MERGER CONTROL IN THE AGE OF GEOPOLITICS: BALANCING COMPETITION AND NATIONAL SECURITY

Arnav Mathur[*] Arjun Gupta[*]

ABSTRACT

Merger control, long a tool to preserve competition, now grapples with geopolitical imperatives. Governments increasingly scrutinise cross-border mergers in strategic industries such as defence, technology, and energy, where economic and security interests converge. The paper examines how competition law objectives intersect with national security in modern merger review, with a comparative focus on the United States, the European Union, and China. It evaluates how states influence data sovereignty and supply chain resilience and reshape regulatory practice. Special attention is given to India's evolving framework under the Competition Act, 2002, and its post-COVID shift towards foreign investment screening through Press Note 3 of 2020. The analysis argues that competition authorities must adapt to protect both economic efficiency and strategic autonomy without undermining investor confidence.

Keywords: Merger Control, Geopolitics, Competition Law, National Security, CCI, FDI Screening.

INTRODUCTION: THE GEOPOLITICAL TURN IN MERGER CONTROL

Merger control, a core pillar of competition law, aims to maintain market fairness by preventing undue concentration of power. In India, the Competition Act, 2002 seeks "to prevent practices having adverse effect on competition, to promote and sustain competition, to protect consumers, and to ensure freedom of trade".[1] Historically, merger review was confined to market shares, consumer welfare, and efficiency. However, global dynamics have pushed regulators to examine strategic and security aspects beyond pure economics.

[*]BBA LLB, FOURTH YEAR, SYMBIOSIS LAW SCHOOL.
[*]BBA LLB, FOURTH YEAR, SYMBIOSIS LAW SCHOOL.
[1] The Competition Act, 2002, No. 12 of 2003, pmbl. (India).

In 2018, the United States blocked Broadcom's $117 billion takeover of Qualcomm, fearing it would give China an advantage in 5G technology.[2] Likewise, Germany vetoed the sale of a semiconductor factory to a Chinese firm in 2022, citing national security and technological sovereignty.[3] These cases exemplify how merger scrutiny now factors in the acquirer's origin and the sensitivity of the asset.

India's trajectory mirrors this shift. During the pandemic, the Government introduced Press Note 3 (2020), mandating prior approval for investments from countries sharing a land border with India, primarily aimed at curbing Chinese takeovers of vulnerable Indian firms.[4] This coincided with wider global instability following the Ukraine conflict, which reinforced the link between economic openness and security risk.

The key question thus emerges - How should competition regimes, particularly India's, reconcile market efficiency with sovereignty and national security? This paper addresses that question by first outlining merger control's legal foundations (Part II), then tracing geopolitical influences on antitrust regimes (Part III). Subsequent parts examine comparative frameworks (U.S., EU, China) and India's domestic policy evolution, culminating in policy recommendations to ensure India's merger control remains robust and strategically aware.

CONCEPTUAL FOUNDATIONS OF MERGER CONTROL

Merger control prevents concentration and market dominance that can harm consumers. Its foundation rests on the consumer welfare and efficiency principles embodied in the Competition Act, 2002. Sections 5 and 6 define "combinations" and prohibit those causing an Appreciable Adverse Effect on Competition (AAEC).[5] The Competition Commission of India (CCI) assesses combinations exceeding prescribed thresholds, applying factors such as market share, barriers to entry, and efficiency benefits.[6]

Transactions are categorised as horizontal (between competitors), vertical (across supply chains), or conglomerate (unrelated markets). Horizontal mergers attract the greatest scrutiny,

[2] Reuters, *President Trump Halts Broadcom Takeover of Qualcomm*.
[3] Andreas Rinke & Miranda Murray, *Germany Blocks Chinese Stake in Two Chipmakers over Security Concerns*, Reuters.
[4] Press Note No. 3 (2020 Series), DPIIT (India).
[5] Id. S. 5–6.
[6] Id. S. 20(4).

