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ANTITRUST ENFORCEMENT IN THE FINANCIAL SERVICES SECTOR: LEGAL CHALLENGES IN BANKING CONSOLIDATION

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ABSTRACT

The financial services sector occupies a critical space in national economies, linking capital flows, consumer welfare, and systemic stability. In India, this role is underscored by successive waves of banking consolidation, from nationalization in 1969 and 1980 to the post-liberalization mergers culminating in the 2017 State Bank of India merger and the 2019–2020 public sector bank mega-mergers. While consolidation has been justified on grounds of efficiency, risk management, and global competitiveness, it also raises substantial antitrust concerns. The Competition Commission of India (CCI), empowered by the Competition Act, 2002, is mandated to assess whether such consolidations produce an appreciable adverse effect on competition (AAEC). Yet, the overlapping jurisdiction of the Reserve Bank of India (RBI) as a prudential regulator and the central government's policy objectives in orchestrating mergers create a unique tension between financial stability and competition enforcement.

This paper critically examines the adequacy of India's current antitrust framework in addressing the distinctive challenges of banking consolidation. Drawing upon comparative experiences from the United States, European Union, and United Kingdom, it situates India's merger control regime in the global context of financial regulation. Special attention is given to issues of market definition in financial services, the **"failing firm defense"** in crisis-driven consolidations, and the increasing disruption caused by fintech and digital platforms.

The study concludes that while India's legal framework is formally equipped to handle competition issues in banking, in practice, financial stability and state-driven industrial policy often overshadow competition concerns especially in public sector bank consolidations. The paper recommends harmonization of regulatory mandates between the CCI and RBI, transparent and neutral review processes for all mergers irrespective of ownership, and a reorientation of market definition tools to account for digital transformation in financial services. Ultimately, effective antitrust enforcement in banking consolidation must balance

systemic risk management with the imperatives of consumer welfare and competitive neutrality.

Keywords: AAEC, Banking Mergers, CCI, Public Sector Bank,

INTRODUCTION

Banking consolidation has emerged as one of the defining trends of financial sector restructuring across the globe. While consolidation is often pursued as a means to achieve economies of scale, diversify risk, and enhance competitiveness, it invariably raises questions of market concentration and its impact on competition and consumer welfare. In India, this debate has been particularly acute given the historical dominance of state-owned banks, the dual pressures of liberalization and financial globalization, and the pressing imperative of managing systemic risks.

The Indian banking system has undergone three major transformations in the last century. The first was the **nationalization of banks in 1969 and 1980**, which sought to extend banking access, channel credit to priority sectors, and align banking with developmental goals. This created a highly concentrated public sector-led system, with limited room for competition. The second was the **liberalization of the 1990s**, which brought private and foreign banks into the fold, catalyzed technological innovation, and forced public sector banks to modernize.² The third transformation has been the **wave of consolidation in the last two decades**, culminating in the merger of the State Bank of India with its associates in 2017, and the 2019–2020 restructuring in which ten public sector banks were merged into four larger entities.

These consolidations have been justified on grounds of efficiency and global competitiveness. For instance, the Ministry of Finance argued that the 2019–2020 mergers would create “globally competitive banks” capable of financing India’s infrastructure needs and competing with international financial giants. Yet, the consolidation trend also raises profound competition concerns. Larger banks may enjoy implicit government guarantees, reducing incentives to manage risk prudently. Regional concentration may increase, potentially diminishing consumer choice and service quality. Moreover, while the Competition Commission of India (CCI) is empowered to scrutinize such mergers, many public sector bank consolidations have effectively bypassed competition review under the guise of financial stability and policy imperatives.

OBJECTIVES OF THE STUDY:

- To examine legal challenges and regulatory gaps in applying competition law in the financial services sector.
- To assess the efficacy of antitrust enforcement mechanisms in regulating banking consolidation.
- To analyse how banking consolidation affects consumer welfare and market competition under existing antitrust frameworks, looking at how it affects pricing, market concentration, and service accessibility.
- To suggest policy recommendations and reforms for India by comparing and contrasting global approaches (US, UK) to banking competition and regulation.

