

Merger Control Mechanisms in India and Australia: Thresholds, Substantive Tests and Procedural Innovations

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ABSTRACT

This research paper undertakes a comprehensive comparative analysis of merger control mechanisms in India and Australia, with a specific focus on jurisdictional thresholds, substantive assessment standards, and procedural innovations. As globalization accelerates cross-border mergers and acquisitions, effective merger regulation becomes pivotal in preserving competitive market structures and preventing undue concentration of market power.

India's merger control regime, governed by the Competition Act, 2002, mandates pre-merger notification based on defined asset and turnover thresholds and follows a mandatory and suspensory model administered by the Competition Commission of India (CCI). Conversely, Australia adopts a voluntary, non-suspensory approach under Section 50 of the Competition and Consumer Act, 2010, enforced by the Australian Competition and Consumer Commission (ACCC), wherein parties are encouraged—but not obligated—to seek clearance.

The paper delves into the substantive analytical frameworks applied by both jurisdictions—India's "Appreciable Adverse Effect on Competition" (AAEC) test and Australia's "Substantial Lessening of Competition" (SLC) test—highlighting their economic underpinnings, evidentiary standards, and evolving interpretative trends. It also explores recent procedural innovations, including India's Green Channel mechanism and Australia's increasing use of pre-assessment tools, with particular attention to the regulatory treatment of mergers in the digital economy.

Drawing from jurisprudence, enforcement practices, and reform proposals, the paper evaluates the comparative strengths and limitations of each model. It further assesses the implications for merger predictability, legal certainty, and regulatory efficiency. The findings underscore the need for calibrated convergence in procedural and substantive aspects, particularly in response to the growing complexities of global mergers involving digital platforms. This research contributes to the broader discourse on harmonizing competition law enforcement and fostering cross-border regulatory cooperation.

1. INTRODUCTION

In the globalized economic landscape, mergers and acquisitions (M&A) have emerged as pivotal instruments of corporate strategy, enabling enterprises to expand operations, achieve synergies, access new markets, and enhance competitiveness. However, such consolidations may also pose serious risks to market competition, particularly when they result in excessive concentration, elimination of effective rivalry, or potential abuse of dominant market positions. Recognizing this delicate balance between pro-competitive efficiency and anti-competitive harm, competition authorities worldwide have instituted robust merger control regimes. These mechanisms are designed to prevent combinations that may distort market dynamics, hinder innovation, or harm consumer welfare.

India and Australia, both members of the Commonwealth and inheritors of the common law tradition, have established distinct yet comparable merger control frameworks aimed at scrutinizing and regulating potentially anti-competitive transactions. While India enforces a mandatory, suspensory merger regime governed by the **Competition Act, 2002**, Australia adopts a voluntary, non-suspensory model under the **Competition and Consumer Act, 2010**. Despite their shared legal heritage, the enforcement philosophy, procedural architecture, and substantive tests employed by their respective competition regulators—the **Competition Commission of India (CCI)** and the **Australian Competition and Consumer Commission (ACCC)**—reveal significant variations shaped by differing institutional priorities, economic structures, and regulatory experiences.

1.1 Background of the Study

The evolution of merger control regimes in both jurisdictions has been deeply influenced by international developments and domestic market dynamics. In India, formal merger review provisions became operational in 2011 with the introduction of the Combination Regulations, marking a significant shift in India's competition policy landscape. Since then, the CCI has reviewed hundreds of transactions, gradually building a body of jurisprudence and procedural clarity. In recent years, India has witnessed heightened scrutiny of technology-driven combinations, especially in digital markets, thereby pushing the CCI toward a more effects-based and economically nuanced approach.

Australia, on the other hand, has maintained a merger control framework since the 1970s, with the ACCC employing an informal clearance system that relies heavily on voluntary notification and proactive market guidance. This flexible approach has been lauded for its speed and low compliance burden but has also attracted criticism for potential underenforcement. Australia's emphasis on public competition assessments and counterfactual market analysis demonstrates a forward-looking model grounded in economic reasoning.

Amidst these developments, both countries are now facing similar challenges brought about by digitalization, global mergers involving multi-jurisdictional players, and the need for procedural modernization. This has led to policy debates around reforming merger control tools, streamlining enforcement, and enhancing predictability for stakeholders.