given their potential to distort competition. The CCI clears most deals in Phase I, but may conduct a Phase II review where adverse effects are suspected. Remedies can include divestitures or behavioural undertakings. In Schneider Electric/L&T Electrical & Automation, the CCI observed that the merger would create a dominant position in low-voltage switchgear markets. Approval was granted subject to commitments ensuring fair access to distribution and price stability.[7] Similarly, the Zee–Sony merger was conditionally approved in 2022 after parties offered voluntary remedies, including channel divestment and advertising concessions, to prevent dominance in television broadcasting.[8]

Such cases demonstrate the CCI's economic focus, yet highlight what is absent: the identity of the acquirer, foreign state involvement, or security sensitivities are not assessed. The Act's scope is confined to preventing private monopolies, not protecting strategic interests. In a globalised economy, however, ownership structure can pose systemic risks, such as control over data, infrastructure, or defence technologies. A merger may pass the AAEC test but still undermine national interests. Hence, a purely competition-based model may no longer suffice in safeguarding economic sovereignty.

THE RISE OF GEOPOLITICS IN COMPETITION LAW

Global merger control is now shaped by geopolitical rivalries. States fear that foreign ownership of critical assets could compromise security or technological leadership. Consequently, competition and investment reviews increasingly overlap.

In the United States, the Committee on Foreign Investment in the United States (CFIUS) reviews foreign acquisitions for national security threats alongside antitrust scrutiny by the DOJ or FTC. CFIUS can recommend blocking or unwinding transactions that pose risks.[9] Its powers expanded under the Foreign Investment Risk Review Modernisation Act 2018, which included sectors such as critical technologies and personal data.[10] High-profile interventions include the blocked acquisition of MoneyGram by Ant Financial.[11] and the forced divestment of Grindr by its Chinese owner over data-security concerns.[12]

[7] CCI, *Combination Order No. C-2018/07/586 (Schneider Electric/L&T Electrical & Automation)* (2019).
[8] Tanvi Mehta & Nishit Navin, *Zee–Sony Merger Approved with Conditions*, Reuters (2022).
[9] 50 U.S.C. § 4565 (2018); U.S. Dept. of Treasury, *CFIUS Overview.*
[10] Foreign Investment Risk Review Modernization Act 2018, Pub. L. No. 115-232.
[11] Greg Roumeliotis, *U.S. Blocks MoneyGram Sale to Ant Financial*, Reuters (2018).
[12] Carl O'Donnell et al., *Chinese Firm to Sell Grindr after U.S. Security Concern*, Reuters.

The European Union has adopted a cooperative screening mechanism under Regulation (EU) 2019/452, allowing Member States to review foreign investments for public order or security risks.[13] The 2016 Chinese acquisition of Kuka AG, later viewed as a strategic loss, spurred tighter oversight.[14] The subsequent Foreign Subsidies Regulation 2022 empowers the Commission to examine mergers benefiting from foreign state support.[15] These instruments mark Europe's turn towards "strategic autonomy", balancing openness with vigilance.

Post-Brexit, the United Kingdom introduced the National Security and Investment Act 2021, granting government power to review and block transactions in sensitive sectors like artificial intelligence, energy, and quantum computing.[16] This framework operates independently from the competition regulator, reflecting a decoupling of economic and security objectives. The broader concern is "weaponised interdependence" – where economic networks become tools of coercion. The G7 Leaders' Statement 2023 pledged to counter attempts to exploit such dependencies.[17] Sectors like semiconductors, telecommunications, and AI have thus become focal points of national strategy, not just commerce.

The trend signifies a transformation: merger control is no longer insulated from geopolitics. Regulators worldwide face the challenge of balancing free-market principles with protective sovereignty. India, too, stands at this crossroads as its FDI and competition regimes begin to overlap.

