



NAVIGATING **AI**-RELATED COMBINATIONS IN **INDIA**

KEY INSIGHTS & TAKEAWAYS



The rapid advancement of artificial intelligence technologies (“AI”) is revolutionizing industries across the globe. As AI technologies evolve, they bring about new opportunities and challenges, shifting the landscape in which businesses are regulated. However, several issues emerge with this development, particularly in the regulation of mergers and acquisitions involving AI technologies. In this context, the decisional practice of the **Competition Commission of India (“CCI”)** in tech and other sectors provides valuable insights into how regulatory frameworks can adapt to the complexities introduced by AI.

In this paper, we touch upon these issues and highlight how **CCI’s** approach to combinations in tech and other sectors can be borrowed into AI related concerns. By leveraging these insights, stakeholders can better navigate the regulatory landscape.

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INTRODUCTION

The growth of AI has spurred a wave of discussions on the regulatory landscape governing transactions involving AI players. AI is the next big wave due to its transformative potential cutting across various sectors. Its ability to analyse vast amounts of data, automate complex tasks and drive innovation makes it a critical driver of future economic and technological progress. However, the rapid pace of AI's growth also raises significant legal and policy challenges as existing frameworks may not sufficiently address issues of market competition, algorithmic bias, data privacy etc. Hence, it is crucial for legal and policy instruments to evolve in tandem with AI advancements.

The Indian competition regulator i.e., the CCI has already launched a market study into **'AI and Competition'**.^[1] The objective of the said market study is to gather insights from all relevant stakeholders, to develop a comprehensive understanding of the evolving landscape of AI and application of AI in markets in India. It will help shape the strategies of the CCI aimed at fostering innovation and fair competition.

AI relies on data and few firms control the access points to such data sets, which is an advantage point. Hence, any combinations between these firms may exhibit certain antitrust concerns due to the incumbent advantages. Increasing global scrutiny into mergers and acquisitions involving AI players^[2] has also raised questions about how such transactions are likely to be scrutinized by the CCI.

This article seeks to demystify some of these concerns by analysing CCI's decisional practice and the extant merger control regime to outline the likely regulatory approach towards mergers and acquisitions involving AI firms. We also suggest key considerations for parties to keep in mind while structuring and notifying combinations involving AI-players.

[1] Available at <https://www.cci.gov.in/images/whatsnew/en/tendernotice-1-11713759672.pdf>

[2] Refer <https://www.gov.uk/government/news/cma-seeks-views-on-ai-partnerships-and-other-arrangements>; <https://www.gov.uk/cma-cases/microsoft-slash-inflection-ai-inquiry>; <https://www.ft.com/news/events/news/press-releases/2024/01/ftc-launches-inquiry-generative-ai-investments-partnerships>

BACKGROUND

Mergers and acquisitions in the AI space can result in several synergies such as better access to inputs, streamlining output and delivery, expansion of markets and consumer base, access to technology, research and development etc. However, it can also give rise to an appreciable adverse effect on competition (“**AAEC**”) such as through:



High levels of concentration on account of the limited number of players and highly specialized nature of the industry such as cloud computing, manufacturing of drivers and chipsets etc.



Vertical integration leading to consolidation of market power which causes a few players to control access to critical inputs, which is crucial for AI development in a nascent market. The markets for critical inputs like large datasets, advanced computing resources and cutting-edge technology are still evolving. As these new technologies evolve, existing legal frameworks may be insufficient to deal with the challenges presented. This can raise barriers to entry for rivals by cutting off their access to core products and services, self-preferencing of own offerings etc.



Leveraging behaviour by incumbent firms to expand into other markets and restriction of choice to downstream firms (for example by making offerings exclusive or through bundling of complementary goods and services).



Consolidation of commercially sensitive datasets which are used to train algorithms. This creates barriers to entry for new firms seeking to enter AI development markets.

APPLICABILITY OF THE COMPETITION ACT

DEAL VALUE THRESHOLD

The existing merger control framework in India is based on an asset and turnover threshold. As a result, a lot of combinations involving high value, but low turnover and asset-light firms escaped antitrust scrutiny. Some **'killer acquisitions'** in the tech space thus have not been notified with the CCI due to such thresholds.