1.2 Objectives of the Study

The primary objective of this research paper is to conduct a **comparative legal analysis** of the merger control mechanisms operative in India and Australia, focusing on the legal, procedural, and economic dimensions that underpin their respective regulatory approaches. The specific objectives include:

- To examine the **statutory frameworks** and regulatory mandates that govern merger control in India and Australia;
- To analyze the **notification thresholds**, including jurisdictional and financial triggers, that determine regulatory oversight in both jurisdictions;
- To compare the **substantive tests** employed by the CCI and the ACCC, specifically the “Appreciable Adverse Effect on Competition” (AAEC) and the “Substantial Lessening of Competition” (SLC) standards;
- To evaluate the **procedural architecture**, including timelines, filing processes, review phases, and investigatory tools used by both authorities;
- To explore recent **procedural innovations** such as the Green Channel route in India and pre-assessment reviews in Australia, especially in light of rising digital mergers;
- To identify the strengths and limitations of each regime and assess whether certain features could be harmonized or adapted for greater global alignment;
- To offer critical insights into how both jurisdictions can recalibrate their merger control tools to effectively address challenges posed by cross-border and technology-driven mergers.

By fulfilling these objectives, the study seeks to contribute to the growing body of scholarship on comparative competition law, while offering policy-relevant observations that may guide future reforms in both jurisdictions. It aims to inform not only legal scholars and regulators but also businesses, transaction advisors, and global investors seeking clarity on the operational nuances of merger control in India and Australia.

2. THEORETICAL FOUNDATION

Merger control, as a branch of competition law, operates at the intersection of legal doctrine, economic theory, and public policy. Its theoretical foundation is rooted in the broader goals of antitrust law—namely, the promotion of market competition, prevention of monopolistic structures, and protection of consumer welfare. However, the manner in which these goals are operationalized through regulatory design and enforcement varies significantly across jurisdictions. In the context of India and Australia, both countries share a commitment to ensuring competitive market structures but diverge in their philosophical underpinnings, institutional approaches, and legislative contours.

2.1 Rationale for Merger Regulation

The theoretical justification for merger control arises from the Structure-Conduct-Performance (SCP) paradigm of industrial organization economics, which posits that increased market concentration often correlates with reduced competitive pressure, leading to higher prices, reduced innovation, and

allocative inefficiency. Horizontal mergers, in particular, may significantly lessen competition by eliminating rivals or creating firms with the ability to unilaterally exercise market power.

Merger regulation thus functions as an ex-ante tool—preventative rather than punitive—aimed at screening potentially anti-competitive combinations before they are consummated. This forward-looking orientation distinguishes merger control from other branches of competition law, such as those addressing cartels or abuse of dominance, which typically involve ex-post enforcement.

2.2 India's Theoretical Model: Statutory Objectivity and Regulatory Evolution

India's merger control regime is enshrined in the Competition Act, 2002, and guided by a dual mandate: (a) to prevent practices having an appreciable adverse effect on competition (AAEC), and (b) to promote and sustain competition in markets, protect consumer interests, and ensure freedom of trade.

India's legal framework adopts a rule-based, mandatory, and suspensory model, rooted in the belief that large combinations must be subject to rigorous regulatory oversight. This reflects a formalist legal philosophy where pre-defined financial thresholds (based on assets and turnover) are used to trigger compulsory notifications. The theoretical emphasis lies on legal certainty and preemptive scrutiny of market power concentrations.

Over time, the Competition Commission of India (CCI) has evolved from a primarily structural approach to one that integrates **economic effect-based analysis**, assessing market dynamics such as price elasticity, barriers to entry, buyer power, and efficiencies. The jurisprudential development of merger law in India remains in its formative stages but is steadily progressing through incremental decisions and procedural innovation (e.g., the Green Channel mechanism for automatic approvals in non-problematic cases).

The **doctrine of proportionality** is increasingly visible in CCI's analysis, where remedies—both structural and behavioural—are tailored to the extent of likely competitive harm. However, India's regulatory philosophy still maintains a **presumption of caution**, reflective of its emerging economy status and concentrated market structures.

2.3 Australia's Theoretical Approach: Economic Pragmatism and Voluntarism

Australia's merger regulation is governed by Section 50 of the Competition and Consumer Act, 2010 (CCA). The statute prohibits acquisitions that would result, or be likely to result, in a "substantial lessening of competition" (SLC) in any market in Australia.

The Australian Competition and Consumer Commission (ACCC) adopts a voluntary and non-suspensory model, underpinned by economic pragmatism and self-assessment by transacting parties. The theoretical framework reflects a market-oriented approach, where the regulatory presumption is in favour of commercial freedom unless a merger demonstrably harms market competition.

The SLC test used by the ACCC is rooted in counterfactual analysis, which compares the likely state of competition with and without the merger. This methodology reflects a dynamic competition theory model

that prioritizes future market effects, innovation trends, and long-term consumer impact over static concentration measures.