UNITED STATES, EU, AND CHINA'S REGULATORY MODELS IN MERGER REVIEW AND NATIONAL SECURITY

The international regulatory landscape for mergers and acquisitions has been deeply changed over the last decade, with traditional antitrust valuation increasingly frequently blending with national security interests. This is a shift that reflects a fundamental shift in the manner in which leading economic powers consider cross-border deals, moving far beyond the competition-focused concerns to include strategic and geopolitical considerations.[18] This comparative summary surveys the United States, the European Union, and China's unique regulatory

[13] Regulation (EU) 2019/452, 2019 O.J. (L79I) 1.
[14] Stephen Mulrenan, *China–Europe Investment Disrupted*, Int'l Bar Ass'n (2023).
[15] Regulation (EU) 2022/2560, 2022 O.J. (L330) 1.
[16] National Security and Investment Act 2021, c.25 (UK).
[17] G7 Leaders' Statement on Economic Security, Hiroshima Summit (2023).
[18] Anu Bradford, The Brussels Effect and National Security: EU Regulatory Influence on Global M&A, 61 Colum. J. Transnat'l L. 77, 88–90 (2023).

approaches, appreciating how each has evolved to grapple with the multifaceted intersection of economic concentration and national security objectives. Although utilising varying institutional mechanisms and legal instruments, all three jurisdictions share a converging thrust in the direction of more rigorous screening of foreign direct investment, and in strategic sectors and critical technologies in specific.[19] This development is part of a wider fragmentation of international economic regulation and presents major challenges to multinational firms with operations in an expanding mesh of regulatory demands.[20]

UNITED STATES: CFIUS and the ANTI-TRUST SECURITY INTERFACE

Institutional Framework and Parallel Review Mechanisms: The United States uses a two-pronged approach for scrutinising mergers and acquisitions that may involve national security issues. The Committee on Foreign Investment in the United States (CFIUS) is an inter-agency committee headed by the Treasury Department, made up of representatives of 16 executive agencies from the federal government, including Defence, State, Homeland Security, and Commerce.[21] This structure allows for a holistic review of transactions that might pose a threat to critical infrastructure, sensitive technologies, or other security concerns. CFIUS can review "any covered transaction that could result in control of a U.S. business by a foreign person or entity," including mergers, acquisitions, joint ventures, and minority investments under some circumstances.

Along with CFIUS review, the typical antitrust reviewing agencies – the Department of Justice (DOJ) and Federal Trade Commission (FTC) – are still reviewing competitive effects, taking into account the Hart-Scott-Rodino (HSR) framework. The agencies are separate but often work in parallel for transactions that raise both competition and security impacts. This cooperation between agencies is quite visible during times of a government shutdown. The FTC and DOJ will continue to process HSR filings, but will, on average, designate about 60% and about 50% of each agency, respectively, as essential personnel.[22] When it comes to CFIUS review, however, that type of review may cease altogether during times of government funding

[19] OECD, Cross-Border Mergers and National Security: Regulatory Trends in the US, EU, and China 15–18 (2024).
[20] World Economic Forum, Navigating the New Fragmented Landscape: Global Investment Policy Review 28–31 (2025), https://www.weforum.org/reports/global-investment-policy-review-2025.
[21] U.S. Dept. of Treasury, Committee on Foreign Investment in the United States: Annual Report to Congress 1–2 (2024), https://home.treasury.gov/system/files/206/2024-CFIUS-Annual-Report.pdf.
[22] 50 U.S.C. § 4565 (2018), as amended by FIRRMA; see also White & Case, Foreign direct investment reviews 2024: United States (2024).

gaps, creating possible timing discrepancies that are problematic for parties seeking to enhance a transaction with a quick close-in date.