This legislative gap was addressed by the **Competition (Amendment) Act, 2023** through the introduction of **'deal value threshold'** ("DVT"). DVT is an additional criterion to determine the notifiability of a transaction which provides that if the **'value of any transaction'**, in connection with the acquisition of any control, shares, voting rights, or assets of an enterprise, merger or amalgamation exceeds **INR 2,000 crore**, then it has to be notified to the CCI. Further, the target which is being acquired or taken control of or merged or amalgamated must have substantial business operations in India.^[3]

'Value of transaction' has been defined expansively to include **"every valuable consideration, whether direct or indirect, immediate or deferred, cash or otherwise"** along with non-compete fees as well as, consideration attributable to interconnected transactions, incidental commercial arrangements entered into within 2 years of the closing of the notifiable transaction (such as technology assistance agreements, licensing of IPR and supply of materials), options and securities on an as converted basis and contingencies. Thus, AI firms are likely to be covered under this definition as they tend to hold innovative technology, IPR and potential for future market dominance with limited current revenue.

[3] The target will be deemed to have 'substantial business operations in India' if atleast 10% or more of any of the following in the 12 months preceding the transaction date was from India: (i) global users, subscribers, customers, or visitors or; (ii) global gross merchandise value or; (iii) global turnover for the preceding financial year derived from all products or services.

Importantly, DVT is sector agnostic and there is a presumption that it has been met if the precise transaction value cannot be determined with certainty. This allows the CCI to cast a wide net and capture transactions across all sectors, including AI.

HOW THE CCI MAY EXAMINE MERGERS INVOLVING AI

CCI's examination of mergers involving AI is likely to fit within the broader debate regarding competition in digital markets. Being a data-intensive technology, AI involves high fixed costs (for setting up initial infrastructure, continuous research and development etc.), economies of scale and scope, access to data, strong network effects and switching costs which can confer first-mover advantages to incumbent firms.^[4] These characteristics lead to concentration of market power which is durable and can expand into other related markets. For instance, holding large troves of consumer data can help to strengthen generative AI software.

Consequently, an innovative and burgeoning sector like AI is likely to create new forms of competition concerns surrounding vertical integration such as cutting of competitors' access to the supply of essential inputs (like technology and data), conglomerate business models to leverage overlapping consumer bases to foreclose competitors, bundling products and services, information asymmetry and reducing market transparency etc. Further, the competitive risks of concentration in AI are exacerbated since the foundation models used in various applications across the AI supply chain need vast amounts of data, computing power, cloud infrastructure, and talent, which only a few players have.

To access these inputs, there is a global trend of bigger firms entering into partnerships with small AI developers. While such partnerships create synergies and are often pro-competitive, they can contribute to entrenched market positions. This can take the form of exclusivity deals which brings into focus how transfer of intellectual property rights ("IPR") affects combination scrutiny. Another industry trend is the practice of "**acqui-hires**" i.e. acquisition of companies for their talent.^[5]

Thus, it becomes crucial to analyse how CCI has regulated all these concerns in other sectors to provide guidance for the regulation of AI-related mergers. A snapshot of the same is provided below.

[4] OECD BUSINESS AND FINANCE OUTLOOK 2021, Chapter 4: Competition and AI.

[5] Refer OECD BUSINESS AND FINANCE OUTLOOK 2021, Chapter 4: Competition and AI.

ASSESSMENT OF AAEC

Any merger review exercise begins by analysing horizontal, vertical and complementary overlaps between the businesses of the parties and their affiliates. The assessment of AI firms is no different.

HORIZONTAL OVERLAPS

Since partnerships between AI firms at a horizontal level are likely to involve technology licensing deals, access to proprietary infrastructure and large datasets, such commitments may be directed by the CCI. A key question to ask here is perhaps how to identify horizontal overlaps since AI firms are dynamic and operate across multiple sectors. For instance, AI companies develop algorithms for healthcare, finance, automobiles etc. This multi-sectoral presence complicates the process of defining a single relevant market to assess overlaps.