Importantly, Australia's merger control regime places substantial reliance on informal clearance processes, enabling parties to seek guidance without mandatory filing. This reflects a regulatory culture based on co-regulation, transparency, and collaboration, rather than compulsion.

The ACCC's theoretical approach is also influenced by its extensive use of public competition assessments detailed reports explaining its merger decisions—which reinforce regulatory accountability and public reasoning. Australia's model is designed to be cost-effective and business-friendly, while retaining discretion to challenge anti-competitive transactions through litigation where necessary.

2.4 Comparative Doctrinal Themes section restructured into high-level legal paragraph form with clarity and flow

Though India and Australia pursue the same overarching objective—namely, the prevention of anti-competitive market consolidation their theoretical underpinnings diverge significantly across several core dimensions. India adheres to a mandatory and suspensory notification regime, whereby parties to qualifying combinations are statutorily obligated to notify the Competition Commission of India (CCI) prior to consummation. In contrast, Australia follows a voluntary and non-suspensory model, allowing transacting parties to self-assess and approach the Australian Competition and Consumer Commission (ACCC) for informal clearance only where competitive concerns may arise.

The substantive tests employed by the two jurisdictions also reflect divergent analytical philosophies: India's "Appreciable Adverse Effect on Competition" (AAEC) test is premised on a structural and market share oriented assessment, whereas Australia applies the "Substantial Lessening of Competition" (SLC) standard, anchored in counterfactual economic analysis that evaluates the merger's likely impact on future market dynamics. This distinction aligns with each country's enforcement philosophy India's approach emphasizes legal certainty, statutory compliance, and structural scrutiny, while Australia embraces economic pragmatism, with an emphasis on flexible, forward-looking assessments.

Moreover, the review models in both jurisdictions reflect this divergence. India employs a rule-based and threshold triggered system, grounded in detailed statutory thresholds for asset and turnover criteria. Australia, however, follows an effect-based and dynamic review structure, where the focus is not on financial triggers but on the likelihood of competitive harm in real or anticipated market conditions. This difference informs the role played by the respective regulators: the CCI acts as an active gatekeeper, mandated to intervene in all notifiable transactions, while the ACCC functions as a reactive advisor and strategic litigator, choosing its interventions based on economic and policy considerations.

In terms of innovation sensitivity, India's approach is still evolving, particularly in light of the proposed Digital Competition Bill, which seeks to enhance scrutiny of data-driven and platform-based mergers. Australia, by contrast, has already embedded a strong emphasis on the implications of mergers for innovation markets and potential "killer acquisitions," particularly in the tech and pharmaceutical sectors. Procedurally, India maintains a structured and codified framework, with fixed forms, timelines, and

phases, while Australia's model remains informal, negotiation-driven, and adaptable to the needs of specific transactions.

This doctrinal divergence reflects broader regulatory philosophies—India's preference for statutory oversight, administrative formalism, and legal certainty, as opposed to Australia's reliance on economic discretion, business engagement, and regulatory flexibility. Each model offers distinct advantages and limitations, particularly in balancing administrative efficiency, regulatory predictability, and the compliance burden placed upon merging parties. As the dynamics of global M&A evolve—particularly in digital and cross-border contexts—these distinctions become increasingly significant in shaping enforcement outcomes and regulatory reforms.

2.5 Normative Implications for Legal Reform

Understanding these theoretical foundations is not merely academic—it has direct implications for regulatory design in the context of globalization, technological disruption, and evolving market behaviours. As jurisdictions grapple with digital conglomerates, killer acquisitions, and cross-border mergers, the case for procedural harmonization, substantive alignment, and mutual cooperation among regulators becomes increasingly strong.

For India, drawing from Australia's informal guidance system may help alleviate regulatory bottlenecks and improve engagement with stakeholders. For Australia, the growing complexity of digital ecosystems may justify consideration of mandatory notification thresholds, particularly for tech-sector mergers.

The theoretical foundation, thus, serves as a crucial platform for the rest of this paper's comparative analysis and policy recommendations.

3. LEGAL FRAMEWORK

The regulatory foundation for merger control in both India and Australia is established through distinct statutory enactments that reflect each jurisdiction's economic priorities, institutional structures, and enforcement philosophies. Despite their common law heritage and shared commitment to promoting competition, the two jurisdictions diverge considerably in the manner in which merger control is legislated, administered, and enforced.