Evolving Enforcement Trends and Notable Interventions: Recent years have witnessed a significant expansion of CFIUS's authority and enforcement vigour. The Foreign Investment Risk Review Modernisation Act of 2018 (FIRRMA) substantially broadened the committee's jurisdiction and resources to address emerging national security threats. In 2024, the Treasury Department proposed further enhancements to CFIUS's enforcement powers, seeking broader subpoena authority, expanded information requirements, and higher fines for non-compliance. This trend reflects growing congressional pressure for more aggressive intervention, particularly regarding Chinese investments in sensitive technologies.[23]

The TikTok case exemplifies this heightened scrutiny, with Congress pursuing legislative solutions amid perceived CFIUS inaction. Similarly, high-profile interventions in the acquisitions of Lattice Semiconductor and dating app Grindr demonstrate CFIUS's widening concern beyond traditional defence sectors to include critical technologies, personal data, and digital infrastructure.[24] These cases illustrate the committee's evolving understanding of national security in an increasingly digital and interconnected economy.

Overlap between economic concentration and Foreign Policy: The U.S. approach increasingly reflects the interaction between economic concentration and foreign policy objectives, not least in strategic competition with China. This is reflected across a number of dimensions: the use of export controls in tandem with investment review; scrutiny of distorting foreign subsidies; and the use of entity lists to restrict technology transfers. Rare earth export controls in 2025 and subsequent U.S. tariff responses illustrate the degree to which trade measures and investment security have become interconnected instruments of economic statecraft.[25]

The scale and scope of this policy integration reflect the broader recognition that market dominance in critical sectors can translate into geopolitical advantage. As one analyst said, "Deepening geopolitical and policy disruptions throughout 2025 will also likely produce more

[23] Covington, Overview and Key Takeaways from CFIUS 2024 Annual Report (Aug. 2025).
[24] James Lewis, TikTok Is Running out of Time: Understanding the CFIUS Decision and Its Implications, Center for Strategic & International Studies (2020).
[25] Dechert LLP, U.S. Outbound Investment Security Program Targeting Emerging Chinese Technology Has Arrived (Oct. 2024).

differentiation across the board", which requires an increasingly careful consideration of how economic and security policies interact. The result is an increasingly complex regulatory environment, in which traditional antitrust analysis must be supplemented by a strategic assessment of how transactions affect the long-term competitive positioning and national security interests.[26]

EUROPEAN UNION: STRATEGIC AUTONOMY AND THE FDI SCREENING REGULATION

The Coordination Framework and Institutional Architecture: In the European Union (EU), the process of investment screening represents a distinctive supranational model founded on Regulation 2019/452. Regulation 2019/452, adopted on March 25, 2019, created a pathway for EU member states to engage with one another regarding reviews of foreign investment into their countries, and was purposely not establishing an investment screening framework at the EU level. This framework recognises the principle of subsidiarity while also permitting member states to address security risks that may have cross-border components.[27] Regulation 2019/452 requires member states to notify the Commission and other member states about foreign direct investments that have been subject to an investment screen, it permits member states to comment on foreign investment decisions made by other jurisdictions that may have implications for their national security interests, and it grants the Commission the authority to provide opinions about foreign investment that would be expected to impact projects of "Union interest."[28]

The EU framework does not grant the Commission the authority to prohibit transactions or impose conditions on transactions - both of which are powers granted to the Committee of Foreign Investment in the United States (CFIUS).[29] The framework additionally maintains a framework in which member states, "retain the final decision" over a foreign investment but do have obligations to give "due consideration" to comments by other member states, and "utmost account" to the opinions by the Commission about an investment likely to impact

[26] Megan Fox & Edward Cheng, Compliance in the Age of Regulatory Fragmentation, 73 Stan. L. Rev. 156, 162–68 (2025).
[27] Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019, 2019 O.J. (L 79) 1, arts. 1–3; Norton Rose Fulbright, EU Regulation on Foreign Direct Investment Screening (Jan. 2022).
[28] OECD, Framework for Screening Foreign Direct Investment into the EU, at 5–6 (2021); Regulation (EU) 2019/452, arts. 6–8.
[29] Crowell & Moring, A New European Commission Proposal on Foreign Direct Investment Screening: Towards Greater Harmonisation (Oct. 2025).

