶ See Competition Commission South Africa. *Facebook Prosecuted for Abusing its Dominance*. <https://www.compcom.co.za/wp-content/uploads/2022/03/FACEBOOK-PROSECUTED-FOR-ABUSING-ITS-DOMINANCE.pdf>.

³⁷ See AGCM. *IP330 - ICA: Facebook sanctioned for 7 Million*. <https://en.agcm.it/en/media/press-releases/2021/2/IP330>.

³⁸ See Bundeskartellamt Facebook proceeding concluded. https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2024/10_10_2024_Facebook.html.

sillimanite (“sillimanite”) in India, concluding that there was no abuse since: (i) the prices charged by IREL were not excessive; and (ii) even though IREL charged different prices and imposed different supply conditions on its customers, these were justified by IREL’s strategic objective of supplying Monazite to the government.

The CCI’s decision to accept the justifications for IREL’s alleged abusive conduct was driven by the following case-specific facts:

- In 2016, sillimanite was included in the category of ‘atomic minerals’ by a government notification. This prohibited private enterprises from mining and selling sillimanite, making it a state monopoly and making IREL one of the few corporations engaged in the production of sillimanite in India by statutory mandate.
- Sillimanite is a by-product obtained during the extraction of Monazite (a strategic mineral whose mining is controlled by the government) and therefore IREL has no control over the supply of sillimanite.
- Being a by-product, the quick and efficient disposal of sillimanite is crucial for the smooth conduct of IREL’s core operations. Stockpiling of sillimanite waste can consume space and storage issues, creating logistical and operational challenges for mining sites. The CCI concluded that past offtake could be used to justify customer discounts, to ensure speedy disposal of sillimanite.

4.3 High Court decisions

India’s courts issued decisions that may affect the CCI’s enforcement of competition law. Below, we highlight two key points.

First, courts have weighed in on the scope of the CCI’s investigations. This was demonstrated in *Bull Machines vs JCB* involving two construction equipment manufacturers, JCB and Bull Machines.³⁹ The CCI launched an abuse of dominance investigation against JCB based on Bull Machines’ allegation that JCB indulged in frivolous litigation. The Delhi High Court invalidated the investigation after the parties settled their dispute out of court, noting that the alleged conduct and the consequent settlement did not have any impact on society, dispensing with a need for the CCI’s investigation. The court went further to note that, on similar matters, the CCI should wait for the litigation to be established as frivolous before investigating. The CCI appealed this judgement before the Supreme Court, which refused to intervene.

Second, court decisions have provided guidance on penalty interest calculations. In *Panasonic and Geep Industries*, the CCI concluded that Geep Industries cartelised the institutional sales of dry batteries, and imposed a penalty of INR 100 million.⁴⁰ In the judgement addressing Geep Industries’ appeal on the interest amount, the Delhi High Court clarified that the starting date relevant to calculate interest on penalties is the date on which the CCI makes the demand for penalty recovery, not the date of the infringement finding.

³⁹ See Business Line. *Supreme Court dismisses CCI’s appeal against Delhi High Court’s ruling in JCB case.* <https://www.thehindubusinessline.com/news/cci-must-respect-settlement-between-parties-rules-supreme-court/article69008522.ece>.

⁴⁰ See Business Line. *Pivotal Ruling. Interest on CCI penalties begins from demand notice date, rules Delhi HC.* <https://www.thehindubusinessline.com/economy/interest-on-cci-penalties-begins-from-demand-notice-date-rules-delhi-hc/article68132494.ece>.