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## TOP 10 ANTITRUST AND COMPETITION LAWYERS OF INDIA



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## TOP 10 ANTITRUST AND COMPETITION LAWYERS OF INDIA



**Anand Pathak**  
Managing Partner  
P&A Law Offices



**Pallavi Shroff**  
Managing Partner  
Shardul Amarchand  
Mangaldas & Co.



**Vinod Dhall**  
Sr. Advisor  
Touchstone Partners



**Manas Kumar Chaudhuri**  
Partner  
Khaitan & Co LLP



**Karan S. Chandhiok**  
Partner (Head-  
Competition Law  
Chandhiok & Mahajan



**Nisha Kaur Uberoi**  
Partner  
Trilegal



**Shweta Shroff Chopra**  
Partner  
Shardul Amarchand  
Mangaldas & Co



**Avaantika Kakkar**  
Partner (Head-  
Competition Law)  
Cyril Amarchand  
Mangaldas



**Harman Singh Sandhu**  
Partner  
Shardul Amarchand  
Mangaldas & Co



**Abdullah Hussain**  
Partner  
DSK Legal

## MANAS KUMAR CHAUDHURI

Partner and Head of Competition Law  
Practice Group, Khaitan & Co LLP



**The Competition Commission of India holds the torchlight for Indian and global businesses.**

### Introducing online hearings and consultations via a Standard Operating Procedure (SOP)

**Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP believes that the CCI met the challenges of the pandemic well by introducing online hearings and consultations via a Standard Operating Procedure (SOP) introduced as early as 06 October, 2020. As a result, even though the new normal appears to continue for some more time, that is not a problem. Anand Pathak, Managing Partner, P&A Law Offices recognizes that while the global COVID-19 pandemic set up many operational challenges for law firms and the industry, in general, they are all learning and adapting to a more virtual work environment. Court proceedings remain largely virtual and filings have become predominantly electronic.

### Successfully assessing global merger control filings and domestic filings

**Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP affirms that the CCI has successfully assessed global and domestic merger filings and closed them with unconditional approval orders (98%).

### Mantle of enforcement not only in the cartel space but also in merger regulation

**Abdullah Hussain**, Partner – Competition Law, DSK Legal makes a passionate case. After a sluggish 2020, the CCI has taken up the mantle of enforcement with renewed vigor from 2021 onwards in the cartel space and in merger regulation, with several gun-jumping orders over the last 6-7 months. He highlights that the CCI has conducted several raids this year itself. We can expect similar vigorous enforcement ahead.

All in all, the Competition Commission has done remarkably well with increasing depth in knowledge

and application, which is evident from its analysis both in enforcement and merger regulation. The High Courts and the Supreme Court have also passed significant orders during this period, strengthening the powers of the Commission and understanding of the law.

On a similar note, **Anand Pathak**, Managing Partner, P&A Law Offices agrees that in the last decade, the competition regime in India has evolved and adapted to the emerging issues and markets. The Commission has been able to address competition concerns in new-age markets through sector studies and/or investigations directed against major digital platforms and e-commerce players - all under existing law.

### Enabling business and innovation by ensuring regulatory intervention is not disproportionate

To the CCI's credit, **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal applauds the Commission for adopting a balanced approach in ordering investigations into purportedly anti-competitive practices. The CCI has not intervened immediately in the digital markets by providing interim relief, barring one instance in the case of Oyo/Makemytrip, therefore, not stifling innovation while investigations are underway.

Naturally, the CCI finds itself playing a decisive role in determining the course of the tech scrutiny in India that has initiated probes into the likes of Amazon, Google, Facebook, and WhatsApp and large indigenous digital market players.





## ANAND PATHAK

Managing Partner, P&A Law Offices

of the Supreme Court in Jan 2005. The amended Act was finally notified in two tranches. First, prohibitory provisions of antitrust disputes were notified on 20 May, 2009. And second, the regulatory provisions of merger control were notified on 01 June, 2011.

During the 13 years of existence of the law, the adoption of continued public consultation processes by the CCI and a few landmark decisions of the Supreme Court of India enabled the Union of India to suggest yet another comprehensive amendment of the competition law.

