

COMPETITION LAW AND POLICY

Concepts and Practice

India, with the United States, the United Kingdom
and the European Union

VOLUME II

THE LAW OF COMPETITION

Chapters 13 to 26

Niten Chandra

Shalini Chandra

COMPETITION LAW AND POLICY

VOLUME II: THE LAW OF COMPETITION

*Concepts and Practice — India, with the United States, the United Kingdom and
the European Union*

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Competition Law and Policy

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Volume I: The Economics of Competition (Chapters 1 to 12)

Volume II: The Law of Competition (Chapters 13 to 26)

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*To our parents,
and to the consumers and businesses
who seek justice*

VOLUME II

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COMPETITION LAW AND POLICY

PREFACE

Concepts and Practice – India, with the United States, the United Kingdom and the European Union

Every day, in markets across India, someone decides what a bag of cement will cost, which bidder will win a public tender, whether two firms will merge, or on what terms a platform will let a seller reach its customers. Most of these decisions are made by firms acting on their own, and the price, the contract or the terms that result are the work of competition. Some are made by firms acting together, or by one firm with power enough to set the terms for everyone else. Competition law is the body of rules that tells the difference, and competition economics is the discipline that measures it.

This book joins the two. Volume I, *The Economics of Competition*, sets out in twelve chapters how markets work and fail: market power and its measurement, oligopoly and cartels, vertical relations, exclusionary conduct, mergers, platforms and data, the quantitative evidence on which cases turn, and the links from competition to productivity, to growth and to the economy as a whole. Volume II, *The Law of Competition*, sets out in fourteen chapters the law that applies that economics: its concepts and evolution and the Indian institutions; agreements, abuse of dominance and combinations; investigation and procedure, penalties, appeals and private enforcement; the State as market actor; the interfaces with sector regulators, consumer protection and intellectual property; digital markets; cross-border enforcement; and practice, including the Commission's advocacy and its studies of markets. The chapters are numbered continuously across the two volumes, so that a reference to a chapter holds

wherever it is read. Economics comes first because the law cannot be understood, or argued well, without it. A reader who wants the law first can begin with Volume II and follow its references back; How to Use This Book sets out that path and two others.

The argument that runs through both volumes is simple to state. The Constitution protects the Rule of Law and the fundamental rights of Articles 14, 19 and 21, the golden triangle, as part of its basic structure. Those guarantees need economic conditions if they are to be enjoyed in markets: economic opportunity allocated by rules and not by favour; entry open to all who can compete; the necessities of life and the means of livelihood at prices people can pay; and the material resources of the community distributed, as Article 39(b) directs, so as best to subserve the common good. Competition is a means to those conditions. Equality of status and of opportunity, which the Preamble promises, binds private economic power as well as the State: the Supreme Court, reading Articles 14, 15, 16 and 38 together, has held that the private sector which offers facilities to the public may not conduct its affairs so as to promote existing discriminations and disadvantages (Box 12.5A). Competition law is the means by which that equality is secured in markets. Where competition is absent, as it largely was in India before 1991, inefficiency and the economic misery that follows erode those conditions, and the purpose of Article 39(b) is weakened. The policy of 1991, by which India restored competition as a choice of policy and not as a constitutional command, is the exemplar. Chapter 12 develops the argument and Chapters 10 and 11 supply its economic evidence. The empirical work on competition and democracy has measured democracy by its institutions rather than by the rights of citizens, and no study has yet tested competition against those rights in India; this book addresses that gap from the side of law, and §12.9A explains why the connection between competition and democracy is established in law and cannot be settled by econometric indices. In Volume I, Constitutional Lens boxes carry it into the economics of competitive prices, market power, concentration, cartels, vertical relations, exclusion, mergers, platforms, evidence, growth and the macroeconomy; in Volume II, every chapter carries one that applies it to the law of that chapter, and the last chapter closes the book by returning to it.

We came to the subject from two sides. One of us, Niten Chandra, trained first as an economist, at St. Stephen's College and the Delhi School of Economics, and later took a doctorate in economics on government budget outlays and their macroeconomic effects, and a degree in law. He served in the Indian Administrative Service for thirty-five years, from 1990 to 2025; as Law Secretary to the Government of India from 2022 to 2024 he advised on the legislation of those years, the Competition (Amendment) Act, 2023 among it. The other, Shalini Chandra, has practised for twenty years before the Supreme Court and the High Courts, as an Advocate-on-Record since 2013, in a practice that includes public contracts and arbitration, and as a mediator trained and certified by the Mediation and Conciliation Project Committee of the Supreme Court. We have written the book together, and each chapter, in the economics and in the law alike, carries both vantage points: the economist's and administrator's view of how markets and policy work, and the advocate's view of how the law is argued and decided.

The method is comparative and practical. Each topic is taken first in India and then in the United States, the United Kingdom and the European Union, each stated from its own statutes, guidelines and cases, and each chapter closes with a Four-Jurisdiction Matrix and Points to Ponder drawn from the comparison. Indian competition law has a policy charter of its own in the Report of the High Level Committee on Competition Policy and Law of 2000, chaired by S.V.S. Raghavan (the Raghavan Committee Report), and the book reads the Competition Act, 2002 against it. Boxes headed *The Law* and *Sister Statutes and Authorities* reproduce the provisions that matter from the official texts; *Case Note*, *On the Ground*, *From the Bar* and *A Practitioner's Checklist* work through the questions as they arise before the Commission, the Appellate Tribunal and the courts; and an *Economist's Note* in each law chapter sets out the economics on which the law turns. Every causal or empirical claim carries a grade of the strength of the evidence behind it, from strong to theoretical, because a practitioner needs to know not only what economics says but how sure it is.

The book is written for students of law and of economics, for practitioners and in-house counsel, for the officers of the Commission

and of the sector regulators, for judges, and for those who make economic policy. In both volumes the law is stated as at 15 October 2026. Where an appeal or other proceeding was pending on that date, the text states its position as at the latest official record and does not anticipate the outcome.

No book can take the place of the statute, the judgment and the data. Its purpose is to make them intelligible and usable together. If this book helps a student to see why competition matters, an advocate to frame a sharper argument, an officer to reach a sounder decision, or a policy-maker to see what is lost when competition is set aside, it will have served its purpose.

Niten Chandra Shalini Chandra

NOIDA, Uttar Pradesh 201301, India

October 2026

COMPETITION LAW AND POLICY

ABOUT THE AUTHORS

Concepts and Practice – India, with the United States, the United Kingdom and the European Union

Niten Chandra is a former civil servant (IAS, 1990–2025) who was Law Secretary to the Government of India from 2022 to 2024. He came to law through economics. He took a B.A. (Honours) in economics at St. Stephen's College, Delhi, and an M.A. at the Delhi School of Economics, with the gold medal; he later earned an LL.B. from Magadh University and a Ph.D. in Economics from Utkal University for a thesis on government budget outlays and outcomes and their macroeconomic effects.

From April 2020 to May 2022 he was Additional Secretary in charge of the Central Agency Section, through which the Union of India conducts its litigation in the Supreme Court. As Law Secretary he advised Ministries, Departments and Parliamentary Committees on contentious questions of law and on the interpretation of the Constitution and statutes, oversaw the conduct of more than fifty thousand cases for the Union in the Supreme Court and the High Courts, and from time to time held additional charge of the Legislative Department and the Department of Justice. He sat ex officio on the Law Commission of India, the India International Arbitration Centre and the Executive Committee of the Indian Law Institute, where he also lectured on law.

Among the statutes he helped to shape are the Competition (Amendment) Act, 2023, the Digital Personal Data Protection Act, 2023, the Telecommunications Act, 2023, the Mediation Act, 2023 and

the Bharatiya Nagarik Suraksha Sanhita, 2023, with its companion codes, and over one hundred other laws and rules. He was Secretary to the High Level Committee on Simultaneous Elections chaired by Shri Ram Nath Kovind, former President of India, whose report was presented to the President on 14 March 2024.

Shalini Chandra is an Advocate-on-Record of the Supreme Court of India, with twenty years at the Bar. Enrolled in 2006 and qualified as an Advocate-on-Record in 2013, she has conducted more than five hundred cases before the Supreme Court, the High Court of Delhi, the Orissa High Court and administrative Tribunals, in a practice that includes public contracts and arbitration, education regulation, environmental and mining law, and constitutional matters, and she has represented public bodies such as the Delhi Development Authority, the Municipal Corporation of Delhi, the National Highways Authority of India and the National Council for Teacher Education.

She is a mediator trained and certified by the Mediation and Conciliation Project Committee of the Supreme Court of India, has mediated at the Supreme Court Mediation Centre since 2023, and has sat as a sole arbitrator since 2014. From 2015 to 2019 she trained senior civil servants at the Gopabandhu Academy of Administration in Bhubaneswar. She studied English literature at Lady Shri Ram College and Miranda House in the University of Delhi and law at Magadh University, and she undertakes legal work pro bono.

Together the authors bring two vantage points to competition law and policy: the Government's law office, which drafts, advises on and defends the law that regulates markets, and the advocate and mediator who challenges decisions of the State and settles disputes with it. They are also the authors of *Administrative Law: Democracy · Governance · Development · Justice* (2026).

COMPETITION LAW AND POLICY

HOW TO USE THIS BOOK

Concepts and Practice – India, with the United States, the United Kingdom and the European Union

The plan of the book

The book is in two volumes and twenty-six chapters, numbered continuously from the first volume to the second. Volume I, *The Economics of Competition* (Chapters 1 to 12), explains how markets work and fail and what competition does for productivity, growth and the economy as a whole, and ends with the constitutional argument that joins the two volumes. Volume II, *The Law of Competition* (Chapters 13 to 26), sets out the law: its concepts and the Indian institutions, the prohibitions and the control of combinations, procedure, penalties and appeals, the State and the sector regulators, digital markets, cross-border enforcement, and practice. Because the numbering is continuous, a reference to "Chapter 18" or "§7.10" means the same thing in either volume. Table 1 lists the chapters.