As far as remedies are concerned, the behavioural commitments issued in *Bayer / Monsanto*^[6] can be taken as an example to deal with horizontal overlaps between parties' businesses. In this decision, CCI ordered the combined entity to adopt a policy of non-exclusive licensing and to allow potential licensees to access its products and services on fair, reasonable and non-discriminatory terms to prevent AAEC in the market.

Hence, CCI's approach to remedies is focussed on providing equal access to ensure sustainable innovation in the market. As AI technologies are also often shared through licensing, access on such non-exclusive terms may be necessary if parties and their affiliates exhibit horizontal overlaps.

[6] Bayer AG, Combination Registration No. C-2017/08/523.

VERTICAL INTEGRATION LEADING TO CONSOLIDATION OF MARKET POWER

Vertical integration of AI firms can involve consolidation at different stages of the AI supply chain, such as partnerships between AI algorithm developers, software companies and hardware manufacturers.

CCI's decisional practice indicates that vertical relationships between parties could cause conflict of interest and create an incentive to foreclose downstream players^[7] as potential competitors would then be required to enter both the downstream and upstream markets to compete effectively.^[8] This would raise entry barriers as it would be significantly time and cost-intensive to so.

RAISING ENTRY BARRIERS

Entry barriers can take the shape of pooling of inputs and access to potentially infinite commercial resources like capital, data, know-how etc. For instance, in *Bayer/Monsanto*,^[9] the CCI noted that there were substantial entry barriers in the crop protection segment in the form of upfront R&D costs, regulatory know-how, national distribution network, IPR, etc. Both parties were integrated R&D players with significant capabilities, and therefore, the entry of a new player as an effective long-term competitor of the parties would be difficult. The CCI also highlighted the limited capability and resources of other firms to compete in the market, as well as the time- and cost-intensive process.

In the AI sector, entry barriers are likely to be more exacerbated since the market is still relatively nascent. This means that while competition is evolving and dynamic at present, any bottlenecks in the AI value chain are likely to have a lasting impact by creating a foreclosure effect on new entrants. For instance, if a firm is unable to access necessary datasets, they cannot train appropriate algorithms. In this case, lack of access to data becomes barrier to entry. Thus, CCI is likely to scrutinize the presence of entry barriers and mitigating steps adopted by the parties, if any, to minimize the entry barriers by virtue of the combination.

[7] BTRIL Urban Transport Private Limited, Valkyrie Investment Pte Limited and Solis Capital (Singapore) Pte. Limited., Combination Registration No. C-2019/07/676.

[8] Bayer/Monsanto

[9] Bayer/Monsanto

MINORITY ACQUISITIONS MAY ALSO COME UNDER CCI'S SCANNER

THE MATERIAL INFLUENCE STANDARD

Microsoft's partnership with Mistral AI, a developer of AI foundation models for supply of cloud compute infrastructure was closely monitored by the **United Kingdom Competition & Markets Authority ("CMA")** even though Microsoft's potential shareholding was **less than 1%**. This is because CMA's assessment focuses on the acquirer's ability to influence materially policy relevant to the behaviour of the target entity in the marketplace. The ability to exercise material influence is the lowest level of control that may give rise to a relevant merger situation.

India also follows the threshold of material influence to determine if there has been transfer of control pursuant to a combination, thereby triggering the notification requirement. Material influence may be inferred from the extent of shareholding and/or statutory rights associated with the shareholding and/or special rights such as veto rights, consultation rights, participation in management, board representation, structural/financial arrangements, etc.^[11]

Thus, the above discussion brings into focus the increased likelihood of antitrust scrutiny of transactions between AI firms since such combinations are often driven by a strategic intention.