As is the norm, there is always room for improvement, and the CLRC recommendations of 2019, followed by the proposed Amendment Bill of 2020 and now 2022, seek to address many of those areas.

The Competition Amendment Bill, 2022 seeking to amend the two-decade-old Competition Act was recently introduced in the Lok Sabha on 5 August 2022 for the monsoon session. The Bill seeks to introduce some key changes to the Indian competition law regime, with the objective of addressing competition issues posed by new-age, digital markets.

### A Critical Analysis of the Bill's highlights

**The Amendment Bill strengthens the Competition Act in line with global best practices.**

**Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal welcomes the Bill bringing in some welcome pro-business changes. Those include accelerating the merger review timelines for phase 2 review, introducing settlements and commitment for vertical agreements and abuse of dominance to avoid protracted litigation, introducing penalty guidelines, etc. strengthening the Competition Act in line with global best practices.

She also highlights the introduction of the Leniency plus regime in line with international best practices. That will give a further fillip to the leniency regime and the long-awaited penalty guidelines providing certainty to the industry.

**Ensuring predictability in the implementation of the Act with newer concepts akin to**

**international best practices.**

**Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP highlights Bill's key features that further the cause, effective implementation of the Competition Act. The waiting periods, both in the anti-trust and merger control, have been proposed to be reduced with reasonable newer concepts of "settlement" and "commitments" in anti-trust disputes in the area of enforcement. Additionally, the merger control would be fine-tuned in digital transactions once the Bill becomes law. A "deal value" threshold is proposed to be introduced for merger control space in respect of digital enterprises.

**The transaction value threshold in the area of merger approval expands the CCI's jurisdiction**

A new merger notification jurisdictional threshold, the "deal value threshold", has been introduced. It seeks to make a notifiable combination of any transaction where the deal value is above ₹2,000 Crores and parties have a substantial business interest in India. **Anand Pathak**, Managing Partner, P&A Law Offices explains that for the first time, "deal value" is being introduced into the notification threshold as an addition to the already existing notification thresholds based upon asset value and turnover. That will expand the jurisdiction of the CCI under the existing merger control regime and bring sophisticated transaction structures and new business models under scrutiny.



**Allowing parties to offer commitments in ongoing investigations against anti-competitive vertical agreements and abuse of dominant position**

Competition lawyers throw a spotlight on the Bill's proposal to allow parties to offer commitments in ongoing investigations against anti-competitive vertical agreements and abuse of dominant position. **Anand Pathak**, Managing Partner, P&A Law Offices shares that this is likely to enable the Commission and the concerned parties to work out solutions better suited to balance the incentive for innovation while preserving competition in dynamic and rapidly evolving markets.

**The potential impact on the digital economy sector with a deal value threshold of ₹2000 crores**

The Bill introduces a deal value threshold of ₹2000 crores which will cover direct, indirect, and deferred consideration. It is proposed to operate irrespective of the de minimis target exemption applies on a sector agnostic basis. The only safeguard is the entity should have substantial business operation in India - which will only be defined by the CCI by regulations. **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal predicts that this could potentially impact the digital economy sector in particular (given acquisitions of small companies who are typically target exempt on account of low revenues) if the CCI were to adopt metrics similar to Austria and Germany in terms of a number of monthly active users for instance. Further, the CCI will need to ensure that the "substantial business operations" guardrail is not a size fit all approach and is customized basis the sectors it is seeking to review.

It is critical to ensure that the proposed value of the transaction test does not neutralize in entirety the de minimis exemption. It must not inadvertently result in capturing exempt combinations that have no impact on competition in India, thereby increasing the regulatory burden on industry and the CCI. The criteria that CCI will frame by way of regulations will be key to determining this. Otherwise, the CCI will unnecessarily receive merger filings that do not have local nexus to India - accordingly

## NISHA KAUR UBEROI

Partner & National Head  
Competition Law, Trilegal

prior consultation with the industry is a must prior to the proposed changes becoming law.