RESEARCH QUESTIONS:

- What are the legal challenges in enforcing antitrust regulations in the financial services sector?
- Does the current antitrust framework effectively address the unique aspects of banking consolidation?
- Do the regulatory objectives of financial stability interact effectively with competition policy?

RESEARCH METHODOLOGY:

This study employs a qualitative methodology to examine antitrust enforcement in the financial services industry. The approach examines regulatory issues and their ramifications by combining empirical analysis and doctrinal legal study.

Primary data will be derived from legal documents, including orders from the Competition Commission of India, guidelines from the Reserve Bank of India, and pertinent judicial rulings. Secondary data will encompass academic literature, industry reports, and market analyses related to competition and consolidation in the banking sector.

The analytical framework of this research features a qualitative analysis. The qualitative study will systematically examine regulatory frameworks, policy documents, and case law associated with banking mergers. Additionally, the research will also shed light on a comparative analysis of international best practices in antitrust enforcement, particularly in developed markets experiencing substantial banking consolidation.

REGULATORY FRAMEWORK GOVERNING BANK MERGERS:

The regulatory framework governing banking consolidation in India is structured across several key statutes that collectively regulate bank mergers, acquisitions, and overall sector consolidation with an eye on both financial stability and competition safeguarding. The principal legislation that empowers competition oversight in India is the Competition Act, 2002. Under Sections 5 and 6 of this Act, the Competition Commission of India (CCI) is authorized to review “combinations” including mergers, acquisitions, or amalgamations that cross specified asset or turnover thresholds. The CCI is empowered to block or modify these transactions if they are likely to cause an appreciable adverse effect on competition (AAEC) in the relevant market.¹¹ To determine this, the CCI applies a multi-factor test as stipulated under Section 20(4), considering market concentration, entry barriers, countervailing buyer power, and the extent of innovation.¹² Industry participants must adhere to a mandatory pre-merger notification regime, ensuring that qualifying transactions are reported to the CCI before consummation.¹³

This competition framework theoretically extends to all banks operating in India, including public, private, and foreign entities. However, in practical terms, a structural divergence exists between private and public sector bank (PSB) consolidation. While private bank mergers are subject to full CCI scrutiny, PSB mergers often occur through government notification under the Banking Companies (Acquisition and Transfer of Undertakings) Acts of 1970 and 1980, usually with limited or no oversight from the CCI.¹⁴ This divergence signifies a pronounced asymmetry in merger regulation, raising competition concerns, particularly because public sector consolidations enjoy regulatory exemptions that shield them from rigorous competition analysis.

Alongside the competition framework, the Reserve Bank of India (RBI) plays a central prudential regulatory role under the Banking Regulation Act, 1949. The RBI’s mandate is primarily to ensure the soundness and stability of the banking system while protecting depositor interests.¹⁵ Its authoritative powers encompass licensing banks, prescribing capital adequacy norms, approving amalgamations under Section 44A, and issuing directions to maintain

¹¹ Competition Act, 2002, Sections 5 and 6

¹² Competition Act, 2002, Section 20(4)

¹³ Competition Act, 2002, mandatory pre-merger notification regime

¹⁴ Banking Companies (Acquisition and Transfer of Undertakings) Acts, 1970 and 1980

¹⁵ Banking Regulation Act, 1949

monetary stability.¹⁶ Voluntary bank amalgamations require RBI approval, and the central government retains powers to direct forced mergers involving weak banks, often based on RBI recommendations. This dual regulatory framework results in a division of labor where the RBI focuses on the merged entity's financial strength, while the CCI evaluates potential competition harms.

ISSUES AND CHALLENGES;

A critical issue that emerges is the lack of a clear statutory hierarchy between the RBI and the CCI, which has resulted in regulatory uncertainty and potential conflict. The interface problem between the CCI and sectoral regulators is recurrent in Indian competition law. Sections 21 and 21A of the Competition Act provide a reference mechanism enabling the CCI or other statutory authorities to refer matters of overlapping jurisdiction to each other.¹⁷ However, these provisions are discretionary and non-binding, often generating ambiguity in jurisdictional applicability.