Minority acquisitions are exempt from the notification requirement if the acquisition is done solely as an investment or in the ordinary course of business. Reading these terms in line with CCI's expansive interpretation in its decisional practice, implies that the exemption would not be available in case of acquisition of any rights which are not available to an ordinary shareholder. This includes investor protection rights like representation on the target's board of directors, informational rights etc.^[12]

Strategic intention behind a combination may also raise the level of antitrust scrutiny. For instance, access to knowledge and expertise in the financial inclusion sector by Axis Bank in its acquisition of stake in CSC was found to fall outside the scope of the ordinary course of business because it was deemed to have a strategic intention.^[13] Since most (if not all) partnerships between AI firms are driven by a strategic motive, the notification requirement may be difficult to surpass from this lens.

[10] Refer <https://www.gov.uk/cma-cases/microsoft-slash-mistral-ai-partnership-merger-inquiry>.

[11] <https://www.cci.gov.in/faqs>

[12] For instance, see Manta Holdings L.P. and Thoma Bravo Fund XII L.P., Combination Registration No. C-2016/10/439; Proceedings against PI Opportunities Fund - I and Pioneer Investment Fund under Section 43A of the Competition Act, 2002, Ref. No. M&A/Q1/2018/18; Section 43A Order against Axis Bank Limited; Kedaara Capital Fund II, Combination Registration No. C-2019/06/666; Section 44 Order in the UltraTech case; Section 43A Order against SABIC International Holdings B.V.; Also refer Schedule to the Draft CCI (Exempted Rules), 2024.

[13] Section 43A Order against Axis Bank Limited.

MINORITY ACQUISITIONS MAY BE SCRUTINIZED IN DETAIL IF THERE IS COMMON OWNERSHIP

Since AI is still evolving, with new forms of technology emerging routinely, small AI firms are attracting significant investment. This gives rise to competition concerns in the form of common ownership through overlapping investments in competing firms - such as influencing strategic decision making, data-sharing etc. Herein, it is relevant to note that Microsoft also let go of its observer seat in OpenAI's board of directors^[14] since it evoked increased regulatory attention by antitrust authorities.

Competition concerns arising from common ownership in competitors are viewed strictly by the CCI, even in cases of minority acquisitions. For instance, *Canary Investment Limited / Link Investment Trust II*,^[15] involved an acquisition of **3%** additional shareholding by ChrysCapital in Intas Pharmaceuticals. Since ChrysCapital also had minority shareholdings in other pharmaceutical companies, the CCI was concerned that its common shareholding in its controlled portfolio entities would enable it to influence competitive behaviour in the market. To address CCI's concerns, ChrysCapital offered to remove its nominee director in a competing portfolio investment, agree not to exercise veto rights over certain strategic corporate actions and restrict the use of information relating to the competing entities.

Similarly, in *General Atlantic / Acko*,^[16] there were no overlaps in the businesses of the parties but the target and an affiliate of the acquirer, each had a stake in two rival prominent players for society/gated community management solutions.

Usually, the remedies in cases of common ownership seek to prevent softening of competition. This can be done by restricting the presence of common directors on the board of directors, not exercising voting rights and ensuring maintenance of separate, independent and competitive businesses. Thus, AI firms may consider structuring their deals accordingly.

[14] Refer <https://www.regulators.com/technology/microsoft-ditches-openai-board-observer-seat-amid-regulatory-scrutiny-2024-07-10/>

[15] Canary Investment Limited and Link Investment Trust II, Combination Registration No. C-2020/04/741.

[16] General Atlantic, Combination Registration No. C-2023/04/1017.

PORTFOLIO AND SPILLOVER EFFECTS

Portfolio and spillover effects are routinely assessed by the CCI to analyse whether they can cause AAEC in the market. For instance, a joint venture between an AI firm specializing in machine learning with another firm focused on **Internet of Things** (“IoT”), could benefit from spillover effects in the form of data sharing and enhanced AI models through the data generated by IoT devices. Similarly, there can be portfolio effects by leveraging complementary assets, product integration and cross-selling to each other’s consumers etc.

Even if the parties’ businesses are independent of each other, the possibility of portfolio and spillover effects cannot be ruled out as there is a likelihood of coordination in competitive behaviour through the medium of the combined entity.