projects of "Union interest." The structure of Regulation 2019/452 and its functions are intended to strike a careful balance between protecting the national sovereignty of member states regarding their security considerations and promoting some level of coordinated approach amongst member states to address national strategic security risks from investments.[30]

Component	**Description**	**Legal Basis**
Cooperation Mechanism	Member States and the Commission exchange information and raise concerns	Art. 3(2), Regulation 2019/452
Comment Procedure	Member States can comment on investments in other Member States	Art. 6(2), Regulation 2019/452
Commission Opinions	The Commission may issue opinions on investments affecting multiple states or Union interests.	Art. 7(1), Regulation 2019/452
Union Interest Projects	Special provisions for projects like Galileo, Copernicus, and critical infrastructure	Annexe, Regulation 2019/452

Implementation Trends and the Kuka-Midea Watershed: The application of the EU screening regulation has coincided with, and reinforced, a marked shift in member state approaches to foreign investment from abroad, especially from China. The 2016 acquisition of German robotics manufacturer Kuka by Chinese appliance maker Midea marked a turning point in European awareness of technology transfer and strategic autonomy.[31] Despite political concerns by then-Economic Minister Sigmar Gabriel and EU Digital Commissioner Guenther Oettinger, the deal was completed, highlighting weaknesses in review mechanisms at the time and motivating regulatory change.

In response to such cases, Germany and other member states have significantly strengthened their national screening mechanisms. Germany reduced review thresholds for security-

[30] CELIS Institute, A Blog Series on the Revision of FDI Screening Regulation 2019/452 (June 2025).
[31] Norton Rose Fulbright, EU Regulation on Foreign Direct Investment Screening (Jan. 2022); Global Trade Alert, EU: Establishment of framework for foreign investment screening (Apr. 2019).

sensitive sectors from 25% to 10-20% and altered the standard for intervention from "actual" to "probable" threat. This trend has spread throughout the EU, with 24 of 27 member states currently maintaining or establishing investment screening mechanisms, compared to just 11 before the adoption of the regulation. The European Commission has gone further to propose strengthening the framework in the direction of requiring all member states to establish screening mechanisms, harmonising minimum sectors for review, and extending coverage to EU investors ultimately controlled by non-EU persons.[32]

Strategic Autonomy versus Protectionism Tension: The EU's position is a difficult one because it is weighing its desire for open markets against a rising desire for the protection of strategic assets. The difficulty is especially relevant for Europe because it has extensive economic ties to China that lead it to consider China as both a "systemic rival" and an important economic partner. The EU is explicitly looking for "strategic autonomy", its ability to make independent choices on important areas of policy without over-dependence on external actors, while trying to avoid overt protectionism that could violate its international obligations or provoke retaliatory measures.

The balancing act is present in the design of the regulation, which emphasises transparency, non-discriminatory treatment, and the right to an appeal while allowing for greater scrutiny of transactions with effects on critical infrastructure, technologies, or inputs. The regulation delineates several specific criteria in measuring supply chain risks, ranging from critical infrastructure to critical technologies to critical inputs in supply to access to sensitive information and media pluralism.[33] The most recent guidance emphasised the health care sector, given the vulnerabilities in supply chains identified during the COVID-19 pandemic.

CHINA: REVERSE PROTECTION THROUGH SECURITY-DRIVEN REVIEW

MOFCOM's Dual Mandate and Institutional Framework: The Chinese approach to merger review and investment screening integrates economic and security imperatives under the auspices of the Ministry of Commerce (MOFCOM). In contrast to the U.S. and EU schemes, essentially designed to review inward investment, MOFCOM has a dual mandate to ensure that

[32] European Commission, Investment Screening: Proposal for Strengthening the Regulation (Oct. 2025); CELIS Institute, A Blog Series on the Revision of FDI Screening Regulation 2019/452 (June 2025).
[33] Norton Rose Fulbright, EU Regulation on Foreign Direct Investment Screening (Jan. 2022); European Commission, Investment Screening - Updated Guidance on FDI Regulation (Oct. 2025).

markets remain competitive and national interests are safeguarded.[34] In this respect, the combination of competition policy and national security review within a single institutional framework presents an integrated approach to the regulation of market concentration that is unparalleled elsewhere.