3.1 India: The Competition Act, 2002

India's merger control regime is codified under the Competition Act, 2002, with the key provisions relating to combinations articulated in Sections 5 and 6. Section 5 defines the scope of combinations, encompassing mergers, acquisitions, and amalgamations that cross specified financial thresholds based on the assets and turnover of the transacting parties. Section 6 mandates that such combinations shall not take effect unless approved by the Competition Commission of India (CCI), thereby establishing a mandatory and suspensory regime meaning that the transaction cannot be consummated until clearance is obtained.

The Act empowers the CCI to examine whether a proposed combination is likely to cause an “Appreciable Adverse Effect on Competition” (AAEC) within the relevant market in India. This entails a comprehensive review of the market structure, concentration levels, potential foreclosure effects, entry barriers, countervailing buyer power, and efficiencies. The enforcement mechanism is proceduralized through the Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011, which provide detailed guidance on filing requirements, review timelines, and form types (Form I for short-form notification and Form II for more detailed analysis).

India’s framework reflects a statutorily driven, rule-based approach that aims to pre-emptively eliminate potential anti-competitive effects before they materialize. The Act also empowers the CCI to impose remedies—structural or behavioral—as a condition for approving combinations. Further, in line with the evolving nature of markets, India is in the process of reforming its competition framework, with a proposed Digital Competition Bill set to introduce ex-ante obligations on large digital platforms, including merger notification mandates regardless of financial thresholds.

3.2 Australia: The Competition and Consumer Act, 2010

In Australia, merger regulation is governed by Section 50 of the Competition and Consumer Act, 2010 (CCA), which prohibits any acquisition that “would have the effect, or be likely to have the effect, of substantially lessening competition” in any market in Australia. Unlike India, Australia operates a voluntary and non-suspensory system—there is no legal obligation to notify the Australian Competition and Consumer Commission (ACCC) of a proposed merger, nor is it necessary to await clearance before closing the transaction.

However, parties are strongly encouraged to approach the ACCC where there is a potential risk of competition harm, particularly in markets where the merged entity would hold a post-merger market share above 20%. The ACCC offers two pathways: (i) informal clearance, wherein the regulator provides a non-binding opinion based on internal review; and (ii) authorisation, a more formal process under which the ACCC assesses public benefits and competitive detriment, resulting in a legally binding decision.

The Australian framework places significant emphasis on economic effects and market analysis. The ACCC conducts a counterfactual assessment, asking how competition would evolve with and without the proposed transaction. The enforcement strategy is largely case-by-case, and the regulator retains discretion to initiate enforcement proceedings before the Federal Court if it deems a transaction unlawful under Section 50. The regime is supplemented by Merger Guidelines issued by the ACCC, which set out analytical tools and indicative thresholds.

In recent years, Australia has intensified its scrutiny of digital mergers, especially those involving potential nascent competition or data-driven advantages. The ACCC’s Digital Platforms Inquiry (2019) and ongoing policy consultations have proposed moving toward a mandatory merger notification system for large digital firms, reflecting a shift toward proactive regulatory intervention.

3.3 Key Distinctions in Legal Design

While both jurisdictions share the common goal of maintaining competitive markets, their legal frameworks reflect contrasting regulatory designs:

- India's regime is legally prescriptive, requiring all combinations meeting financial thresholds to be notified and reviewed ex ante, with legally binding clearance being a prerequisite for closing.
- Australia's system is principle-based and discretionary, relying on parties to self-assess and engage with the ACCC voluntarily, though risk of post-merger enforcement action exists.

The contrast between India's structured, codified process and Australia's informal, effects-driven approach forms the crux of this comparative study, with broader implications for administrative efficiency, legal predictability, and deterrence in the context of merger regulation.

4. NOTIFICATION THRESHOLDS

The notification threshold mechanism serves as the primary regulatory filter through which competition authorities determine whether a proposed transaction warrants review. It functions not only as a jurisdictional trigger but also as a policy tool to balance regulatory oversight with administrative efficiency. India and Australia exhibit fundamentally divergent approaches to merger notification, reflective of their underlying regulatory philosophies and enforcement strategies.

4.1 India: Mandatory and Financial Threshold-Based Regime:

In India, merger notification is mandatory and suspensory, meaning that a transaction cannot be consummated unless and until it receives approval from the Competition Commission of India (CCI). The obligation to notify arises when a proposed combination crosses the asset or turnover-based thresholds prescribed under Section 5 of the Competition Act, 2002, read with the relevant rules and notifications.