Table 1: The twenty-six chapters, by volume

Volume	Chapter	Title
I	1	Markets, Firms and Welfare
I	2	Market Power, Monopoly and Market Definition
I	3	Market Structures and Concentration in India
I	4	Oligopoly, Collusion and Cartels
I	5	Vertical Relations and Foreclosure
I	6	Exclusionary Conduct
I	7	Merger Economics

Volume	Chapter	Title
I	8	Platforms, Data and Innovation
I	9	Quantitative Evidence
I	10	Competition, Productivity and Growth
I	11	Macroeconomics of Competition
I	12	Competition and the Constitution
II	13	Competition Law: Concepts, Objectives and Evolution
II	14	The Indian Framework and Its Institutions
II	15	Horizontal Agreements and Cartels
II	16	Vertical Agreements
II	17	Abuse of Dominance
II	18	Combinations and Merger Control
II	19	Investigation and Procedure before the Commission
II	20	Penalties, Leniency, Settlement and Commitment
II	21	Appeals, Judicial Review and Private Enforcement
II	22	Competition Law and the State
II	23	Interfaces: Sector Regulators, Consumer Protection and Intellectual Property
II	24	Digital Markets and Ex Ante Regulation
II	25	Cross-Border Enforcement and Cooperation
II	26	Competition Practice

Source: Authors' arrangement.

The Schema of Competition Law and Economics, placed before Chapter 1 in each volume, shows on one page how the parts fit together: the constitutional foundations at the top; the economics of markets and market power in Volume I; the three prohibitions and the control of combinations, with the institutions and procedure that apply them, in Volume II; the State, the regulators, digital markets and cooperation across borders; and, at the foot, the economic conditions that competition helps to secure and the dignity of the individual that those conditions serve.

The argument that runs through the book

One argument joins the economics and the law. The Constitution protects the Rule of Law and the golden triangle of Articles 14, 19 and 21, and directs the State, in Articles 38 and 39, towards economic

democracy. Competition is a means to the economic conditions on which those guarantees depend. Chapters 10 and 11 set out the evidence and grade it; Chapter 12 develops the argument; and a box headed *Constitutional Lens* carries it into every chapter of both volumes, each time with the same sentence of thesis: "Competition is a means: an instrument for realising the economic conditions on which the Rule of Law and the golden triangle of Articles 14, 19 and 21 depend, and for the economic democracy of the Directive Principles." The last section of the book, §26.14, returns to the argument without adding to it. The book states the argument as its authors' argument; where a court has held something, the text says so, and where it is the authors' reading, the text says that.

Inside each chapter

Each chapter is divided into numbered sections (§17.5 is section 5 of Chapter 17), and cross-references throughout the book use these numbers. A chapter opens with an illustration — in Volume I a decision, an order or a passage of the Raghavan Committee Report; in Volume II a worked example on stated, hypothetical facts — and a mind map of its ground. Within each topic the Indian rule comes first, followed by the United States, the United Kingdom and the European Union, each stated from its own statutes, guidelines and cases; comparison tables are placed where the comparison arises, not left to the end. Every chapter closes its body with a Four-Jurisdiction Matrix, which sets the four systems side by side on such matters as the substantive rule, the authority, procedure, penalties and remedies, digital markets, advocacy and the leading cases, and with Points to Ponder, which state facts drawn from the comparison.

Every chapter then closes with a *Pointwise Summary*, which states the chapter in numbered propositions, each keyed to the section in which the point is made. It is designed for revision and for a quick review of the law and the economics before a hearing or a filing; the section numbers lead back to the full treatment.

Boxes, figures, tables and memory aids

The book contains 185 figures, 157 tables, 269 boxes and 59 memory aids, each numbered by chapter and listed with page numbers after

the Table of Statutes. The boxes belong to eight families, and each family does one job:

Table 2: The eight families of boxes

Family	What it does
<i>The Law</i>	Reproduces the key provisions, from the official text of the jurisdiction concerned, with the date at which the text is stated and its source.
<i>Sister Statutes and Authorities</i>	Sets out the neighbouring law that a competition case meets: consumer protection, sector regulation, intellectual property, data protection, companies and insolvency, evidence, procurement, and state aid or subsidy control.
<i>Case Note</i>	Takes one decision through its facts, holdings and significance.
<i>Constitutional Lens</i>	Connects the chapter's law or economics to the Rule of Law, Articles 14, 19 and 21, Articles 38 and 39 or the basic structure, with authority, and carries the sentence of thesis.
<i>Economist's Note</i>	In each law chapter, states the economics on which the law turns, with the strength of the evidence.
<i>On the Ground</i>	Shows how a rule works in practice, often from the Commission's Annual Reports, orders and studies.
<i>A Practitioner's Checklist</i>	Lists, in order, what to check or do at a stage of a matter.
<i>From the Bar</i>	Works through a problem as counsel meets it: the argument, the record and the remedy.

Source: Authors' classification.

Besides the charts that present data, which name their source and its date, figures are of four kinds: the mind map that opens each chapter, timelines, process flows that trace a procedure step by step, and diagrams of relationships. Every table carries its number and title above it and its source below it. Memory aids compress lists that must be remembered, such as the elements of an offence, the steps of a procedure or the factors of an assessment.

Evidence and its strength

A practitioner needs to know not only what economics says but how sure it is. The economics chapters, and the Economist's Note in each law chapter, therefore grade each causal or empirical claim as strong, moderate, mixed, weak or theoretical, and say plainly where Indian data run against a channel that the textbooks expect. The grade attaches to the evidence, not to the importance of the point: a

theoretical claim may matter a great deal, and a strong one may matter little to the case in hand.

Conventions

Sources. Statutes, regulations, judgments, orders and reports are cited from their official texts: India Code and the Gazette of India, the websites of the Supreme Court, the High Courts, the National Company Law Appellate Tribunal and the Commission; and the official sources of the United States, the United Kingdom and the European Union. Where a passage could be read only in a copy published by another source, the citation says so in the words "as reproduced by", naming the source. Neutral citations of the Supreme Court of India (for example, 2025 INSC 668) are given where the judgment carries one. Quotations are exact; words omitted are marked by an ellipsis, and words added by square brackets. The composition of a Supreme Court of India bench is given as "a Supreme Court Bench of" the judges named.

Names. "The Act" is the Competition Act, 2002 as amended, and "the Commission" is the Competition Commission of India; "the Director General" is the Commission's Director General; "the Tribunal" or "the NCLAT" is the National Company Law Appellate Tribunal, which has heard competition appeals since 26 May 2017, and "COMPAT" is the Competition Appellate Tribunal that heard them before. The Report of the High Level Committee on Competition Policy and Law (May 2000) is cited as the Raghavan Committee Report. The four jurisdictions are always taken in the same order: India, the United States, the United Kingdom and the European Union.

Money and years. Indian amounts are in rupees: a lakh is one hundred thousand and a crore ten million. Indian financial years run from April to March and are written 2023-24. Figures from the Commission's Annual Reports are taken from the reports for 2014-15, 2022-23, 2023-24 and 2024-25.

Finding cases, statutes and subjects

The Table of Cases lists every decision cited, arranged by jurisdiction and alphabetically within each, with the sections in which it is cited, so that 4.7 means section 7 of Chapter 4, and the page on which it is cited

there. The Table of Statutes, Instruments and Official Documents lists the Constitution, statutes, regulations, rules, notifications and guidelines, and the instruments of the United States, the United Kingdom and the European Union, with the chapters in which they are cited and the provisions cited in each chapter. The list of Abbreviations explains the courts, authorities, law reports and statutes referred to by their initials. The Select Bibliography lists the books, articles and official reports drawn upon, grouped by kind, and marks the select readings recommended for each chapter. The chapters themselves carry no lists of cases, statutes or readings: these are gathered once, at the end of each volume. The Index lists subjects, institutions and doctrines; its references are to sections, with the page of this volume in brackets, so that 18.7 (p 245) means section 7 of Chapter 18, treated on page 245; the section numbers hold in every format of the text.

Three ways through the book

For a course in the economics of competition. Read Volume I in order. Chapters 1 to 3 set out welfare, market power and the structure of Indian markets; Chapters 4 to 8 the economics of each kind of conduct and of mergers and platforms; Chapter 9 the evidence on which cases turn; and Chapters 10 to 12 what competition does for productivity, growth and the economy, and why that matters to the Constitution.

For the law student and the practitioner. Begin with Chapters 13 and 14 on the concepts of the law and the Indian institutions. Then read each chapter of the law with the chapter of economics on which it rests, as Table 3 shows, and finish with Chapters 19 to 21 on procedure, penalties and appeals and with Chapter 26 on practice.