MOFCOM's review process includes explicit public interest considerations beyond traditional antitrust analysis. Technically separate from China's formal foreign investment negative list, MOFCOM's merger review operates as a further mechanism of market access control to protect strategic sectors. Public statements by the ministry underline its role as a "responsible major country" that has taken measures "to refine its export control system in accordance with laws and regulations," while protecting "the security and stability of global industrial and supply chains."[35]

Strategic Application of Control Mechanisms: China has been more active in carrying out export controls and other trade measures as a complement to investment review, creating an overall system of economic statecraft. The 2025 rare earth export control measures represent this philosophy importantly, as the Ministry of Commerce (MOFCOM) explicitly articulated restrictions on the application of rare earths to military applications and to "international common security" while also carefully issuing caveats that they "are not 'export bans'" and "export licenses... will be issued to eligible applications."[36] This measured set of economic statecraft also allows Beijing to maintain leverage over economic dependencies without actually formally violating international trade law.

China's regulatory measures are constantly jumping off from the U.S.'s restrictions in a reciprocal pattern, as MOFCOM stated, responding to U.S. tariff measures: "The U.S. remarks confirm a textbook 'double standard'... China's position on the trade war has been consistent from the outset: we would not like it, but we are not afraid of it."[37] This back-and-forth dynamic is what some analysts have referred to as a "reverse protection" strategy, using regulatory measures to combat Western acquisition strategies, but also to advance pathways of state-

[34] Merger Control Laws and Regulations Report 2025: China, Int'l Comparative Legal Guides (Apr. 2024); Merger Control 2025 - China, Global Practice Guides (July 2025).
[35] Merger Control in China: a Practical Guide (Clifford Chance, June 2023), at 2–4; Ministry of Commerce, PEOPLE'S REPUBLIC OF CHINA, Public Policy Release (Oct. 2025).
[36] China's Rare Earth Export Controls—Impact on Businesses and Global Markets, China Briefing (Oct. 2025).
[37] Antitrust and Competition in China, Global Compliance News (Mar. 2017).

sponsored Chinese firms acquiring and gaining foreign technology and markets through alternative means.

China as Both Target and Actor in Global Merger Geopolitics: China plays a dual role in investment governance: it is a major source of outbound investment facing ever-tightening controls abroad, while also being a recipient of foreign investment with its own screening mechanisms at home. This dual position entailed specific challenges and opportunities for Chinese policymakers, since they had to navigate the restrictive measures abroad while devising their domestic review processes.

This dynamic has been further complicated by the implementation of China's "Made in China 2025" strategy, where the focused acquisitions of Chinese companies in ten key industrial sectors have triggered defensive responses in Europe and North America. A study by the Bertelsmann Foundation finds that 64% of German companies sold to China between 2014 and 2017 belonged to sectors prioritised by MIC25, including 17 companies classified as German world market leaders. This pattern has thus strengthened perceptions of Chinese investment as strategically coordinated rather than market-driven, further justifying protective measures in recipient countries.[38]

The comparative assessment of U.S., EU, and Chinese regulatory models shows important movement toward an integrated national security element in merger review, although each is pursued through somewhat distinct institutional mechanisms and variation in formality. All three regimes have developed even more sophisticated mechanisms for screening foreign investments, especially in identified critical or strategic sectors. This is but a part of a larger geopolitical reconfiguration in which economic competition and national security are increasingly inseparable. One analyst refers to this as "a destabilised geopolitical environment that should continue to provide structural and long-term tailwinds for various national security themes."