These thresholds are structured across three key tests:

- **Parties Test:** The combined assets or turnover of the acquirer and the target must exceed INR 2,000 crore (approx. USD 240 million) in assets or INR 6,000 crore (approx. USD 720 million) in turnover within India.
- **Group Test:** Post-combination, if the acquirer group (to which the target will belong) exceeds INR 8,000 crore (approx. USD 960 million) in assets or INR 24,000 crore (approx. USD 2.9 billion) in turnover within India, notification is required.
- **Worldwide Thresholds:** If the parties have global assets exceeding USD 1.5 billion—including at least INR 1,000 crore in India—or global turnover exceeding USD 4.5 billion with at least INR 3,000 crore in Indian turnover, the filing becomes mandatory.

In 2017, the Ministry of Corporate Affairs introduced De Minimis exemptions, which exempt target enterprises with assets not exceeding INR 350 crore or turnover not exceeding INR 1,000 crore from the

requirement to notify, even if the acquirer's size exceeds prescribed limits. These exemptions were extended until March 2027.

Furthermore, combinations involving credit institutions, banks, or NBFCs often invoke sector-specific exemptions. However, the CCI retains discretionary powers to scrutinize transactions *suo motu* if they raise significant competition concerns.

Non-compliance with the notification requirement can attract penalties under Section 43A, which provides for fines up to 1% of the total assets or turnover of the combination, whichever is higher. Therefore, legal and commercial risk assessment becomes critical during deal structuring.

4.2 Australia: Voluntary and Effects-Based Notification:

In stark contrast, Australia operates a voluntary and non-suspensory merger notification system. There are no statutory financial thresholds under Section 50 of the Competition and Consumer Act, 2010 (CCA) mandating merger notification to the Australian Competition and Consumer Commission (ACCC). Instead, the ACCC encourages merging parties to approach the regulator voluntarily, particularly when the transaction raises potential competition concerns.

The informal clearance process which is the most commonly used mechanism in Australia is initiated at the discretion of the parties. While not legally required, failure to engage with the ACCC prior to closing can result in significant legal risk, including post-closing investigation, litigation, and court-ordered divestiture.

To guide this process, the ACCC has set out non-binding indicative thresholds, recommending parties seek review if:

- The merged entity's market share exceeds 20% in any relevant market in Australia; or
- The transaction involves competitors or vertically integrated players in concentrated sectors.

Although informal, the ACCC conducts a rigorous review through internal market analysis and stakeholder consultations. It may issue either:

- A no-objection letter (informal clearance), or
- A decision to oppose the merger, prompting the parties to either abandon the deal or seek authorisation, where the ACCC weighs public benefit against anti-competitive harm.

In 2023, the ACCC proposed introducing a mandatory notification regime for digital platform mergers, citing the growing challenges of detecting "killer acquisitions" and preserving innovation in dynamic markets. This proposal reflects a growing recognition that a purely voluntary model may fall short in the context of large tech firms acquiring nascent competitors.

4.3 Key Comparative Insights:

India and Australia adopt markedly different approaches to merger notification, rooted in distinct regulatory philosophies. India mandates a suspensory filing system, requiring parties to notify the Competition Commission of India (CCI) if asset or turnover thresholds are met. Notifications must be filed within 30 days, and the process results in a binding decision, often with potential remedies. India also provides De Minimis exemptions and sector-specific carve-outs to streamline compliance.

By contrast, Australia operates a voluntary, non-suspensory regime under the Australian Competition and Consumer Commission (ACCC), where parties are encouraged—but not obligated—to notify, particularly when post-merger market share exceeds 20%. There's no fixed deadline for filing, and outcomes of informal clearance are non-binding, unless formal authorisation is sought. While India's regime ensures thorough review, it can increase procedural burdens. Australia's system offers greater flexibility, but risks under-enforcement, especially in fast-moving or digital markets. These contrasts highlight each country's balance between legal certainty and regulatory agility.

5. SUBSTANTIVE TESTS

The core function of any merger control regime lies in its ability to substantively assess whether a proposed combination is likely to harm competition. India and Australia employ distinct analytical frameworks both grounded in economic principles but differ in their interpretive methodologies and regulatory presumptions. These frameworks are critical in determining the permissibility of mergers and the imposition of remedies where required.

5.1 India: Appreciable Adverse Effect on Competition (AAEC) Test

In India, the Competition Commission of India (CCI) is mandated under Section 6 of the Competition Act, 2002 to prohibit combinations that are likely to cause an “Appreciable Adverse Effect on Competition” (AAEC) within the relevant market. The statutory criteria for AAEC are elaborated in Section 20(4), which sets out a non-exhaustive list of factors that the CCI must consider during its analysis. These include:

- Market concentration and the level of existing competition;
- Barriers to entry, including regulatory or structural barriers;
- Potential for foreclosure of market access to competitors;
- Countervailing buyer power;
- Extent of innovation and technical development likely to be impacted;
- Nature and extent of vertical integration;
- Efficiency gains passed on to consumers.