This conflict is especially pronounced in banking, where the RBI prioritizes maintaining stability and depositor confidence, while the CCI protects competitive markets. PSB mergers mostly evade CCI scrutiny as the government frames them as matters of financial stability rather than competitive market transactions. The Supreme Court has adjudicated on similar jurisdictional overlaps, as seen in *CCI v. Bharti Airtel Ltd.*,¹⁸ where it held that regulatory bodies with technical expertise, such as the Telecom Regulatory Authority of India (TRAI), should address sector-specific jurisdictional disputes before the CCI intervenes. Although this decision pertains to telecom, critics argue it sets a precedent that may marginalize the CCI in the financial services sector, particularly in banking consolidation, undermining the efficacy of competition oversight.

Several key Indian case studies illustrate this framework's practical application and challenges. The private sector merger of Kotak Mahindra Bank and ING Vysya Bank in 2014–2015 was one of the earliest prominent banking consolidations reviewed by the CCI. The Commission cleared this transaction, noting that the merged entity's market share remained moderate and competitive pressures from both PSBs and private banks were sufficient to prevent any appreciable adverse effect on competition. The decision reflected the CCI's reliance on broad

¹⁶ Banking Regulation Act, 1949, Section 44A

¹⁷ Competition Act, 2002, Sections 21 and 21A

¹⁸ *CCI v. Bharti Airtel Ltd.*, (2019) 2 SCC 521

market definitions that considered the competitive constraints beyond mere market concentration.¹⁹

In contrast, the merger of State Bank of India with its associate banks and Bharatiya Mahila Bank in 2017, which created one of the world's largest banks by assets, was executed through a statutory notification under the State Bank of India Act and bypassed CCI scrutiny entirely. Critics have pointed out that exempting such a significant consolidation from competition review risks entrenching dominance without adequate analysis of consumer welfare implications.

Similarly, the mega-mergers of public sector banks between 2019 and 2020, which amalgamated ten PSBs into four larger entities and reduced the number of PSBs from 27 to 12, did not undergo CCI evaluation. The government justified these amalgamations to create globally competitive banks and address capital adequacy requirements. Nevertheless, competition scholars warn that the absence of merger control potentially enabled excessive market concentration, especially in critical regional segments such as Small and Medium Enterprises (SME) lending, thereby raising competition concerns at the grassroots level.

The merger between HDFC Ltd., India's largest housing finance company, and HDFC Bank, the largest private bank in the country, in 2023 stands out as the largest financial sector deal in India's history. Unlike PSB mergers, the CCI scrutinized and approved this deal unconditionally. However, concerns were raised post-merger that the CCI may have underestimated the potential foreclosure risks in housing finance and retail lending markets, highlighting discrepancies and inconsistencies in the antitrust scrutiny applied to private sector mergers compared to public sector consolidations.

In summary, this regulatory framework creates an environment of dual standards and fragmented oversight. While private sector mergers are subject to close competition review with a multi-dimensional analysis, public sector mergers often escape such rigor due to legislative exemptions and government policy priorities. This bifurcation underscores the regulatory and legal challenges in effectively enforcing anti-trust regulations in India's financial services sector.

¹⁹ Combination Registration No. C-2014/12/231 2014. Competition Commission of India.

INTERNATIONAL FRAMEWORKS AND COMPARATIVE LESSONS

- United States

The United States provides the most developed jurisprudence on antitrust enforcement in banking consolidation. U.S. antitrust law has three pillars: the Sherman Antitrust Act of 1890, the Clayton Antitrust Act of 1914, and the Bank Holding Company Act of 1956.²⁰ Section 7 of the Clayton Act, in particular, prohibits mergers and acquisitions where the effect “may be substantially to lessen competition, or to tend to create a monopoly.”²¹

Banking mergers are also subject to sector-specific provisions under the Bank Merger Act of 1960, which requires the Department of Justice (DOJ) and banking regulators, the Federal Reserve Board, Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC) to evaluate proposed consolidations jointly.²² This dual regime reflects the balance between competition concerns and financial stability.