[38] Merger Control Laws and Regulations Report 2025: China, Int'l Comparative Legal Guides (Apr. 2024); Bertelsmann Stiftung, China's Investments in Germany: Impact and Policy Response (2023).

INDIA'S EVOLVING FRAMEWORK: THE CCI, FDI AND SECURITY NEXUS

Statutory Framework and the CCI's Traditional Role: The Competition Act of 2002 is the primary legislation regulating mergers in India. The key terms and the role of the CCI are established in the Act.

Sections 5 and 6: Section 5 of the Act defines "combinations" (mergers, acquisitions and amalgamations) that will be notified to the CCI, provided the criteria of certain asset/turnover thresholds are satisfied. Section 6 prohibits any combination which causes, or is likely to cause, an "appreciable adverse effect on competition" (AAEC) within India and requires notification to the CCI before any notifiable transaction.

Mechanism for Merger Review: The review by the CCI is a suspensory process, which must occur in two phases. If the CCI identifies potential anti-competitive effects, the prayer for merger will move forward to a Phase I for 30-working days and Phase II for up to 210 calendar days for a full examination.[39]

Jurisdictional Thresholds: The regime has both asset-based and turnover-based tests that define whether the merger requires notification to the CCI. Recent amendments, however, also introduced the Deal Value Threshold (DVT). Starting September 2024, the target of the transaction must have "substantial business operations" in India, and the total value of the transaction must be above ₹20 billion (approximately USD $240 million) to require CCI approval. The introduction of the DVT is intended to capture acquisitions that take place within the digital economy.[40]

Emerging Challenges and Institutional Overlaps: Conventional competition-oriented frameworks increasingly intersect with investment security issues and create issues and jurisdictional challenges.

Strategic Acquisitions and Press Note 3 (2020): The Indian government issued Press Note 3 of 2020 to address concerns of opportunistic strategic acquisitions caused by the COVID-19 pandemic. The policy states that any person or entity from a country that shares a land border with India, including China, can only invest in India through the "Government route." The

[39] Legal500, India: Merger Control, PDF Generated: 29-10-2025; Merger control in India: overview, AZB Partners (Sep. 2021).
[40] New Era of Competition Laws in India: Navigating the 2025 FAQs Published by CCI, TCCLR (July 2025).

investment will require government approval from the respective ministry. Thus, the burden is on the Department for Promotion of Industry and Internal Trade (DPIIT) and other governmental bodies, and it is separate from the CCI's competition analysis.[41]

Blurred Lines and Jurisdictional Conflicts: Overlapping CCI jurisdictions with sectoral regulators are tensions is another issue and challenge. An example of this is the case of Torrent Power acquiring a company. Torrent Power argued that the Electricity Act 2003 gave ERCs exclusive jurisdiction over competitive issues in the power sector. The CCI argued that it still had jurisdiction over and above, stating that competition law cuts across sectors. Similar tensions in the use of the CCI arose in the mobile telecommunications sector, where courts have attempted to strike a balance between the CCI's and TRAI's jurisdiction and law.[42]

National security review gaps: India does not have a single statutory authority—like the United States' single-window CFIUS and the United Kingdom's NSI—that provides specifically for a national security review of investments. The national security framework regarding investment in India is complex, as investment policy is managed by the DPIIT and security clearances are considered by the MHA. Moreover, the CCI is tasked with considering competition. This results in a lack of clarity for parties as to which authority has the final say in the security issues associated with a commercial transaction.