ACCESS TO CRITICAL INPUTS AND BUNDLING

AI technology requires specialized technical infrastructure. In deals between AI firms, there may be potential for bundling of services or technical realignment of infrastructure to better suit the contracting parties. These concerns are especially concerning for downstream consumers who may be availing products and services from the target company.

Generally, portfolio effects include potential anti-competitive effects that might arise due to a merger uniting complementary products in which one or more parties enjoy significant market power. The CCI has held that in such cases, the combined entity would have the ability to bundle their portfolios which may have a negative impact on competitors and customers.^[17]

Since preferential treatment and equal access have been the key concerns with AI, ensuring fair competitive treatment becomes the main the question. Reliance may be placed on *Dish TV / Videocon*^[18] and Reliance Jio Infocomm’s strategic acquisition of Den and Hathway, which were the two largest competitors in the cable television and broadband market. In its assessment, the CCI raised concerns about the possibility of technical re-alignment on account of the acquisition that could result in change in customer premises equipment or bundling of services for existing subscribers for services being currently availed by them from the respective companies separately. These transactions were approved on the parties’ commitment to bear the cost of technical realignment and reconfiguration, if any, and the undertaking that the customers would be free to choose any type of services or their bundle i.e., between broadband, Cable TV and telephone, offered by the respective companies. Hence, remedies have to be designed to ensure competition on merits - by letting consumer choice take the centre stage in AI markets. Parties must also be mindful of whether the combination increases the cost for downstream consumers.

[17] Bayer/Monsanto

[18] Dish TV India Limited & Videocon D2h Limited, Combination Registration No.C-2016/12/463.

[19] Jio Futuristic Digital Holdings Pvt. Ltd., Jio Digital Distribution Holdings Pvt. Ltd. and Jio Television Distribution Holdings Pvt. Ltd., Combination Registration No. C-2018/10/609; Jio Content Distribution Holdings Pvt. Ltd., Jio Internet Distribution Holdings Pvt. Ltd., and Jio Cable and Broadband Holdings Pvt. Ltd., C-2018/10/610.

ACCESS TO DATA

Data is central to innovation, growth and development of AI. Consequently, access to vast datasets can increase the market power of the collaborators by bestowing them with an undue advantage over their competitors.

In *Google / Airtel*,^[20] the CCI approved Google's acquisition of a minority stake in Bharti Airtel Limited despite its stake in Airtel's biggest competitor i.e., Jio Platforms Limited subject to restrictions on information control to prevent the flow of competitively sensitive information between rivals. Both Airtel and Jio were active in the markets for provision of wireless telecommunication services, supply of mobile phones, and provision of cloud services in India. The parties further undertook, that they will comply with all applicable privacy and data protection laws governing customer and/or consumer data and will not share customer data with each other.

Another concern was data-backed market power, arising from possible data sharing between Google and Jio. The CCI observed that the assessment in such instances needs to focus on the incentives of parties to pool or share their databank and monetize such data in the best possible means. In this case, since the proposed combination was an acquisition of **7.73%** stake in Jio by Google, it was observed that it may not result in unrestricted access to each other's resources, including user data. Nevertheless, the parties may have incentives to engage in mutually beneficial data sharing.

However, the record is mixed in such cases. While firewalls were adopted in *Google / Airtel*,^[21] in the CCI approved the acquisition of **9.99%** stake by a wholly owned subsidiary of Facebook in Jio without any such commitment.^[22] The investment was aimed at collaborations in the online advertising and e-commerce sectors inter alia through a commercial arrangement to connect the users of WhatsApp with Reliance's e-commerce marketplace, JioMart. Despite a recognition of how data-backed market power can allow firms to pool their data, leading to anti-competitive outcomes and have bearings on platform neutrality, CCI approved the combination while recognizing its pro-competitive effects and the growing synergies between the telecommunication and digital technology sectors. CCI left the scope open for ex post review in the future in case of any anticompetitive effects.

Thus, there is no one-size-fits-all approach to dealing with concerns about access to data. Further, CCI's approach to concerns of data access and data-sharing will have an important bearing on regulation of AI related combinations. Out-of-the-box thinking is needed to design flexible remedies to balance parties' businesses interests with competition concerns.