The landmark decision in *United States v. Philadelphia National Bank* (1963)²³ Established a structural presumption: bank mergers that significantly increase concentration in local banking markets are presumed illegal under Section 7 of the Clayton Act.²⁴ The Court emphasized that “a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in concentration, is so inherently likely to lessen competition substantially that it must be enjoined.”

Subsequent cases, such as *United States v. Third National Bank in Nashville*²⁵ And *United States v. Marine Bancorporation, Inc.*²⁶ Refined this approach by examining local market shares, entry barriers, and competitive effects. The DOJ and Federal Reserve also apply quantitative thresholds based on the Herfindahl–Hirschman Index (HHI) to assess competitive harm. Transactions resulting in an HHI above 2,500 with an increase of more than 200 points are presumed anticompetitive.²⁷

The Hart–Scott–Rodino Antitrust Improvements Act of 1976 (HSR Act) introduced mandatory pre-merger notification, ensuring DOJ and FTC review before consummation.²⁸ This requirement has become central in screening bank mergers.

²⁰ Sherman Antitrust Act, 15 U.S.C. section 1–7; Clayton Act, 15 U.S.C. section 12–27; Bank Holding Company Act of 1956, 12 U.S.C. section 1841–50.

²¹ Clayton Act section 7, 15 U.S.C. section 18.

²² Bank Merger Act, 12 U.S.C. section 1828(c).

²³ *United States v. Philadelphia National Bank*, 374 U.S. 321. United States Supreme Court. (1963)

²⁴ *Ibid* 27

²⁵ *United States v. Third National Bank in Nashville*, 390 U.S. 171. United States Supreme Court. (1968)

²⁶ *United States v. Marine Bancorporation, Inc.*, 418 U.S. 602. United States Supreme Court. (1974)

²⁷ Horizontal Merger Guidelines, section 5.3.

²⁸ Hart–Scott–Rodino Antitrust Improvements Act of 1976, 15 U.S.C. section 18a

The U.S. framework illustrates a rigorous merger control regime with firmly embedded competition principles, though banking regulators retain discretion to balance systemic risk considerations.

- **European Union**

The European Union (EU) follows a supranational model of merger control under the EU Merger Regulation (EUMR)²⁹ Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) prohibit anticompetitive agreements and abuse of dominance, while the EUMR provides ex ante merger scrutiny.

Banking mergers that meet specified turnover thresholds are notified to the European Commission, which evaluates whether the concentration would significantly impede effective competition (the SIEC test). Unlike the U.S. presumption-based approach, EU law adopts a more effects-based methodology.

In *Commission v. Deutsche Bank AG* (1999),³⁰ The Commission cleared the Deutsche Bank and Bankers Trust merger, subject to conditions addressing overlap in investment banking. In *Santander Abbey National* (2004), the Commission approved the cross-border merger, emphasizing the need to preserve competition in retail and mortgage lending markets.³¹

The EU has also adapted its competition law to the realities of digital finance. The Payment Services Directive (PSD2) promotes open banking and consumer choice by mandating data-sharing among banks and fintechs.³² This represents a proactive attempt to reconcile competition law with financial innovation, ensuring that consolidation does not foreclose new entrants.

Importantly, EU law provides for close coordination between competition and prudential regulators, including the European Central Bank (ECB) under the Single Supervisory Mechanism. This institutional framework reduces the regulatory turf wars that plague India.

- **United Kingdom**

Post-Brexit, the UK Competition and Markets Authority (CMA) exercises exclusive jurisdiction over merger control. The CMA has actively investigated retail banking markets,

²⁹Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (EU Merger Regulation). Official Journal of the European Union, L 24/1.Council of the European Union. (2004)

³⁰ Case No. IV/M.1025 – Deutsche Bank/Bankers Trust, Decision 1999/331/EC.