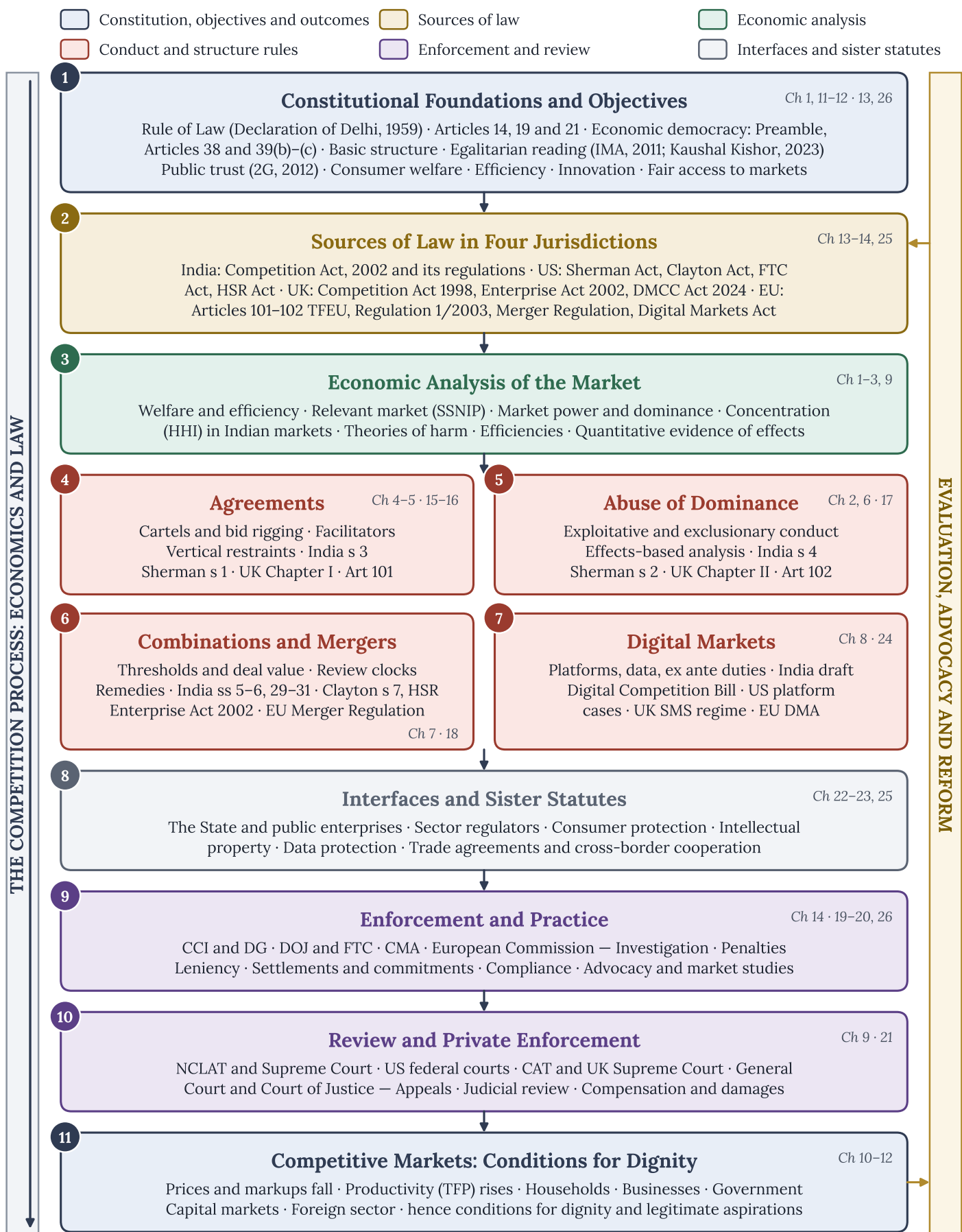
Table 3: Reading the law with its economics

Subject	Economics (Volume I)	Law (Volume II)
Horizontal agreements and cartels	4 Oligopoly, Collusion and Cartels	15 Horizontal Agreements and Cartels
Vertical agreements	5 Vertical Relations and Foreclosure	16 Vertical Agreements
Dominance and its abuse	2 Market Power, Monopoly and Market Definition; 6 Exclusionary Conduct	17 Abuse of Dominance

Subject	Economics (Volume I)	Law (Volume II)
Mergers	7 Merger Economics	18 Combinations and Merger Control
Digital markets	8 Platforms, Data and Innovation	24 Digital Markets and Ex Ante Regulation
Evidence, penalties and damages	9 Quantitative Evidence	19 Investigation and Procedure; 20 Penalties; 21 Appeals and Private Enforcement
The State, regulators and the economy	3 Market Structures and Concentration in India; 10 Competition, Productivity and Growth; 11 Macroeconomics of Competition	22 Competition Law and the State; 23 Interfaces; 26 Competition Practice (advocacy and market studies)
The constitutional argument	12 Competition and the Constitution	The Constitutional Lens box in every chapter; §26.14

Source: Authors' arrangement.

For the policy-maker and the general reader. Chapter 1 explains what competition is and why it matters; Chapter 3 describes concentration in Indian markets; Chapters 10 and 11 set out the evidence on productivity, growth and the economy; Chapter 12 states the constitutional argument; Chapter 22 examines the State as market actor and regulator; and §§26.2 and 26.3 describe the Commission's advocacy and what its studies of markets have found.



VOLUME II

THE LAW OF COMPETITION

Chapters 13 to 26

CHAPTER 13

COMPETITION LAW: CONCEPTS, OBJECTIVES AND EVOLUTION

Volume II · The Law of Competition

CHAPTER 13

COMPETITION LAW: CONCEPTS, OBJECTIVES AND EVOLUTION

What competition law is, whom it binds, what it is for, and how four legal systems arrived at it

Take one agreement and three dates. The dealers meet in their association's hall and agree the price at which each will sell a common product (the facts are hypothetical). In 1965 no competition statute reached it: the MRTP Act lay four years in the future, and that year the Monopolies Inquiry Commission reported on the concentration of economic power (§13.4(a)). In 1980 it would have been a matter for the Monopolies and Restrictive Trade Practices Commission, which would have asked whether the agreement had "the effect of preventing, distorting or restricting competition in any manner", and, after the Supreme Court's decision in *TELCO* (1977), would have answered by weighing its reasons and effects (Box 13.7).¹ In 2026 the Competition Act, 2002 presumes that such an agreement has an appreciable adverse effect on competition, and the Commission may impose a penalty measured by turnover (Chapters 15 and 20). The conduct is the same. What changed is the law's idea of what competition is, whom it binds, and what it is for. This chapter traces that change in India and in the three systems from which India has drawn.

¹Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969), s 2(o), as quoted by the Supreme Court in *Tata Engineering and Locomotive Co Ltd v Registrar of Restrictive Trade Agreements* (1977) 2 SCC 55; 1977 (2) SCR 685, 688.

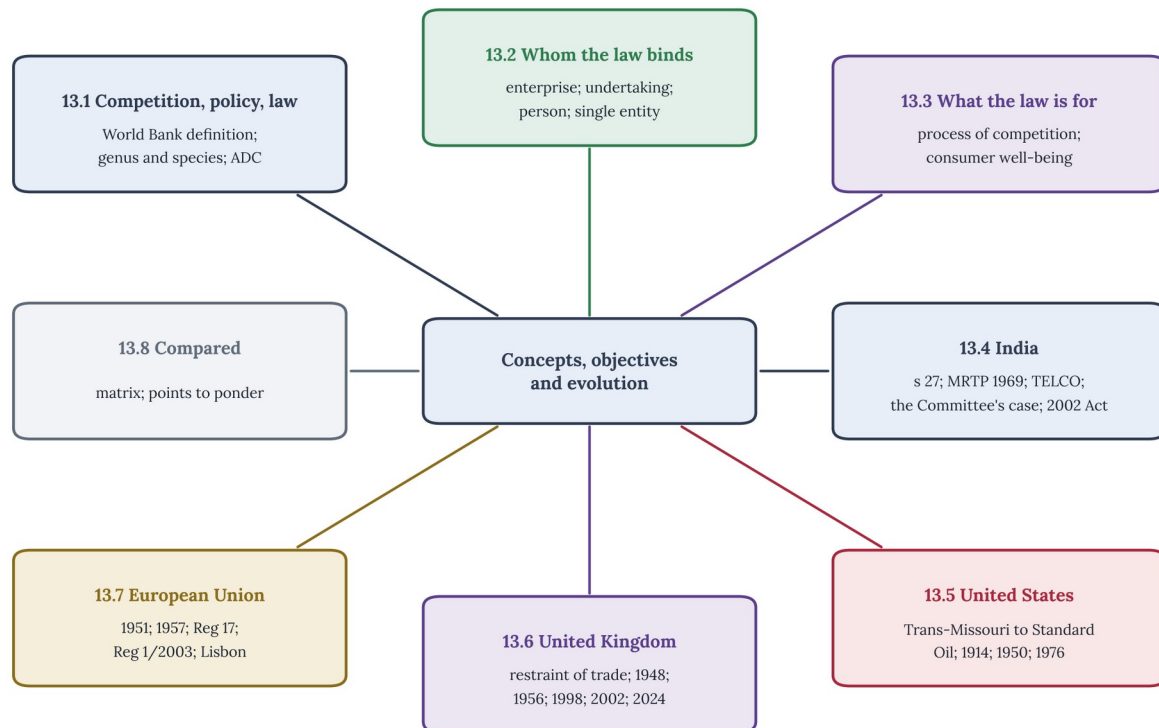


Figure 13.1: Concepts, objectives and evolution: a map of the chapter

Source: Authors' illustration.

§13.1 asks what "competition" means in law, §13.2 whom the law binds, and §13.3 what the law is for. §§13.4–13.7 trace the evolution of the law in the four systems, and §13.8 compares them. The chapter follows the reasoning of the Raghavan Committee Report, which the Supreme Court has called "the blueprint for the Act".²

13.1 Competition, Competition Policy and Competition Law

(a) What "Competition" Means

The Competition Act, 2002 does not define "competition". Nor did the MRTP Act, 1969 before it. The Raghavan Committee conceded the difficulty at the head of its Executive Summary: "In the absence of a generally accepted definition of the phenomenon of Competition, it has to be regarded as the object fostered and protected by

²*Competition Commission of India v Schott Glass India Pvt Ltd*, 2025 INSC 668 (decided 13 May 2025), para 61 (Vikram Nath J for the Supreme Court Bench of Vikram Nath and Prasanna B. Varale JJ). The Report is High Level Committee on Competition Policy and Law (Chairman: S.V.S. Raghavan), Report (Department of Company Affairs, May 2000) ("Raghavan Committee Report").