The CCI adopts a structured, factor-based assessment, weighing both anti-competitive and pro-competitive effects. While the CCI initially applied a structural approach focused on market shares and

concentration ratios, there has been a gradual shift toward a more economic effects-based model, especially in recent digital mergers. The test is inherently forward-looking, but grounded in the legalistic and codified framework of the Competition Act.

Importantly, the AAEC test does not operate on a presumption of illegality. The burden lies with the CCI to establish that the proposed merger is likely to cause harm. Where such a determination is made, the CCI may either block the transaction or approve it subject to structural or behavioural remedies, as per Section 31 of the Act.

5.2 Australia: Substantial Lessening of Competition (SLC) Test

In Australia, the Australian Competition and Consumer Commission (ACCC) applies the Substantial Lessening of Competition (SLC) test under Section 50 of the Competition and Consumer Act, 2010 (CCA). Unlike India's multi-factor statutory matrix, the SLC test is guided by case law and economic analysis, with a focus on whether the transaction would, or would be likely to, substantially reduce competitive rivalry in any Australian market.

The ACCC's preferred method of analysis is the counterfactual approach, which involves comparing the likely state of competition if the merger proceeds versus if it does not. This hypothetical baseline allows the ACCC to assess potential changes in market structure, strategic behaviour, entry dynamics, innovation incentives, and pricing power. Key factors considered include:

- The removal of a vigorous competitor;
- Likelihood of coordinated conduct post-merger;
- Vertical effects such as input foreclosure or customer foreclosure;
- Innovation harm, particularly in dynamic or nascent markets;
- Impact on potential market entrants.

The SLC test is effects-based and probabilistic—the ACCC does not need to prove harm with certainty, only that there is a real chance or likelihood of substantial harm. Remedies may be negotiated informally or imposed through formal undertakings and court orders, depending on the clearance path chosen (informal or authorisation).

5.3 Comparative Analysis of Substantive Tests

While both the AAEC and SLC tests are prospective in nature, the Indian model is more statutorily prescriptive, focusing on a checklist of factors, whereas the Australian approach is economically dynamic, hinging on market-specific evidence and counterfactual scenarios. The AAEC test often places greater emphasis on structural indicators such as market shares and concentration, while the SLC test gives broader scope to behavioural and innovation-related harms.

India's framework is more formalized and predictable but may be limited by rigid application unless supplemented by in-depth economic analysis. Australia's model allows for greater flexibility and

analytical nuance, though it relies heavily on the ACCC's discretion and economic forecasting capability, which can lead to inconsistent outcomes in borderline cases.

6. PROCEDURE

The procedural framework for merger control in India and Australia reflects stark differences in regulatory design, enforcement culture, and institutional priorities. In India, the process is formalized, codified, and legally binding, governed by the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, under the authority of the Competition Act, 2002. The Indian system is both mandatory and suspensory, meaning that any proposed transaction meeting the statutory asset or turnover thresholds must be notified to the Competition Commission of India (CCI) before it can be implemented. This imposes a legal obligation on the parties to seek prior approval, and failure to do so may result in financial penalties under Section 43A of the Act.

The filing process in India requires parties to submit either a short-form notification known as Form I or a long-form notification known as Form II, depending on the complexity and potential competition impact of the proposed combination. Once the filing is complete, the CCI initiates a two-phase review process. In Phase I, the CCI undertakes a preliminary assessment to evaluate whether the combination is likely to cause an appreciable adverse effect on competition (AAEC) within the relevant market in India. This initial review must be completed within 30 working days, extendable under specific procedural circumstances. If no concerns are identified, the CCI grants unconditional clearance. However, if *prima facie* concerns are raised during Phase I, the matter progresses to Phase II, which involves a deeper investigation. This phase may include market testing, stakeholder consultations, economic analysis, and, where necessary, the imposition of structural or behavioural remedies to address potential anti-competitive effects. The Phase II review can extend the total timeline up to 210 calendar days from the date of the original notification. The CCI's final decision may approve, block, or conditionally clear the merger. While most cases are resolved during Phase I, more complex or high-concentration mergers tend to trigger Phase II scrutiny.