### The tricky definition of eCommerce and digital companies as “enterprises” under the Competition Amendment Bill, 2020

The Competition Amendment Bill, 2020 is likely to be deliberated/passed in the Winter Session – is expected to open new opportunities and challenges to all stakeholders when it finally gets the nod of both the Houses. **Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP highlights that e-commerce and digital companies are “enterprises” within the ambit and scope of the Act. All jurisdictional challenges raised by parties against the CCI, in respect of the digital companies, were settled as the Hon’ble Supreme Court dismissed such challenges on merit.

However, the challenge to this sector is unique. Defining relevant products and geographic markets in this

## ABDULLAH HUSSAIN

Partner – Competition Law  
DSK Legal



sector are not settled. Assessing competition within the vertical business relationship and/or algorithm-based collaboration amongst enterprises in this sector both within and beyond the sector, could be debatable. The determination of relevant markets, especially relating to multi-sided markets, may not be easy to assess and finally remedy market distortions if any. A debate is on amongst competition agencies with regard to disciplining this sector via an ex-ante process in contradiction to the ex post facto mandates of the respective antitrust laws. Many jurisdictions have already amended their respective competition legislation on this behalf. It, as of now, at best can be said to be a work-in-progress as most competition agencies agree that end consumers must not be harmed.

### Unintended consequences of the proposed 25% penalty deposit provision

The proposed 25% penalty deposit to appeal a decision to the NCLAT will have unintended consequences. **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal cautions that it may impact access to justice for small and medium size companies, in particular, who will now have to pay a higher deposit (from the existing 10%) which will significantly impact them given that India’s highest economic penalties are imposed under the Competition Act.

### Substantial Impact on the Competition Structural Landscape with the proposal of combining the CCI with the DG

**Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP highlights a couple of areas in the Bill that will have a significant impact. The merger of the former COMPAT with the NCLAT in May 2017 is still a work-in-progress.

While the new appeal process is work-in-progress, he opines that combining the CCI with the DG in the Bill is an innovative proposal that needs to be assessed on merits when implemented. The new structure may change the competition structural landscape substantially. We may require proper and workable robust filters to achieve the objective intended ensuring minimizing inordinate delays.

### Changing the standard of control from existing decisive control to material influence

The proposed change to the standard of control from existing decisive control to material influence will result in an unnecessary burden on the industry. **Nisha Kaur Uberoi**, Partner & National Head Competition Law,

Trilegal opines that it will expand the scope of merger notifications and particularly impact private equity. Shorter merger review periods for phase-2 (from the existing 210 calendar days to 150 calendar days extendable by a further 30 calendar days) are most welcome. However, the shorter phase-1 merger review from 30 working to the proposed 20 calendar days will have unintended consequences of clock stops seeking additional information and likely invalidations unless the strength of the already overburdened and highly efficient merger department are quadrupled.

While there are areas that require further developments and clarifications, as **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal says, the Amendment Bill is a welcome step. It makes the competition law more effective and facilitates ease of doing business in India.

### Other Legislations that appear to have an overlapping effect with the Competition Act

### The potential intersection of ONDC companies and the Competition Act

Open Network for Digital Commerce (ONDC) is a private non-profit Section 8 company established by the Department for Promotion of Industry and Internal Trade of the Government of India to develop open e-commerce. It is active and, **Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP predicts that it is likely to have an interface with the Competition Act. Stakeholders who may require a course correction in conducting their commercial activities may like to assess the opportunities and challenges going forward.

### Digital Enterprises need to brace up for the impact of the EU’s Digital Market Act

The Digital Market Act of the EU Parliament will prohibit specific actions by major digital platforms acting as gatekeepers. That will empower the European Commission to conduct market investigations and penalize non-compliant behaviour. The Commission introduced a digital services package in December 2020, including the Digital Services Act and the DMA.

**Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP opines that even though it is an EU legislation, yet it will impact all digital enterprises in India.

A Parliamentary Standing Committee (PSC) has already been set up under the able leadership of Mr.

Jayant Sinha, Hon’ble Member of Parliament to assess DMA and its applicability in India. The PSC, as available in the public domain, has been drawing persuasive values from the EU legislation and is seeking information from digital enterprises, operating in India either directly or via their global parents incorporated outside India, about their business models. The purpose prima facie seems to understand the business models before initiating any regulatory actions if required.