Competition Policy and Law."³ It then adopted a working definition from the World Bank, which opens the first chapter of the Report:

"a situation in a market in which firms or sellers independently strive for the buyers' patronage in order to achieve a particular business objective for example, profits, sales or market share".⁴

The definition is an economist's description, not a legal test, and it is useful because each of its elements has a counterpart in the Act (Table 13.1). Competition is "a situation in a market", and the Act's prohibitions turn on a relevant market (Chapter 2). It is a contest among "firms or sellers", and the Act's subject is the "enterprise" (§13.2). The firms act "independently", and the word does double duty in the Act. An agreement among enterprises replaces independent decision with coordination, which is the concern of s 3. A dominant enterprise is one that can "operate independently of competitive forces prevailing in the relevant market", which is the concern of s 4.⁵ Independence among rivals is what the law protects; independence from rivals is what it watches. The firms strive "for the buyers' patronage", which is the process of rivalry the long title calls on the Commission to "promote and sustain" (Box 1.1). And they pursue "a particular business objective", which the law leaves to the firm: it does not tell an enterprise to seek profit, sales or share, only how it may not seek them.

Table 13.1: The World Bank definition of competition, element by element

Element of the definition	Where the Competition Act, 2002 meets it	Where the book treats it
"a situation in a market"	The relevant market: s 2(r), (s) and (t); s 19(5)–(7)	Chapter 2
"firms or sellers"	"Enterprise", s 2(h); "person", s 2(l)	§13.2
"independently"	Agreements that replace independent decision with coordination (s 3); dominance as the power to operate independently of competitive forces (s 4, Explanation (a))	Chapters 4, 15, 17

³Raghavan Committee Report, Executive Summary, para 1, p xiii.

⁴Raghavan Committee Report, para 1.1.1, p 1, citing World Bank (1999), *A Framework for The Design and Implementation of Competition Law and Policy* (Washington DC, 1999), p 1 (Raghavan Committee Report, Bibliography, item 20, p 83). The Framework is by R. Shyam Khemani, Robert Anderson and Pete Bamford.

⁵Competition Act, 2002, s 4, Explanation (a)(i).

Element of the definition	Where the Competition Act, 2002 meets it	Where the book treats it
"strive for the buyers' patronage"	Rivalry as a process: the long title and s 18, "promote and sustain competition"	Box 1.1; §13.3
"a particular business objective"	Not prescribed: the law regulates the means, not the firm's end	§13.3

Source: Raghavan Committee Report, para 1.1.1, p 1; Competition Act, 2002 (as amended to 15 October 2026).

The Committee did not stop at the definition. It built an argument, in its first eight paragraphs, for why competition needs law. "A prerequisite for good competition is trade."⁶ The case for free trade is that it joins private gain to public good: "Indeed, it is specifically this coincidence of commercial self-interest and social benefit that offers the most potent argument for free trade."⁷ Free markets have two handicaps. Those who can pay most buy first, whatever their needs; and sellers may withhold supplies to raise prices. On the first the Committee was clear: "the real culprit is income distribution not the competitive system."⁸ On the second it was candid about India's own experience: "In the past, we have attempted to overcome these difficulties by regulating prices. But these efforts have been generally unsuccessful."⁹ Its answer to both was more competition: "Competition therefore becomes an essential handmaiden to efficient trade."¹⁰

Then came a choice between two approaches. "One approach is to have totally free and unfettered competition in the belief that it will drive out all unfair practices." The other is "that the process of free competition should be supported by regulations which preclude any attempt at subversion of free trade and competition."¹¹ The Committee observed that the second approach prevails "in most parts of the world", and it chose it.¹² It also fixed the target of the regulation: "Free competition means total freedom to develop optimum size without any restriction. The limitation, if at all necessary, is not limitation of

⁶Raghavan Committee Report, para 1.1.2, p 1.

⁷Raghavan Committee Report, para 1.1.3, p 1.

⁸Raghavan Committee Report, para 1.1.4, p 1.

⁹Raghavan Committee Report, para 1.1.5, p 1.

¹⁰Raghavan Committee Report, para 1.1.6, p 1.

¹¹Raghavan Committee Report, para 1.1.7, p 1.

¹²Ibid.

size but of competition power."¹³ That sentence is the seed of the distinction between dominance and its abuse that the Act later drew (§2.4; Chapter 17).

Before 2002 the word "competition" had appeared in Indian statute law in a definition of something else. The Committee noted that "Specifically the expression "Competition" figures in section 2(o) of MRTP Act. The said section defines a restrictive trade practice."¹⁴ Section 2(o) defined a restrictive trade practice as one that "has, or may have, the effect of preventing, distorting or restricting competition in any manner", and went on to name two particular kinds: practices that obstruct "the flow of capital or resources into the stream of production", and practices that manipulate prices or supplies so as "to impose on the consumers unjustified costs or restrictions".¹⁵ The Act used competition as the measure of a practice without saying what competition was. So does the Act of 2002.

One member of the Committee thought the omission went deeper. Sudhir Mulji argued in his Note of Dissent that the word itself had led the Committee astray: "In this case the use of the word "Competition" is highly misleading; and it certainly misled us."¹⁶ He quoted Flynn and Stratford to separate two ideas, "a restriction on competition (an economic concept)" and "a restriction on conduct (a concept which lawyers find easier to understand)".¹⁷ The Act of 2002 uses both ideas. It prohibits conduct (agreements, abuses, combinations), but it judges agreements and combinations by whether they cause or are likely to cause "an appreciable adverse effect on competition" (ss 3(1) and 6(1)), and that effect is an economic question (Chapter 9).

(b) Competition Policy and Competition Law

The Raghavan Committee drew the line between policy and law in its Preface: "Competition Policy and Competition Law need to be distinguished. The former can be regarded as a genus, of which, the latter is a specie [sic]."¹⁸ Policy is the wider idea. "Competition Policy

¹³Raghavan Committee Report, para 1.1.8, p 2. The first sentence of the paragraph is quoted in §12.2.

¹⁴Raghavan Committee Report, para 7.1.4, p 68.

¹⁵MRTP Act, 1969, s 2(o), as reproduced in Raghavan Committee Report, para 7.1.4, pp 68–69; the first limb is quoted by the Supreme Court in *TELCO*, above, 1977 (2) SCR 685, 688.

¹⁶Raghavan Committee Report, Note of Dissent (Sudhir Mulji), p 91.

¹⁷*Ibid*, p 91, quoting Flynn and Stratford.

¹⁸Raghavan Committee Report, Preface, para 4, p viii.

includes all Governmental measures that have the objective of creating and sustaining the appropriate market environment."¹⁹ Law is the narrower instrument: "To the extent the implementation of Competition Policy requires legal backing, there is need for a Competition Law", and the law, "therefore, has a more specific focus and is, as a result, necessarily more limited in scope".²⁰ The Committee used the same image twice. In the Preface: "Competition Law provides necessary teeth to the Authority concerned to enforce and implement the Competition Policy." In Chapter IV: "The purpose of any Competition Law is to provide teeth to Competition Policy, where this is necessary."²¹

The policy, in the Committee's account, had four aims, which Figure 13.2 sets out: "Competition policy, in this context, thus becomes an instrument to achieve efficient allocation of resources, technical progress, consumer welfare and regulation of concentration of economic power."²² It placed one condition before them: "there is first a need to bring about a competitive environment."²³ And it explained where law came in: "Forces of competition need to be reinforced with a competition law particularly to counter forces of monopoly."²⁴ Many laws other than the Competition Act shape that environment, as the Committee recognised: "There are a number of laws that directly or indirectly have an impact on economic activity and competition."²⁵ Among the Government's policies that "may support or adversely impinge on" competition policy, the Committee listed industrial policy, small-scale reservation, privatisation and regulatory reform, trade policy, State monopolies and labour policy.²⁶

¹⁹Raghavan Committee Report, para 4.1.5, p 30.

²⁰Raghavan Committee Report, para 4.1.1, p 29. The paragraph's opening contrast between policy and law is quoted in §12.2.

²¹Raghavan Committee Report, Preface, para 4, p viii; para 4.1.5, p 30.

²²Raghavan Committee Report, para 1.2.0, p 2.

²³Raghavan Committee Report, para 1.2.1, p 2.

²⁴Raghavan Committee Report, para 1.2.5, pp 2–3.

²⁵Raghavan Committee Report, para 4.1.2, p 29.

²⁶Raghavan Committee Report, para 3.3.0, p 22.