In contrast, Australia follows a more flexible and pragmatic approach to merger review, underpinned by an informal and voluntary system administered by the Australian Competition and Consumer Commission (ACCC). There is no statutory obligation to notify a merger under Section 50 of the Competition and Consumer Act, 2010. Instead, the ACCC encourages merging parties to approach the regulator voluntarily when a proposed transaction raises potential competition concerns, particularly in markets where the post-merger entity is likely to command a share exceeding 20%. The absence of formal notification thresholds or prescribed deadlines allows for procedural flexibility and reduces compliance burdens on businesses.

The Australian process typically begins with a confidential pre-assessment, where the ACCC provides preliminary feedback on whether a public review is necessary. If concerns are minimal, the merger may be cleared swiftly without formal investigation. However, if the ACCC identifies potential issues, it may proceed with a public or confidential review. In a public review, the ACCC releases a Statement of Issues, invites third-party submissions, and conducts a thorough market analysis, often concluding within 6 to 12 weeks. In more sensitive cases, where commercial confidentiality is a concern, the ACCC may conduct a confidential review instead. Although the outcome of an informal clearance is not legally binding, it

provides regulatory comfort. If the ACCC opposes a merger and parties choose to proceed regardless, the Commission may seek court intervention to prohibit or unwind the transaction.

For transactions where the parties seek legal certainty, particularly when substantial competition concerns exist, the Australian regime also offers a formal authorisation pathway. Under this process, the ACCC evaluates whether the public benefits of the transaction outweigh any likely anti-competitive detriment. A favourable authorisation decision is legally binding and grants immunity from court challenge under Section 50. This dual-track model—informal review complemented by formal authorisation—allows the ACCC to strike a balance between procedural flexibility and enforcement certainty.

The differences in procedural structure between the two jurisdictions are significant. India's system prioritizes legal certainty, administrative rigor, and comprehensive ex-ante control. It mandates a clear procedural roadmap and imposes statutory timelines for review and clearance, thereby offering predictability to parties. However, this rigidity may increase transaction costs and delay deal execution. Australia, on the other hand, emphasizes collaborative engagement and regulatory discretion. Its informal and principle-based model enables faster resolution and lower compliance burden, but carries inherent risks due to its non-binding nature—particularly in complex or high-profile transactions.

Ultimately, these procedural divergences reflect deeper regulatory philosophies. India's model is more interventionist and prescriptive, designed to catch potentially harmful transactions before they take effect. Australia's approach is more economically driven and consultative, placing greater trust in market self-regulation and business transparency. For multinational corporations engaging in cross-border M&A, understanding and navigating these procedural variations is critical to ensuring deal compliance, regulatory alignment, and transactional efficiency.

7. CASE STUDIES

A comparative assessment of landmark merger cases in India and Australia provides valuable insight into how each jurisdiction applies its merger control framework in practice. These case studies illustrate the regulators' approaches to substantive analysis, procedural rigor, and the balancing of anti-competitive effects with public benefit or efficiency claims.

One of the most prominent merger cases in India was the Sun Pharma–Ranbaxy Laboratories merger (2014). This was a significant horizontal merger in the Indian pharmaceutical sector, involving two of the country's largest generic drug manufacturers. The transaction triggered detailed scrutiny under the AAEC standard due to potential overlaps in multiple therapeutic segments. The Competition Commission of India (CCI), while ultimately approving the merger, identified concerns in several product markets where the combined entity would gain substantial market power. To address these concerns, the CCI imposed structural remedies, including the divestiture of seven products to an independent third party. This case demonstrated the CCI's willingness to conditionally clear large mergers while maintaining competitive equilibrium in concentrated sectors like healthcare.

In Australia, the TPG Telecom–Vodafone Hutchison Australia merger (2020) was a landmark transaction in the telecommunications sector. Initially, the Australian Competition and Consumer Commission (ACCC) opposed the deal on the grounds that it would substantially lessen competition by eliminating TPG as a potential independent entrant in the mobile network market. The ACCC argued that TPG, despite not launching its mobile service, could have become a disruptive fourth competitor. However, the parties challenged the ACCC’s decision in the Federal Court. The Court ruled in favour of the merger, holding that TPG was unlikely to roll out its network due to commercial and strategic constraints, and that the merger would not substantially lessen competition in the foreseeable future. This case highlighted the role of counterfactual analysis in Australia’s merger assessment and demonstrated the judiciary’s check on regulatory discretion.