### The future of Competition Landscape

### Aspirations from the CCI going forward

### Being considerate of the industry concerns

The CCI has faced umpteen challenges before various High Courts of India on issues relating to breaches of due process and principles of natural justice. According to **Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP, had the authorities been a bit considerate in agreeing with the industry’s concerns, these challenges could have been avoided.

### The devil lies in the detail

For the law to be effective without posing an unnecessary burden on industry, **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal suggests that the regulations should be out for public consultation and feedback. The regulations and proposed amendments in the law should come into effect in tandem akin to what happened when merger control was introduced on 1 June, 2011.

**Abdullah Hussain**, Partner – Competition Law, DSK Legal agrees that much will depend on the regulations framed. Even here, we can expect some interpretation called for by the constitutional courts in the first few years of implementation.

### Enforcement must be in accordance with due process of law

**Anand Pathak**, Managing Partner, P&A Law Offices opines that although the Commission has come a long way in ensuring procedural fairness in the process of investigation, the evolution of competition law jurisprudence in India is still impacted by some significant procedural challenges. Those include the creation of a robust confidentiality regime, the importance of having a judicial member on the Commission and the involvement of experts in the investigation process.



As a lawyer, **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal affirms the challenges faced are in ensuring that regulatory intervention is not disproportionate. And ensuring business and innovation are not impacted by overtly narrow market definitions.

### The need for greater access to justice

The need of the hour is a proactive approach by both the regulator and industry to work together towards the wider goal of benefiting the economy and facilitating ease of doing business in India. To this end, **Nisha Kaur Uberoi**, Partner & National Head Competition Law, Trilegal suggests that for the ease of doing business and access to justice, the CCI should have benches in Bengaluru, Mumbai, and Chennai. The time for mere regional outposts which only do advocacy has long passed.

### Opportunity to evolve and become a mature competition law jurisdiction

The jurisprudence around anti-competitive vertical agreements, gun-jumping, and abuse of dominant position still rely largely on precedents from mature competition law jurisdictions such as the EU and USA. There, the market realities are not necessarily analogous to India and our unique regulatory landscape, including strict regulation of FDI. And therein lies an opportunity for the CCI.

**Anand Pathak**, Managing Partner, P&A Law Offices opines that we live in exciting times where the Competition Commission of India is pro-actively looking into emerging new-age markets and critical sectors. Those include Telecom and e-commerce through sector studies and investigations directed against major industry players.

That is an opportunity for the Competition Commission of India to develop domestic jurisprudence that is better suited to address competition issues unique to our country and identify remedies aligned with the commercial realities of the Indian market.

### More in-person hearings and interactions

Going forward, **Manas Kumar Chaudhuri**, Partner and Head of Competition Law Practice Group, Khaitan & Co LLP suggest that the in-person hearings and interactions between the CCI and the stakeholders must resume sooner.

**Abdullah Hussain**, Partner – Competition Law, DSK Legal opines that the industry should also introspect on whether they are compliant with competition law.

### Suggestions to mitigate the unfairness of the investigation process

Given that the Competition Amendment Bill gives more extensive powers to the office of the Director General, **Anand Pathak**, Managing Partner, P&A Law Offices brings out some of the key areas where changes could mitigate the unfairness of the investigation process.

There is an opportunity to extend confidential treatment to information submitted by third parties who may be competitors of the parties being investigated. That is because these third parties are not eligible to be a part of the confidentiality rings formed by the Commission under the existing regime.

Introduction of a judicial member in the Commission would ensure a balanced approach in the investigation process.

Also, setting out guidelines to be followed during search and seizure operations (dawn raids) will ensure compliance with due process and preserve the rights of the parties being raided.

### Improving the status of global merger control filings and domestic filings

Gun-jumping proceedings against defaulting enterprises avoiding filing a notifiable transaction are high in India. It continues to remain a concern.

### Aspirations from Competition and M&A Lawyers

#### Making the most of the expanding role of Competition Lawyers

**Anand Pathak**, Managing Partner, P&A Law Offices opines that the role of a competition lawyer has become all the more important in the current era of enhanced regulatory intervention into e-commerce and, as a result, the close scrutiny of the conduct of digital platforms.