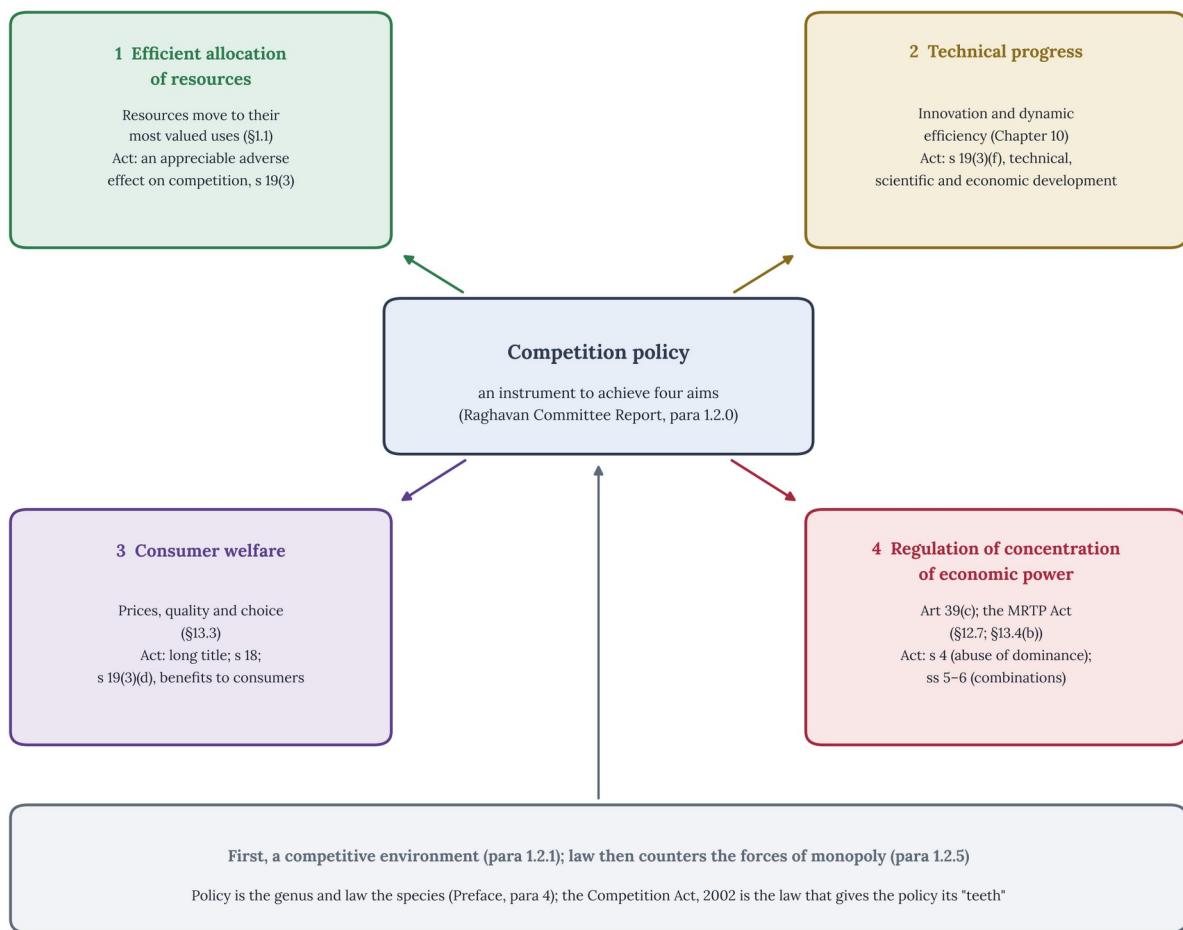


Figure 13.2: The four aims of competition policy, as the Raghavan Committee stated them

Source: Authors' illustration from Raghavan Committee Report, Preface, para 4, and paras 1.2.0, 1.2.1 and 1.2.5; Competition Act, 2002, long title, ss 4–6, 18 and 19(3)(d), (f).

Memory Aid 13.1: the four aims of competition policy "ATCC"

Allocation of resources, efficient
Technical progress
Consumer welfare
Concentration of economic power, regulated

(c) Three Areas of Enforcement

The Committee found that most laws act in three areas. "There are three areas of enforcement that provide the focus for most Competition Laws today": agreements among enterprises; abuse of dominance; and "Mergers or, more generally, Combinations among

enterprises".²⁷ It added that "the purview of the laws in most countries is generally limited to these three areas".²⁸ The areas overlap, it said, but the division "provides a useful taxonomy for organising the thinking about Competition Law". The Committee's reason for treating mergers separately was that "The concern with mergers is ultimately a concern with market power and the possible abuse of that market power by the merged entity", and that it "might be difficult to deal with the situation after the fact".²⁹

Two things were deliberately left out. Unfair trade practices, which the MRTP Act had covered since 1984 (§13.4(b)), were to go elsewhere: they "are not included here and should be included in the relevant Consumer Protection Act(s)".³⁰ And the regulation of particular sectors, though it "falls under the larger ambit of Competition Policy", was not to be part of the competition law itself.³¹ The Act of 2002 followed the three areas exactly: s 3 (agreements), s 4 (abuse of dominance) and ss 5–6 (combinations). The other three systems act in the same three areas, with additions, some of them later than the Report (Table 13.2).

Table 13.2: The three areas of enforcement in India, the United States, the United Kingdom and the European Union

Area	India	United States	United Kingdom	European Union
Agreements	Competition Act, s 3	Sherman Act §1	Competition Act 1998, s 2 (Chapter I)	TFEU art 101
Single-firm conduct	s 4 (abuse of dominance)	Sherman Act §2 (monopolisation)	Competition Act 1998, s 18 (Chapter II)	TFEU art 102
Mergers	ss 5, 6, 20, 29–31	Clayton Act §7; HSR Act (Clayton §7A)	Enterprise Act 2002, Part 3	Regulation 139/2004

²⁷Raghavan Committee Report, para 4.1.9, p 31.

²⁸Raghavan Committee Report, para 4.2.0, p 32.

²⁹Raghavan Committee Report, para 4.2.1, p 32. Chapter 7 (§7.1(d)) examines the Committee's reasoning on merger review.

³⁰Raghavan Committee Report, para 4.1.9, n 7, p 31.

³¹Ibid.

The chapter continues

*Chapter 13, Competition Law: Concepts, Objectives and Evolution,
continues in the complete volume.*

CHAPTER 14

THE INDIAN FRAMEWORK AND ITS INSTITUTIONS

Volume II · The Law of Competition

CHAPTER 14

THE INDIAN FRAMEWORK AND ITS INSTITUTIONS

The statute, the Commission and its Director General, the appellate route, and the counterpart authorities in the United States, the United Kingdom and the European Union

Take one complaint and follow it through the institutions (the facts are hypothetical). A municipal corporation finds that the bids in three successive tenders for road materials rise in step, and it files information with the Competition Commission of India. The Commission forms a prima facie view and directs the Director General to investigate. The Director General gathers documents, examines witnesses and reports. The Commission hears the parties and passes a final order with a penalty. The parties appeal to the National Company Law Appellate Tribunal, depositing a quarter of the penalty, and from the Tribunal the matter may go to the Supreme Court. In Washington the same complaint would go to the Antitrust Division of the Department of Justice and, if charged, to a federal court. In London it would go to the Competition and Markets Authority, with an appeal to the Competition Appeal Tribunal. In Brussels it would go to the European Commission, with review by the General Court. This chapter describes those institutions: who they are, how they are appointed, what they may do, and how their decisions are reviewed.

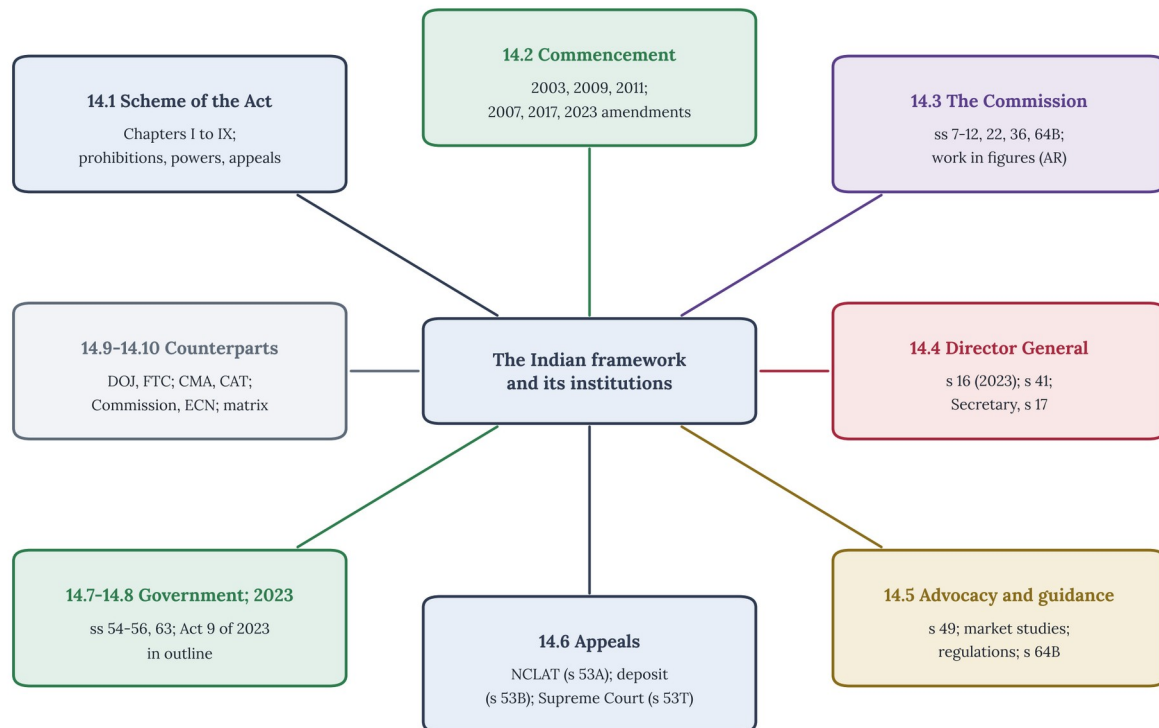


Figure 14.1: The Indian framework and its institutions: a map of the chapter

Source: Authors' illustration.

14.1 The Scheme of the Act

The Competition Act, 2002 is arranged in ten chapters. Chapter I contains the short title and the definitions. Chapter II contains the three prohibitions and the regulation of combinations: anti-competitive agreements (s 3), abuse of dominant position (s 4), and combinations (ss 5, 6 and 6A). Chapters III to V create the institutions: the Commission and its Director General. Chapter VI deals with penalties, Chapter VII with competition advocacy, and Chapter VIII with finance, accounts and audit. Chapter VIIIA establishes the appellate route, and Chapter IX contains the Central Government's powers and the rules and regulations. Table 14.1 sets out the arrangement.¹

Table 14.1: The Competition Act, 2002, chapter by chapter

Chapter	Heading	Sections	What it does
I	Preliminary	1-2	Title, extent, commencement; definitions

¹Competition Act, 2002 (12 of 2003), arrangement of sections, as consolidated on India Code to 12 October 2026. Section 6A ("Open offers, etc.") was inserted by the Competition (Amendment) Act, 2023 (9 of 2023), s 8, and Chapter VI now runs to s 48C, inserted by s 35 of the same Act.