³¹ Case No. COMP/M.3440 – Santander/Abbey National, Decision 2004/918/EC. Official Journal of the European Union, L 374/22. European Commission. (2004)

³² Directive (EU) 2015/2366 on payment services in the internal market (PSD2). Official Journal of the European Union, L 337/35.European Commission. (1999)

including the Retail Banking Market Investigation (2016), which concluded that market concentration and customer inertia limited effective competition.³³ Remedies included mandating easier account switching and open banking initiatives.

Banking consolidations are reviewed under the Enterprise Act 2002, applying a substantial lessening of competition (SLC) test.³⁴ While the UK does not have a dual review system like the U.S., prudential considerations are factored in through coordination with the Prudential Regulation Authority (PRA).

- **Canada**

Canada regulates mergers under the Competition Act, 1985, which prohibits mergers that “prevent or lessen, or are likely to prevent or lessen, competition substantially”. The Competition Bureau collaborates with the Office of the Superintendent of Financial Institutions (OSFI) in reviewing bank mergers.

Notably, in 1998, the Canadian government blocked the proposed mergers of Royal Bank of Canada with Bank of Montreal, and Toronto-Dominion Bank with Canadian Imperial Bank of Commerce, citing both competition concerns and systemic risk.³⁵ This case illustrates Canada’s willingness to prioritize competition over efficiency justifications in banking consolidation.

- **Global Coordination and Soft Law**

Given the transnational nature of finance, international coordination is essential. The Financial Stability Board (FSB), the Basel Committee on Banking Supervision, and the International Competition Network (ICN) provide soft law frameworks for harmonizing prudential and competition policies.³⁶

The Basel Committee, for instance, promotes minimum capital adequacy standards (Basel III), indirectly influencing merger decisions by ensuring financial resilience.³⁷ The ICN facilitates the exchange of best practices in merger review, including financial services, though its recommendations are non-binding.

Global experience demonstrates that effective merger control in banking requires coordination between competition authorities and prudential regulators. Jurisdictions like the EU and

³³ Retail Banking Market Investigation: Final Report. Competition and Markets Authority. (2016)

³⁴ Enterprise Act 2002, c. 40, Section 22–23.

³⁵ Report on Large Bank Mergers in Canada, December. House of Commons Standing Committee on Finance

³⁶ Recommended Practices for Merger Notification and Review Procedures. International Competition Network. (2018)

³⁷ Supervision, B., 2011. Basel committee on banking supervision. Principles for Sound Liquidity Risk Management and Supervision (September 2008).

Canada have achieved greater coherence, while India struggles with institutional overlap between the CCI and RBI.

CONTEMPORARY CHALLENGES IN ANTITRUST ENFORCEMENT

- Fintech, BigTech, and Digital Banking

The most significant contemporary challenge to antitrust enforcement in financial services arises from the rapid digitalization of banking and the rise of fintech and BigTech platforms. Traditional banking consolidation now competes with market restructuring driven by technological disruption.

India's Unified Payments Interface (UPI) has transformed retail payments, allowing real-time fund transfers across banks and digital wallets.³⁸ While hailed as a success for financial inclusion, UPI has also created a platform-based ecosystem dominated by a few players—most notably Google Pay and PhonePe, which account for over 80% of UPI transactions. This concentration raises concerns about network effects and the potential foreclosure of smaller fintech competitors.

Antitrust issues in fintech differ from conventional banking:

1. **Data Concentration:** Digital platforms aggregate consumer financial data, allowing them to engage in targeted pricing or exclusionary conduct.³⁹
2. **Interoperability:** The lack of interoperability among payment systems can entrench incumbents, limiting entry.⁴⁰
3. **Vertical Integration:** BigTech firms often combine financial services with e-commerce, cloud, and digital advertising, leveraging cross-market dominance.⁴¹

The CCI has begun grappling with these issues. In 2020, it ordered an investigation into Google Pay for alleged abuse of dominance in UPI app distribution. Similarly, the CCI reviewed WhatsApp Pay's entry into the payments market, highlighting concerns of tying services between messaging and payments.⁴² These cases reflect the challenges of applying traditional antitrust concepts like "relevant market" in a rapidly evolving digital ecosystem.