Another notable Indian case is the Schneider Electric–L&T Electrical & Automation business acquisition (2018). The merger was flagged for likely AAEC due to overlaps in low-voltage switchgear markets. The CCI conducted a detailed investigation and approved the combination subject to behavioural remedies, including non-exclusive licensing obligations and supply commitments. The case is significant as it illustrates the CCI’s preference for tailored, non-structural remedies where divestiture may be commercially impractical.

In contrast, Australia’s Metcash–Franklins merger (2011) serves as an example of regulatory opposition based on buyer power concerns. The ACCC challenged the acquisition of Franklins supermarkets by Metcash, citing the risk of a dominant wholesale grocery supplier limiting retail competition. However, the Federal Court disagreed, finding insufficient evidence of a likely SLC. The case revealed the evidentiary burden faced by the ACCC in court-based challenges and underscored the importance of robust economic forecasting in merger enforcement.

Additionally, in India, the PVR–DT Cinemas merger (2016) raised competitive concerns in regional multiplex markets. The CCI cleared the deal with conditions, including divestiture of select cinema assets in overlapping geographies. This case demonstrated the Commission’s sensitivity to geographic market definitions and localised competition dynamics in service sectors.

These cases collectively illustrate the diversity of enforcement strategies employed by the CCI and ACCC. While India often prefers pre-implementation structural or behavioural conditions, Australia’s system relies on voluntary compliance, judicial recourse, and public benefit assessments. Together, they reflect evolving regulatory practices tailored to jurisdictional market realities.

8. RECENT TRENDS AND REFORMS

Both India and Australia are witnessing significant regulatory developments aimed at adapting their merger control regimes to the evolving challenges of digital markets and cross-border transactions. In India, the government is actively considering the introduction of a Digital Competition Act, which proposes an ex-ante framework to regulate large digital platforms classified as “systemically significant digital enterprises.” Among its key provisions is the mandatory notification of acquisitions, including those that may fall below current financial thresholds but could lead to “killer acquisitions” or foreclosure

of competition. This reflects the CCI's growing concern over the inability to capture data-driven mergers under the existing asset-turnover based framework.

Australia, similarly, has acknowledged the limitations of its voluntary notification regime, particularly in the digital and tech sectors. The Australian Competition and Consumer Commission (ACCC), through its Digital Platforms Services Inquiry, has recommended introducing mandatory merger notification requirements for designated large digital firms. These proposals include greater transparency in pre-clearance engagement, expanded powers to issue prohibition orders, and stricter scrutiny of acquisitions involving nascent or potential competitors.

These reform efforts in both jurisdictions indicate a shift toward proactive, forward-looking merger enforcement, especially in response to digital concentration and global M&A activity. The trend reflects a convergence around the need for greater regulatory oversight of tech giants, even as the broader merger control frameworks in India and Australia continue to differ in structure and philosophy.

9. COMPARATIVE INSIGHTS

India's merger control regime, with its mandatory filing and suspensory structure, provides a high degree of legal certainty, procedural clarity, and comprehensive oversight. Transactions that meet defined financial thresholds are systematically reviewed by the Competition Commission of India (CCI), ensuring predictability and preventing potentially anti-competitive mergers from being consummated unchecked. However, this structured process can be procedurally intensive and time-consuming, potentially delaying deal execution, especially in fast-moving markets.

In contrast, Australia's voluntary and informal clearance process, overseen by the Australian Competition and Consumer Commission (ACCC), offers greater flexibility and quicker turnaround for merging parties. It allows businesses to self-assess and engage with the regulator only when competitive risks are apparent. While this promotes efficiency and reduces regulatory burden, it also carries the risk of underenforcement, particularly in digital markets or where transactions fall below the radar due to lack of mandatory notification.

Overall, the Indian model favours rigour and precaution, whereas the Australian system emphasizes discretion and adaptability. The trade-off lies between certainty and speed, with each approach offering lessons for future policy refinement—especially in the face of complex, cross-border, and tech-driven mergers.

10. CONCLUSION

The comparative study of merger control in India and Australia reveals two distinct yet complementary regulatory approaches—one grounded in formal statutory oversight, the other in pragmatic, effect-based discretion. While India's mandatory and structured framework ensures legal certainty and exhaustive review, Australia's voluntary, flexible model enables faster resolution but may fall short in capturing emerging competition threats, particularly in the digital economy. As cross-border mergers grow more



complex and platform-driven acquisitions become increasingly nuanced, greater procedural alignment and substantive convergence between jurisdictions may be essential. Harmonizing key elements—such as notification standards for digital firms and analytical tools for innovation harm—can enhance global regulatory cooperation, enforcement consistency, and the overall effectiveness of merger control in safeguarding competitive markets.