Chapter	Heading	Sections	What it does
II	Prohibition of certain agreements, abuse of dominant position and regulation of combinations	3–6A	The three prohibitions; notice of combinations; open offers (s 6A, 2023)
III	Competition Commission of India	7–17	Establishment, composition, selection, term, removal; Director General; Secretary and staff
IV	Duties, powers and functions of Commission	18–40	Duty (s 18); inquiry (s 19); orders (ss 26–33); procedure (s 36); rectification (s 38)
V	Duties of Director General	41	Investigation, search and seizure
VI	Penalties	42–48C	Penalties; lesser penalty (s 46); settlement and commitment (ss 48A–48C, 2023)
VII	Competition advocacy	49	References by Governments; advocacy
VIII	Finance, accounts and audit	50–53	Grants by the Central Government (s 50); fund; accounts and audit
VIIIA	Appellate Tribunal	53A–53U	NCLAT as Appellate Tribunal; appeals; compensation; appeal to the Supreme Court
IX	Miscellaneous	54–66	Exemptions; directions; supersession; rules (s 63); regulations (s 64); guidelines (s 64B); repeal of the MRTP Act (s 66)

Source: Competition Act, 2002, arrangement of sections (India Code), as amended to 15 October 2026. Several sections in Chapters IV and VIIIA are omitted and are not listed.

The chapters connect in one line of authority. The prohibitions in Chapter II are enforced by the Commission under Chapter IV, which inquires into a contravention on information, on a reference or of its own motion, directs the Director General to investigate, and passes final orders. The Director General's powers are in Chapter V. Penalties are imposed under Chapter VI. Appeals from the Commission's orders go to the Appellate Tribunal under Chapter VIIIA, and from the Tribunal to the Supreme Court. Chapter VII gives the Commission a second role, that of advising Governments and promoting a culture of competition, and Chapter IX holds the powers of the Central Government that frame the whole.

Box 14.1: The Law — The Commission: Establishment and Composition

Competition Act, 2002, s 7(1)–(2)

"(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India". (2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued."

Competition Act, 2002, s 8 (as substituted by Act 39 of 2007 and amended by Act 9 of 2023, s 9, with effect from 18 May 2023)

"(1) The Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government. (2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, technology, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission. (3) The Chairperson and other Members shall be whole-time Members."

As at 15 October 2026. Source: India Code, Competition Act, 2002 (consolidated), ss 7 and 8 with footnotes; Competition (Amendment) Act, 2023, s 9 (inserting "technology," after "industry,"). The Commission was established from 14 October 2003, with its head office at New Delhi (S.O. 1198(E), 14 October 2003).

Section 9 provides for the selection of the Chairperson and Members from a panel recommended by a Selection Committee chaired by the Chief Justice of India or his nominee; its text, as it stood before the 2023 amendment, is in Box 12.8. The 2023 amendment added technology to the fields of knowledge that qualify a person for appointment, both in s 8(2) and among the experts on the Selection Committee in s 9(1)(d).²

14.2 Commencement and Amendment, 2003–2024

The Act received the President's assent on 13 January 2003 (§13.4(d)), but it came into force in stages over eight years. The provisions on the Commission's composition, selection and term, and on the Director General and staff, came first, on 31 March 2003. The remaining

²Competition (Amendment) Act, 2023, ss 9 and 10, in force 18 May 2023 (S.O. 2228(E), 18 May 2023).

sections of Chapter III (ss 7, 11, 12, 13 and 15), ss 22, 23 and 36, and ss 49 to 62, 64 and 65, with further parts of s 63, followed on 19 June 2003, and the Commission was established from 14 October 2003. The prohibitions of anti-competitive agreements and abuse of dominance came into force on 20 May 2009, the repeal of the MRTP Act on 1 September 2009, and the regulation of combinations on 1 June 2011.³ Table 14.2 and Figure 14.2 set out the sequence with the amending Acts.

Table 14.2: Commencement and amendment of the Competition Act, 2002

In force	Instrument	What came into force
31 March 2003	S.O. 340(E)	s 1; definitions in s 2(d), (g), (j), (k), (l), (n); ss 8, 9, 10, 14, 16, 17; parts of s 63
19 June 2003	S.O. 715(E)	Rest of s 2; ss 7, 11, 12, 13, 15, 22, 23, 36, 49–62 and other provisions
14 October 2003	S.O. 1198(E)	The Commission established; head office at New Delhi
12 October 2007	Notification of 12 October 2007	Provisions of the Competition (Amendment) Act, 2007 (Act 39 of 2007), including: ss 8, 10, 16, 17, 22 and 36 substituted or amended; s 37 (review) omitted
20 May 2009	S.O. 1241(E)	ss 3, 4, 18, 19, 21, 26, 27 and related provisions
1 September 2009	S.O. 2204(E)	s 66: repeal of the MRTP Act, 1969 and dissolution of the MRTP Commission
1 June 2011	S.O. 479(E); notifications of 30 May 2011	Combinations: ss 5, 6, 20, 29, 30 and 31; ss 43A and 44
26 May 2017	S.O. 1696(E) (Finance Act, 2017)	The NCLAT becomes the Appellate Tribunal (s 2(ba), s 53A substituted); the Competition Appellate Tribunal's provisions omitted
18 May 2023	S.O. 2228(E)	First provisions of the Competition (Amendment) Act, 2023 (Act 9 of 2023), including s 41 (investigation), s 22(3) (casting vote omitted), s 53B (deposit), s 64A
18 July 2023	S.O. 3199(E)	s 16(1): the Director General appointed by the Commission
26 October 2023	S.O. 4672(E)	s 64B: guidelines

³India Code, Competition Act, 2002, footnote to s 1(3), recording S.O. 340(E), 31 March 2003; S.O. 715(E), 19 June 2003; S.O. 1241(E), 15 May 2009 (in force 20 May 2009); S.O. 2204(E), 28 August 2009 (s 66, in force 1 September 2009); S.O. 1231(E), 30 May 2011 (s 44, in force 1 June 2011); S.O. 1198(E), 14 October 2003 (establishment). The combination provisions (ss 5, 6, 20, 29, 30 and 31) were brought into force on 1 June 2011 by S.O. 479(E), 4 March 2011, and s 43A from the same date by a notification of 30 May 2011.

In force	Instrument	What came into force
6 March 2024	Notification under s 1(2) of Act 9 of 2023	s 27(b) (penalty on global turnover); ss 48–48C (settlement and commitment); s 53N
10 September 2024	S.O. 3846(E)	Combinations: deal value threshold (s 5); timelines (ss 6, 29, 29A, 31); s 6A; s 43A; s 53A(1)(a)
19 September 2024	Notification under s 1(2) of Act 9 of 2023	s 26(9): closure or final order after investigation

Source: India Code, Competition Act, 2002, footnotes to s 1(3) and to the amended sections; Competition (Amendment) Act, 2023, s 1(2), and the commencement notifications of the Ministry of Corporate Affairs (e-Gazette); Finance Act, 2017 (7 of 2017), Part XIV of Chapter VI, and S.O. 1696(E), 26 May 2017.

The Act has been amended by the Competition (Amendment) Act, 2007, the Finance Act, 2017 and the Competition (Amendment) Act, 2023, and, in s 66 only, by the Competition (Amendment) Act, 2009. The Act of 2007, published in the Gazette of India on 25 September 2007, recast the Commission after *Brahm Dutt* (§12.11(d)): the substituted s 8 reduced the maximum number of other Members from ten to six and omitted the qualification of a person who is, or is qualified to be, a judge of a High Court; the substituted s 9 entrusted selection, previously left to rules, to a Committee chaired by the Chief Justice of India or his nominee; and a Competition Appellate Tribunal was created. The Finance Act, 2017 transferred the Tribunal's work to the National Company Law Appellate Tribunal from 26 May 2017. The Competition (Amendment) Act, 2023 received the President's assent on 11 April 2023 and came into force in stages between 18 May 2023 and 19 September 2024.⁴ Its content is outlined in §14.8.

⁴Competition (Amendment) Act, 2007 (39 of 2007), Gazette of India, Extraordinary, Part II, s 1, 25 September 2007; Finance Act, 2017 (7 of 2017), assent 31 March 2017, Part XIV of Chapter VI in force 26 May 2017 (S.O. 1696(E)); Competition (Amendment) Act, 2023 (9 of 2023), assent 11 April 2023. A fourth amending Act, the Competition (Amendment) Act, 2009 (39 of 2009), amended s 66 (Box 13.9).

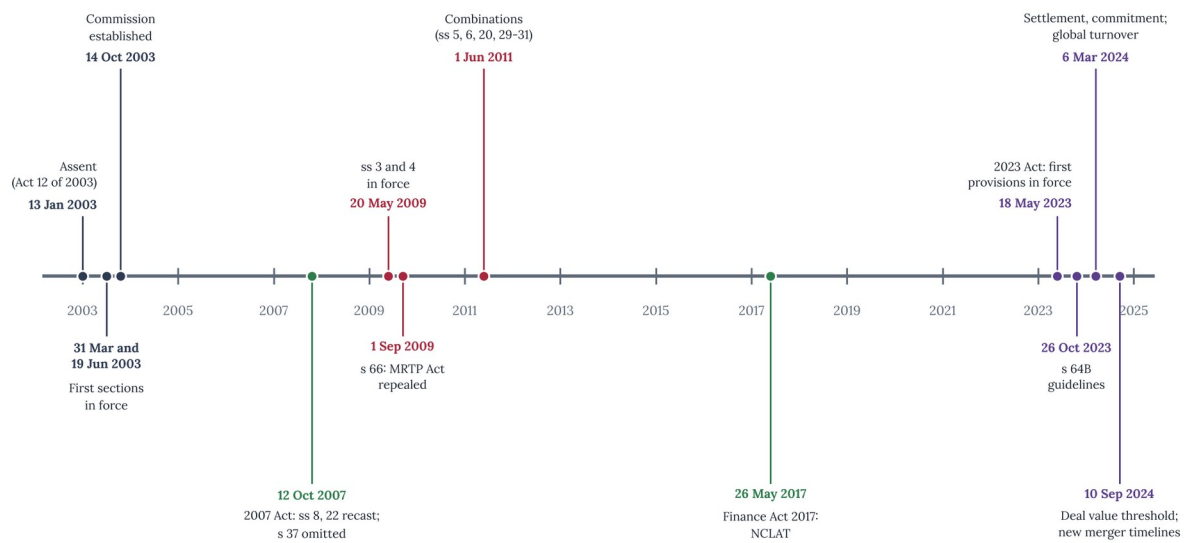


Figure 14.2: Commencement and amendment of the Competition Act, 2002, 2003–2024

Source: Authors' compilation from the notifications listed in Table 14.2.