[20] Google International LLC, Combination Registration No.-2022/03/913.

[21] Ibid.

[22] Jaadhu Holdings, LLC, Combination Registration No. C-2020/06/747.

MITIGATING CONCERNS OF SELF-PREFERENCING

Deals between vertically situated firms can give rise to concerns of self-preferencing such as in the supply and distribution of inputs, access to technology infrastructure etc. Self-preferencing is likely to be a big issue on CCI's radar while assessing the AI sector since an AI firm may use its control over an input or service to favour its own (or its portfolio) products and services over competitors. This practice can distort competition, harm consumers and stifle innovation in the emerging market of AI.

For instance, in *Google / Jio*,^[23] there were overlaps between the parties' activities in mobile app distribution, supply of apps & mobile/web services, supply of advertisement services, and supply of mobile OS, OTT applications and telecommunication services. Consequently, the CCI assessed the ability and incentive of both platforms to discriminate between competitors in their respective businesses and whether their access to each other's resources created any undue advantages.^[24] In particular, Reliance (the parent company of Jio) was found to deploy KaiOS on its mobile devices, offering competition to Google's Android OS, and the proposed business collaboration was likely to reduce the incentive for Reliance to continue with KaiOS-based devices. However, since Reliance confirmed that it would continue to sell KaiOS phones and shall not degrade the quality of these phones to favour the new smartphone to be made in collaboration with Google, the CCI approved the combination.

CCI's decisional practice indicates scrutiny of potential self-preferencing between parties to a combination, but there is also willingness to accept behavioural commitments instead of harsher remedies. Hence, parties to AI-related combinations may brace themselves for similar treatment.

In *Hyundai / Kia Motors*,^[25] the CCI assessed the proposed acquisition by automobile manufacturers Hyundai and Kia for minority shareholdings in ride-sharing company ANI Technologies (OLA) and its electric vehicles arm, OLA Electric Mobility. In its assessment, the CCI was concerned that drivers of Hyundai and Kia cars might be favoured in the OLA ride-sharing marketplace. The CCI approved the transaction after allowing a novel remedy voluntarily offered by the parties – that the strategic collaboration would be on a non-exclusive basis and that the algorithm/programme of the OLA marketplace would not give preference to the drivers driving Hyundai/Kia cars or discriminate against drivers based solely on the brand of the passenger vehicles manufactured by any other automobile manufacturer.

Thus, CCI seems to be open to novel commitments if immediate AAEC concerns are mitigated.

[23] Google International LLC, Combination Registration No. C-2020/09/775, 11 Nov. 2020.

[24] Ibid..

[25] Hyundai Motor Company and Kia Motors Corporation, Combination Registration No. C-2019/09/682.

TRANSFER OF IPR

IPR transfer is a popular method of collaboration amongst AI and tech firms, such as through assignment, exclusive licensing, non-exclusive licensing, etc. Such transactions can also trigger the notification requirement before CCI if jurisdictional thresholds are met since the term '**acquisition**' under **Section 2(a) of the Competition Act** inter alia includes directly or indirectly, acquiring or agreeing to control over assets of any enterprise.^[26] Further, the explanation to **Section 5** clarifies that the value of assets "*shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights*".

However, IPR licensing may not in itself constitute a transfer or acquisition if the licence is demonstrably non-exclusive. For this, the licensor must inter alia establish that it itself continues to use the IPR, or indeed licenses out the IPR to others for wider use, and that the licence is not exclusive, irrespective of terminology used in the licence agreements.^[27]

In this context, AI firms may seek to acquire valuable IPR assets instead of acquiring the firm itself. However, such deals are also likely to invite regulatory scrutiny and must be notified, depending on the nature of the transaction if the jurisdictional thresholds are met. For instance, in *ITC Limited / Johnson & Johnson*,^[28] the CCI imposed a penalty on the parties for not notifying the acquisition of certain trademarks despite meeting the jurisdictional thresholds. The CCI rejected the

acquirer's argument that acquisition of mere trademarks of an enterprise does not amount to acquisition of '**assets**', by observing that trademarks are considered an asset as they provide economic value to their owners. Hence, the CCI clarified that 'assets' includes both tangible and intangible assets in the form of IPR.