Globally, regulators have recognized the risks of fintech dominance. The European

³⁸ NPCI, Unified Payments Interface (UPI) Statistics (2023),

³⁹ Maurice Stucke & Allen Grunes, Big Data and Competition Policy 112–15 (2016).

⁴⁰ OECD, FinTech and Competition Policy: Market Developments and Policy Implications 21–24 (2020).

⁴¹ Ariel Ezrachi & Maurice Stucke, Virtual Competition 93–97 (2016).

⁴² Harshita Chawla v. WhatsApp Inc., Case No. 15 of 2020, CCI (June 18, 2020).

Commission's Digital Markets Act (DMA)⁴³ and the U.S. DOJ's suits against Google highlight a willingness to regulate Big Tech's entry into finance through an antitrust lens. India, however, lacks a comprehensive framework integrating digital competition with financial stability considerations.

- **Public Sector vs. Private Sector Bias**

A recurring criticism of India's antitrust enforcement in banking consolidation is its uneven application to public and private banks. Private sector mergers, such as Kotak/ING Vysya or HDFC-HDFC Ltd., undergo a full CCI review. In contrast, public sector bank (PSB) mergers are typically exempted or routed through statutory notifications, avoiding competition scrutiny. This asymmetry undermines the principle of competitive neutrality. Antitrust law is premised on ownership-blind enforcement, yet in practice, state ownership shields PSBs from rigorous scrutiny.⁴⁴ The government justifies this exemption for financial stability and the need to create globally competitive banks.⁴⁵ However, such policy-driven exemptions may entrench dominance, particularly in regional markets where merged PSBs hold overwhelming market shares.

Moreover, preferential treatment of PSBs may distort competition against private banks and fintech entrants. If PSBs can consolidate without scrutiny, they may gain implicit competitive advantages, such as government backing and depositor trust, further reducing competitive pressure.

Comparatively, jurisdictions like the U.S. and Canada do not distinguish between public and private ownership in merger review. All consolidations are subject to antitrust evaluation, with prudential concerns addressed in parallel by banking regulators. India's selective application thus represents a significant challenge for effective enforcement.

- **Merger Control Tools and Their Limitations**

1. Reliance on Structural Metrics

Like other competition authorities, the CCI relies heavily on structural measures such as the **Herfindahl-Hirschman Index (HHI)** and combined market share in merger analysis.⁴⁶ While useful, these tools are limited in the banking context:

⁴³ Regulation 2022/1925 of the European Parliament and of the Council of 14 Sept. 2022 on Contestable and Fair Markets in the Digital Sector (Digital Markets Act), 2022 O.J. (L 265)

⁴⁴ Agrawal, Anukriti & Agarwal, K.K. (2023). Competition, Consolidation and Convergence in the Indian Banking Industry- A path to \$5 trillion economy. *Management Insight*. 19. 24-36. 10.21844/mijia.19.1.3.

⁴⁵ Ministry of Finance, Government of India, Press Release: Mega Consolidation of PSBs (Aug.30, 2019).

⁴⁶ U.S. Dep't of Justice & Fed. Trade Comm'n, *Horizontal Merger Guidelines* § 5.3 (2010).

- They do not capture systemic interconnections; even small banks may contribute to financial contagion.
- They ignore non-price competition factors such as service quality, innovation, and branch access.
- They fail to integrate prudential considerations, such as capital adequacy or resolution planning.

Thus, a benign merger under HHI thresholds may still generate systemic vulnerabilities or reduce long-term innovation.

2. Failing Firm Defense

Another challenge is the application of the **failing firm defense** in crisis-driven consolidations. The defense allows an otherwise anticompetitive merger if one of the firms fails and exiting would harm competition more than the merger itself.