14.3 The Competition Commission of India

(a) Composition, Appointment and Term

The Commission is a body corporate with perpetual succession (s 7(2)). It consists of a Chairperson and not less than two and not more than six other Members, all whole-time, appointed by the Central Government (s 8; Box 14.1). They are appointed from a panel recommended by a Selection Committee of five: the Chief Justice of India or his nominee as Chairperson, the Secretaries in the Ministries of Corporate Affairs and of Law and Justice, and two experts (s 9(1); Box 12.8). Each holds office for five years and is eligible for re-appointment, but no one may hold office after the age of sixty-five (s 10(1)). When the office of Chairperson falls vacant, or the Chairperson is unable to act, the senior-most Member acts in that office (s 10(4)–(5)). Table 14.3 sets out the statutory features of the Commission in one place.

Table 14.3: The Competition Commission of India at a glance

Feature	Provision	Section
Status	Body corporate with perpetual succession and a common seal; may sue and be sued	s 7(2)
Composition	Chairperson and not less than two and not more than six other Members; all whole-time	s 8(1), (3)
Qualifications	Ability, integrity and standing; special knowledge and at least fifteen years' professional experience in a listed field (technology added in 2023)	s 8(2)
Selection	Panel recommended by a Selection Committee chaired by the Chief Justice of India or his nominee	s 9(1)
Term	Five years; eligible for re-appointment; not after the age of sixty-five	s 10(1)
Removal	By order of the Central Government on grounds listed in s 11(2); on two grounds only after an inquiry and report by the Supreme Court on a reference	s 11(2)–(3)
After office	For two years, no employment, advice or management connection with a party to a proceeding or a person who appeared before the Commission; no representation before the Commission (2023)	s 12
Decisions	By a majority of the Members present and voting; quorum of three; the casting vote omitted in 2023	s 22(3)
Procedure	Guided by the principles of natural justice; powers of a civil court for summons, documents, evidence and commissions	s 36
Funding	Grants by the Central Government after due appropriation by Parliament	s 50

Source: Competition Act, 2002, ss 7–12, 22, 36 and 50, as amended to 15 October 2026 (India Code; Competition (Amendment) Act, 2023, ss 9–11 and 18).

(b) Removal and the Restriction after Office

The Central Government may remove the Chairperson or a Member by order on six grounds: insolvency, paid employment during the term, conviction for an offence involving moral turpitude, the acquisition of an interest likely to affect prejudicially the Member's functions, abuse of position, and incapacity (s 11(2)). For the fourth and fifth grounds, removal requires a reference to the Supreme Court and a report by the Court, after an inquiry, that the Member ought to be removed (s 11(3); Box 14.2). The Delhi High Court relied on this

The chapter continues

*Chapter 14, The Indian Framework and Its Institutions,
continues in the complete volume.*

CHAPTER 15

HORIZONTAL AGREEMENTS AND CARTELS

Volume II · The Law of Competition

CHAPTER 15

HORIZONTAL AGREEMENTS AND CARTELS

The section 3(3) presumption, price fixing, output limitation, market sharing and bid rigging, hub-and-spoke arrangements and the proof of agreement, with the Sherman Act, Chapter I of the Competition Act 1998 and Article 101 TFEU

A district hospital invites tenders for surgical consumables (the facts are hypothetical). Four firms submit bids. One withdraws its bid before opening; the other three, opened together, lie within one per cent of each other; and the firm that wins later gives part of the supply to the firm that withdrew. Nothing in the papers records an agreement. The questions this chapter answers are the ones the hospital, the Competition Commission of India and the bidders would ask next: what the Commission must prove before the law presumes harm, whether the conduct is bid rigging within s 3(3) (d), what a bidder may say in answer, and how the same facts would be charged in the United States, the United Kingdom and the European Union. The chapter returns to the hospital at §§15.2, 15.5 and 15.11.

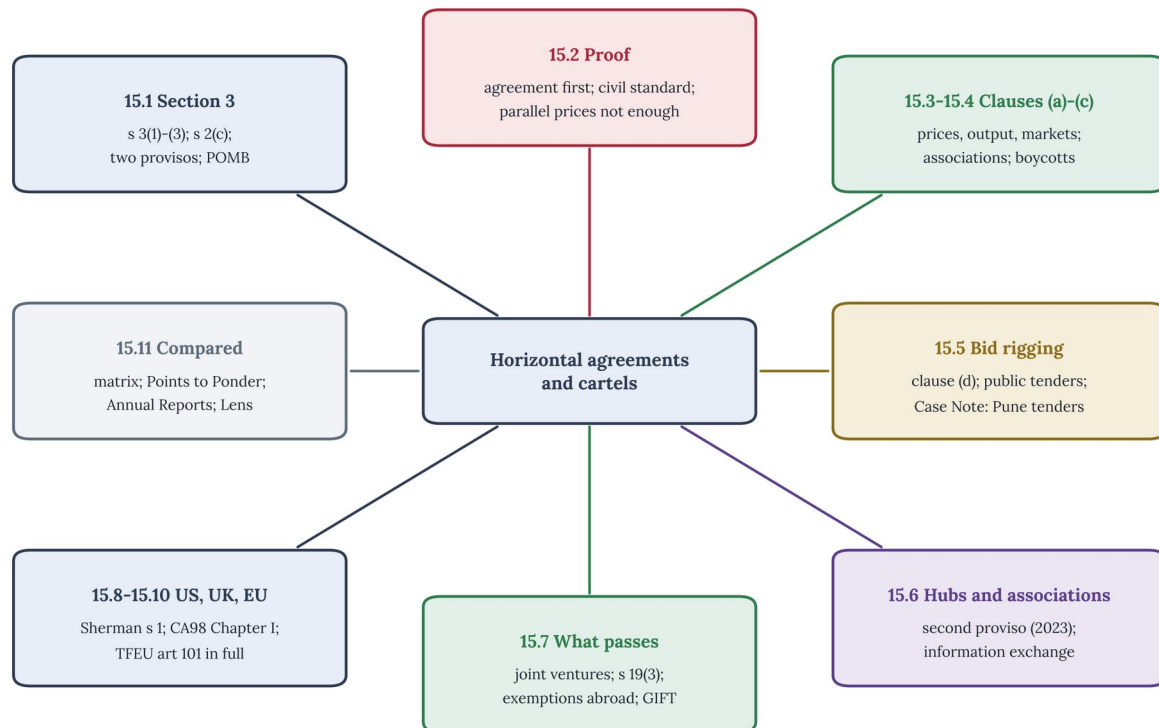


Figure 15.1: Horizontal agreements and cartels: a map of the chapter

Source: Authors' illustration.

Chapter 4 explains why oligopolists may collude without agreeing, what makes cartels stable and why leniency works, and sets out the texts of s 2(b), s 3(3), the second proviso and the Explanation on bid rigging (Box 4.3) and the sanctions (Box 4.5). This chapter does not repeat that material. It states the law of s 3 as it applies to agreements between competitors, the Indian orders and judgments that apply it, and the law of the United States, the United Kingdom and the European Union in full.

15.1 The Prohibition in Section 3

(a) The Structure of Section 3

Section 3 is built in three steps. Section 3(1) prohibits any agreement "in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India". Section 3(2) makes such an agreement void. Section 3(3) then picks out four kinds of agreement between persons "engaged in identical or similar trade" and presumes them to have that effect: agreements that determine prices, that limit or control production or supply, that

share markets, and that result in bid rigging (Box 15.1; for the text of s 3(3) itself, Box 4.3). For these four, the person alleging the contravention need not prove an appreciable adverse effect; the presumption supplies it. For every other agreement, including the vertical agreements of s 3(4) (Chapter 16), the effect must be shown, by reference to the factors in s 19(3) (Chapters 1 and 5).

The parties to the agreement are described broadly. Section 3(3) reaches an agreement "between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise", and also a "practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels". An association's practice or decision is therefore within s 3(3) in the same way as an agreement, which matters for trade and professional associations (§15.6). The definition of "cartel" in s 2(c) adds that the members act "by agreement amongst themselves" to "limit, control or attempt to control" production, distribution, sale, price or trade (Box 15.1).

Box 15.1: The Law – The Prohibition of Anti-Competitive Agreements**Competition Act, 2002, s 3(1)**

"No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India."

Competition Act, 2002, s 3(2)

"Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void."

Competition Act, 2002, s 3(3), first proviso

"Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services."

Competition Act, 2002, s 2(c)

"'cartel' includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;"

- **Not repeated here.** Section 2(b) ("agreement"), the opening words and clauses (a)–(d) of s 3(3), the second proviso (2023) and the Explanation defining "bid rigging" are in Box 4.3.

As at 15 October 2026. Sources: Competition Act, 2002, ss 2(c), 3(1)–(3), consolidated text published by the Commission (cci.gov.in); Competition (Amendment) Act, 2023, s 4, which inserts the second proviso to s 3(3) and amends s 3(4), and does not otherwise amend s 3(1)–(3) or s 2(c) (Gazette copy published by the Commission).