This case is particularly relevant since it underscores the fact that intangible assets, which also form the backbone of the AI sector, influence market power and competition. Thus, AI-related combinations involving acquisition of assets like data sets, algorithms and related IPRs might also require notification. The takeaway is that AI firms must be mindful of the economic value of the asset that they are acquiring.

[26] For instance, see *SRF Ltd., Combination* Registration No. C-2015/12/347; *TDY Industries LLC and, General Electric Company Combination* Registration No. C-2016/08/421.

[27] *AT&T and Time Warner Inc., Combination* Registration No. C-2016/11/456, 13 Feb. 2017.

[28] *ITC Limited, Combination* Registration No. C-2017/02/485.

NON-COMPETE AND HIRING OF FORMER EMPLOYEES

Hiring of former employees in a niche market can be a major commercial threat to any firm. This has led to the trend of “**acqui-hires**” in AI sector where firms are being acquired for their talent. For instance, the CMA is currently investigating Microsoft’s hiring of certain former employees of Inflection AI, Inc.^[29] Further, considering that the market of AI components at different levels of the supply chain is highly concentrated, transacting parties may be eager to employ non-compete arrangements to protect their investment in the target business.

However, such non-compete arrangements have been viewed strictly by CCI in the past. In all these cases, the CCI has directed modifications to ensure that the scope of non-compete restrictions is reasonable in duration and geographic terms as well as the persons subject to such conditions.^[30] Thus, parties must attempt to reach a middle ground between safeguarding investments and promoting competitive dynamics within the market.

[29] Refer [Bayer/Monsanto](#).

[30] For instance, see [1] Orchid Chemicals and Pharmaceuticals Limited, Combination Registration No. C-2012/09/79; PVR Limited, Combination Registration No. C-2015/07/288; CDPO Private Equity Asia Pte. Ltd. And Mr. R. Dinesh, Combination Registration No. C-2016/11/453; Mylan Inc., Combination Registration No. C-2013/04/116; Torrent Pharmaceuticals, Combination Registration No. C-2014/01/148; Advent International, Combination Registration No. C-2015/05/270; TVS Logistics, Combination Registration No. C-2015/06/286; Clariant Chemicals, Combination Registration No. C-2016/02/373; LT Foods Middle East, DMCC, Dubai, UAE, LT Foods Limited, Combination Registration No. C-2016/03/387

WAY AHEAD: CREATIVE DEAL STRUCTURING

The kind of commitment to be designed depends on the nature of the nature of the transaction but the key mantra is ensuring that the independence of the parties is maintained, especially in the same market. This is equally true for AI firms.

Parties can avoid structural commitments like divestiture through voluntary modifications in the form of behavioural commitments such as firewalls to prevent the transfer of competitively sensitive data,^[31] mitigating concerns of common ownership through restriction on board representation etc.^[32] Bundling may also be addressed through commitments that the combined entity will maintain non-exclusive distribution channels.^[33] Further, conflicts of interest can be resolved by making compliance with principles of competition neutrality and level playing field take the center-stage in approval of commitments.

CCI's decisional practice of not prohibiting a single combination in more than a decade long merger control regime suggests its pro-competitive approach to regulation and willingness to accept party-centric remedies. Since AI involves complex collaborations with interconnected supply chains, structuring deals creatively is crucial to achieve CCI's approval. It will be extremely interesting to see CCI's stance in this vastly developing space of AI.

[31] Google International LLC, Combination Registration No. C-2022/03/913.

[32] TRIL Urban Transport Private Limited, Valkyrie Investment Pte Limited and Solis Capital (Singapore) Pte. Limited., Combination Registration No. C-2019/07/676.

[33] Bayer AG, Combination Registration No. C-2019/08/523.

THANKYOU!

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