THE BALANCING ACT: COMPETITION, SOVEREIGNTY, AND THE GLOBAL ECONOMY

Competition regulators around the world have to juggle a very delicate balancing act: the need to preserve open markets while preventing acquisitions impinging on national security or strategic interests. This produces a deeply opposing pull: a merger that is blocked for competition reasons maintains plural markets, an expansive effect, whereas blocking it on security grounds restricts market entry, a restrictive effect. The pressure to consider industrial policy, evident in cases like the blocked Siemens-Alstom merger, challenges the orthodox application of antitrust law, forcing regulators to navigate beyond pure competition analysis.[43]

[41] Trilegal, Competition Quarterly Milestones (April to June 2025).
[42] India: Guide to Merger Control (2025); April-June 2025, Competition Commission of India.
[43] Thomas Keenan & Alex Nourry, What Now for EU Merger Control After Siemens/Alstom?, Clifford Chance (Mar. 2020), https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2020/03/european-champions-what-now-for-eu-merger-control.pdf.

This is exacerbated by the dilemma of geoeconomic fragmentation and U.S.-China regulatory polarisation. Strategic rivalry is making economic interdependence a weapon, as with semiconductor export controls, which pushes the global economy toward competing regional blocs.[44] The result is the encouragement of "friendshoring" at the expense of multilateral frameworks, with an increasing risk of "geoeconomic protectionism," where security considerations trump efficiency principles and balkanise global supply chains.[45]

These pressures notwithstanding, careful institutional design can make security screening and liberal competition policy coexist. The European Union's FDI Screening Regulation is a case in point, creating a binding coordination mechanism for security reviews that runs in parallel with, yet separate from, its antitrust enforcement machinery.[46] The key to coherence lies in increased inter-agency cooperation to ensure that security and competition assessments, while distinct, do not lead to conflicting outcomes and maintain consistency in policy in an increasingly securitised global economy.

POLICY RECOMMENDATIONS AND THE WAY FORWARD

India must recognise that competition policy and national security are increasingly interlinked. While the Competition Commission of India focuses on market efficiency, separate oversight exists for foreign investment. To bridge these, India could establish a coordinated Investment Security Review Authority, integrating security risk assessments into merger scrutiny. This framework should preserve the transparency and predictability vital for investor confidence, while allowing the government to act decisively against hostile takeovers in critical sectors.

Some experts and industry observers have argued that a legislative mandate would bring in clarity and remove jurisdictional conflicts. This has led to discussions on whether India should establish an integrated "Investment Security Review Authority" similar to CFIUS. Such a body could consolidate the security-related functions currently dispersed across the DPIIT, MHA,

[44] Charanjit Singh Walia, The Growing Influence of Geoeconomic Competition on Trade and Investment, Bruegel (Mar. 15, 2020), https://www.bruegel.org/blog-post/alstom-siemens-merger-and-need-european-champions.
[45] Guy Harles, Competition Law: Blocking of Siemens-Alstom Merger and the Future of European Industry, IBA (Dec. 2024).
[46] European Political Strategy Centre, EU Industrial Policy After Siemens-Alstom: Finding a New Balance Between Openness and Protection (Nov. 19, 2019), https://op.europa.eu/en/publication-detail/-/publication/03fb102b-10e2-11ea-8c1f-01aa75ed71a1.

and other ministries, providing a single, predictable point of review for foreign investments in critical sectors.[47]

The key policy dilemma lies in how to safeguard critical infrastructure and national interests without eroding investor confidence. The traditional focus of the CCI has been on economic issues of market concentration and consumer welfare, not on national security. It has been argued that the CCI and the sectoral regulators can play a complementary rather than a conflicting role if their respective roles are duly harmonised. For example, the sectoral regulators may deal with the technical and operational aspects of the industry, while the CCI retains powers over market-wide competition concerns. The suggested measures include empowering the presently underutilised consultative mechanisms between regulators (Sections 21 and 21A of the Competition Act) so as to make cooperation mandatory.

At the international level, India should collaborate through OECD and BRICS forums to develop consistent norms for merger and FDI review, promoting reciprocity and reducing regulatory fragmentation. By embedding security consciousness into competition enforcement without sacrificing openness, India can fortify both its economy and its strategic autonomy in the evolving global order.

[47] Merger Control And Combination Regulations In India, Mondaq (June 2025).