(b) The Four Forms and Their Counterparts

The four clauses of s 3(3) correspond closely to the categories that the other three systems treat most strictly. In the United States, agreements among competitors to fix prices or to divide markets are unlawful per se, and output limitation is "ordinarily" condemned in the same way (§15.8). In the European Union and the United Kingdom, agreements that "directly or indirectly fix purchase or selling prices", "limit or control production" or "share markets or sources of supply" are the first three examples in art 101(1) and in s 2(2) of the Competition Act 1998; the CMA lists price fixing, market sharing, bid rigging and agreeing to limit output among the horizontal agreements "found to restrict competition by object" (CMA184, para 3.35), and the Court of Justice gives "horizontal price-fixing by cartels" as its example (*Cartes*

Bancaires, para 51) (§§15.9–15.10). India alone names bid rigging as a separate clause of its civil prohibition and defines it there; the United Kingdom names and defines "bid-rigging arrangements" only for its criminal cartel offence (Enterprise Act 2002, s 188(2)(f) and (5); §15.9). Table 15.1 sets out the correspondence.

Table 15.1: The four forms of section 3(3) and their counterparts

Form	India	United States	United Kingdom	European Union
Price fixing	s 3(3)(a): "directly or indirectly determines purchase or sale prices"	Per se unlawful (<i>Trenton Potteries</i> , 1927; <i>Socony</i> , 1940)	CA98 s 2(2)(a)	TFEU art 101(1)(a)
Output and supply limitation	s 3(3)(b): "limits or controls production, supply, markets, technical development, investment or provision of services"	Ordinarily per se unlawful (NCAA, 1984, at 100)	CA98 s 2(2)(b)	TFEU art 101(1)(b)
Market sharing	s 3(3)(c): by area, type of goods or services, number of customers "or any other similar way"	Per se unlawful (<i>Topco</i> , 1972; <i>Palmer</i> , 1990)	CA98 s 2(2)(c)	TFEU art 101(1)(c)
Bid rigging	s 3(3)(d) and the Explanation	Per se violation of §1 (Antitrust Division primer, revised 2021)	Within s 2(1), by object (CMA184, para 3.35); defined for the cartel offence, EA02 s 188(5)	Within art 101(1) (Commission Notice 2021/C 91/01, s 5.1); no separate clause
Legal effect	Appreciable adverse effect presumed; rebuttable	No inquiry into reasonableness	Restriction by object; exemption under s 9 possible in law	Restriction by object; exemption under art 101(3) possible in law

Source: Competition Act, 2002, s 3(3); 15 U.S.C. §1, the cases cited in §15.8 and US Department of Justice, Antitrust Division, Price Fixing, Bid Rigging, and Market Allocation Schemes (revised February 2021); Competition Act 1998, s 2(2), and CMA184, para 3.35; TFEU art 101(1), *Cartes Bancaires*, para 51, and Commission Notice on tools to fight collusion in public procurement (2021/C 91/01), s 5.1.

Memory Aid 15.1: the four forms of section 3(3) "POMB"

Prices: determining purchase or sale prices, directly or indirectly (clause (a))

Output: limiting or controlling production, supply, markets, technical development, investment or services (clause (b))

Markets: sharing markets or sources of production by area, goods, customers or any similar way (clause (c))

Bids: bid rigging or collusive bidding (clause (d) and the Explanation)

The prohibition came into force with s 4 on 20 May 2009 (§14.2). Figure 15.2 places it beside the rules of the other three systems.



Figure 15.2: The prohibition of horizontal agreements in the four jurisdictions: a timeline

Source: Authors' illustration from the statutes, judgments and instruments cited in this chapter.

(c) The Two Provisos

The first proviso takes efficiency-enhancing joint ventures out of s 3(3). It does not take them out of s 3(1): an agreement entered into "by way of joint ventures" that "increases efficiency" loses the presumption, so that its effect on competition must then be proved

under s 3(1) and s 19(3), like any other agreement (§15.7). The second proviso, in force from 18 May 2023, works in the opposite direction. It brings within the presumption an enterprise, person or association "though not engaged in identical or similar trade" that "participates or intends to participate in the furtherance" of the agreement (Box 4.3; §15.6). The Commission's own explanation of the amendment is that it "would capture hub-and-spoke cartels within the presumptive framework of Appreciable Adverse Effect on Competition".¹

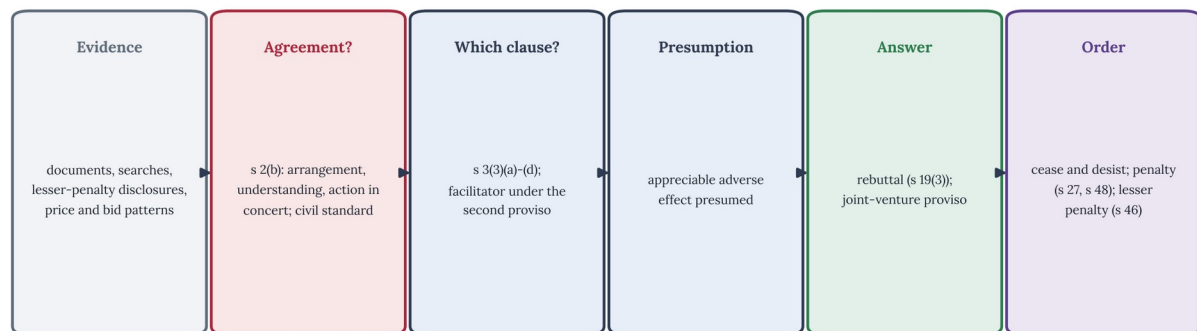
15.2 Proving an Agreement

(a) What Must Be Proved

The presumption in s 3(3) attaches to an agreement. It does not supply one. The Commission, acting on the Director General's report, must first find that the parties entered into an "agreement" in the wide sense of s 2(b), which includes an "arrangement or understanding or action in concert", whether or not formal, written or enforceable (Box 4.3). Only then does the burden shift to the parties to show that the agreement has no appreciable adverse effect. The Supreme Court has held that the standard of proof is the civil one, "one of probability", and that market structure may be used to rebut the presumption (*Rajasthan Cylinders*, Box 4.6). In the cement appeals the NCLAT put the point in these words: "What is required to be proved is a strong probability in favour of a pre-concerted agreement".² Figure 15.3 shows the sequence.

¹Competition Commission of India, *Competition (Amendment) Act, 2023: Salient Features* (booklet).

²*Ambuja Cements Ltd v Competition Commission of India*, TA(AT)(Compt) No 22 of 2017 and connected appeals (NCLAT), para 96. For the outcome of the appeals see Table 4.2.



If no agreement is proved, s 3(3) does not apply; other agreements need proof of effect under s 3(1) and s 19(3).

Procedure: Chapter 19. Penalties and lesser penalty: Chapter 20.

Figure 15.3: From evidence to order under section 3(3)

Source: Authors' illustration from the Competition Act, 2002, ss 2(b), 3, 19(3), 27, 46 and 48.

(b) Direct and Circumstantial Evidence

The material on which an agreement may be found is of three kinds. The first is what the Director General finds in the parties' records, including by search and seizure under s 41 (Chapter 19). The second is what cartel members disclose to obtain a lesser penalty under s 46 (Chapter 20). The third is circumstantial: the pattern of prices and bids, and the structure of the market in which they appear. Chapter 4 explains why parallel prices alone prove little in an oligopoly and what economists mean by "plus factors" (§4.13).

The Commission has applied that reasoning to tenders. In *Delhi Jal Board v Grasim Industries*, a reference concerning tenders for poly aluminium chloride and liquid chlorine, it accepted that "price parallelism per se is not sufficient to establish collusion", but found that the bids had been "designed and coordinated by the same set of professionals" and that "the various cost components were adjusted to arrive at the quoted prices agreed upon by the bidders in concert".³ The order shows the method: parallel prices open the inquiry, and evidence that the prices were not set independently closes it. The same order dealt with two companies of one group that had bid separately. The Commission rejected their reliance on the "group" concept of s 5, which it held "applicable only in the context of

³*Delhi Jal Board v Grasim Industries Ltd*, Ref Case Nos 03 and 04 of 2013 (CCI, 5 October 2017), paras 125, 147 and 155.

The chapter continues

*Chapter 15, Horizontal Agreements and Cartels,
continues in the complete volume.*

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Every day, in markets across India, someone decides what an air ticket will cost, how many seats will fly a route, which bidder will win a public tender, whether two firms will merge, or on what terms a platform will let a seller reach its customers. When IndiGo cancelled flights on a large scale in early December 2025, the Competition Commission of India directed an investigation into whether the airline had imposed unfair conditions on passengers and limited the supply of air travel, and in 2026 it invited public comments on the commitments the airline offered (*Kartikeya Rawal v InterGlobe Aviation Ltd*, Case No 44 of 2025). Competition Law and Policy explains the economics and the law that govern such decisions, in India and, side by side, in the United States, the United Kingdom and the European Union.

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Niten Chandra, who retired from the Indian Administrative Service in 2025 after thirty-five years, was Law Secretary to the Government of India from 2022 to 2024. Before that he directed the Union's litigation in the Supreme Court as Additional Secretary in charge of the Central Agency Section. He sat ex officio on the Law Commission of India, the India International Arbitration Centre and the Executive Committee of the Indian Law Institute, and helped shape the Mediation Act, the Competition (Amendment) Act and the Digital Personal Data Protection Act, all of 2023, and over one hundred other laws and rules. Educated at St. Stephen's College and the Delhi School of Economics (gold medal), he holds an LL.B. and a Ph.D. in Economics.

Shalini Chandra is an Advocate-on-Record in the Supreme Court of India with twenty years at the Bar and more than five hundred cases before the Supreme Court, High Courts and Tribunals, many for public bodies such as the DDA, MCD, NHAI and NCTE. A mediator trained and certified by the Mediation and Conciliation Project Committee of the Supreme Court, she mediates at the Supreme Court Mediation Centre, sits as an arbitrator and undertakes legal work pro bono.

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