The role has expanded in re representing parties being investigated and advising e-commerce companies and digital platforms on their day-to-day operations and conduct in the market to ensure compliance with applicable laws.

In that context, **Abdullah Hussain**, Partner – Competition Law, DSK Legal shares that competition lawyers must familiarize themselves with the technology involved. They should keep abreast of the ever-changing regulatory landscape in the area, especially in the light of the increasing focus of anti-trust

authorities worldwide on digital markets and digital platforms.

**Anand Pathak**, Managing Partner, P&A Law Offices similarly opines that as the market adapts to the changing socio-economic dynamics in the course of its evolution, the practice of competition law also has to evolve and adapt to these dynamic and evolving markets.

### Opportunities to master the craft of competition and M&A Advisory

**Anand Pathak**, Managing Partner, P&A Law Offices highlights that some of the challenges while assisting e-commerce companies are to balance full cooperation in the investigation process while at the same time ensuring procedural fairness of the process. Another challenge for M&A lawyers today is regarding innovative structuring of commercial and investment transactions in accordance with the rapidly evolving regulatory landscape.

### In Conclusion

All in all, competition law experts agree that the competition landscape's future looks bright. The Commission has established itself as a credible markets regulator to look out for. The industry is far more knowledgeable about competition law today than it was over a decade ago. The CCI has undertaken several market studies in sensitive areas, and that trend is likely to continue informing both the CCI and the industry of potential competition issues.

And very importantly, the role of competition lawyers will be crucial in the coming years as we identify the problems with applying and implementing the proposed amendments to the Competition Act and help companies align their businesses with the applicable legal framework.

#### Manas Kumar Chaudhuri

Designation: Partner and Head of Competition Law Practice Group, Khaitan & Co LLP

Manas Kumar Chaudhuri, an anti-trust litigator, advises Indian and overseas clients on Competition Law & Policy and related legal/regulatory issues. He has worked as the first Additional Registrar of the Competition Commission of India and was also associated with the drafting of various statutory Regulations under the Competition Act during his stay in the CCI. Prior to joining the profession as a full-time lawyer, Manas served as a Civil Judge in the West Bengal State Judicial Services. He also worked as the Joint Director (Legal) Monopolies and Restrictive Trade Practices Commission.

#### Anand Pathak

Designation: Managing Partner, P&A Law Offices

Anand S. Pathak has extensive experience in advising clients on the full range of US, European and Indian legal issues in connection with international mergers and acquisitions, privatizations, financings, technology licensing, distribution and franchising and agency arrangements, and European and Indian laws on competition, state assistance, trade and intellectual property. Mr. Pathak has represented clients in arbitrations, including the Government of India in bilateral investment treaty arbitrations and various companies in claims for compensation from the United Nations Compensation Commission for losses arising from the Iraqi invasion of Kuwait.

#### Nisha Kaur Uberoi

Designation: Partner & National Head Competition Law, Trilegal

Nisha Kaur Uberoi is a Partner and the National Head of the Competition Law Practice at Trilegal, leading one of the largest competition law teams in India, across Mumbai, Delhi and Bengaluru. Nisha is currently the lead lawyer on the alleged cement cartel case, where she is representing Ambuja Cements Ltd and ACC Ltd (both Lafarge Holcim companies) and Nuvoco Vistas Corporation Ltd (formerly Lafarge India Ltd), in which the cement companies were penalised approximately USD 1.4 billion by the CCI.

#### Abdullah Hussain

Designation: Partner – Competition Law, DSK Legal

Abdullah Hussain is a partner at the firm, with over 15 years of experience in competition law practice. Abdullah has been involved in this practice area since the formative stages of the Competition Act, during which time he has assisted the Government of India, and the then newly constituted Commission, in the formulation of its rules and regulations. Significant assignments undertaken in this area include preparing the CCI Regulations relating to mergers, determination of cost, general procedure, etc., and preparation of a report on India's Competition Policy as part of the working group on competition policy set up by the Planning Commission of India in 2006.



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