India has seen the de facto application of this principle in the Yes Bank rescue (2020), where the RBI directed a forced reconstruction plan led by the State Bank of India.⁴⁷ The merger avoided collapse but raised questions about moral hazard and precedent: will future failing banks rely on state-arranged rescues without facing market discipline?

Unlike the U.S. DOJ, which applies strict criteria for failing firm defenses (including proof of inevitable exit and absence of less anticompetitive buyers),⁴⁸ India lacks codified standards. This creates uncertainty and scope for discretionary interventions.

3. Dynamic Competition and Innovation

Banking competition today is increasingly shaped by **innovation**, not just price or branch networks. Digital lending, artificial intelligence in risk assessment, and blockchain-based settlements redefine market dynamics. Yet the CCI has not consistently incorporated innovation effects into its merger analysis. Without this, enforcement risks lagging behind technological reality.

4. Regulatory Fragmentation and Coordination Gaps

A final challenge is the fragmented institutional landscape. The RBI oversees prudential stability, the CCI enforces competition law, and sectoral regulators like SEBI and IRDAI supervise capital markets and insurance. Overlaps and gaps are inevitable.

Although Sections 21 and 21A of the Competition Act provide for references between

⁴⁷ RBI, Press Release: Draft Scheme of Reconstruction of Yes Bank Ltd. (Mar. 6, 2020).

⁴⁸ Shelanski, H.A., 2012. Information, innovation, and competition policy for the Internet. U. Pa. L. Rev., 161, p.1663.

regulators, these mechanisms are rarely used and are non-binding. Unlike the EU's Single Supervisory Mechanism, which lacks a structured coordination framework, turf battles often weaken competition oversight.

The case of *Bharti Airtel*⁴⁹ suggests that courts may defer to sectoral regulators in cases of overlap, potentially marginalizing the CCI in banking. Unless more explicit statutory guidance is introduced, consolidation may continue to bypass rigorous competition scrutiny.

CONCLUSION AND SUGGESTIONS

Findings (Suggestions)

- ***Development of a sector-specific framework:*** A "one-size-fits-all" antitrust model is insufficient for the banking sector, particularly with digital platforms, big data, and financial inclusion goals shaping competition. Developing banking-specific competition guidelines, incorporating digital market parameters, data governance standards, and economic access indicators, is essential.
- ***Refined approach to market definition:*** Conventional antitrust tools that rely primarily on price and output considerations fail to capture the true nature of banking competition. Market definitions should incorporate service quality, innovation, consumer trust, and data ecosystems, as these are increasingly central to market power in the digital banking environment.
- ***Strengthened institutional coordination between RBI and CCI:*** Current overlaps and jurisdictional frictions between regulators undermine effective enforcement. Establishing formal statutory obligations, structured data-sharing mechanisms, and joint procedural frameworks would help reconcile the twin goals of stability and competitive markets.
- ***Mandatory post-merger review:*** A key gap in Indian practice is the absence of post-merger evaluation. Mandatory follow-up reviews would ensure that promised efficiencies are realized, financial inclusion is not undermined (especially in rural areas), and merged entities remain aligned with the regulator's objectives.
- ***Regulatory sandboxes and adaptive enforcement tools:*** Using sandboxes should be restricted to fintech innovation and extended to enforcement strategies—such as algorithmic tools to monitor digital dominance and performance-based merger

⁴⁹ Supra Note 18

remedies that evolve. This would allow regulators to adapt flexibly to rapid market changes.

- **Formalized balancing mechanisms:** Merger review should involve an explicit balancing test, making how stability concerns are weighed against competition objectives transparent. This would provide greater foresight and accountability for both regulators and market stakeholders.
- **Inclusive measures of consumer welfare:** Banking in India serves not just commercial objectives but also social goals tied to financial inclusion. Therefore, welfare analysis should account for accessibility, affordability, outreach in rural areas, and long-term economic stability rather than limiting assessment to price-based factors.

Conclusion

Banking consolidation in India occupies a complex space where financial stability and competitive dynamics must coexist. The study shows that while current legislation provides foundational safeguards against anti-competitive practices, it is inadequate to address the intricacies of a rapidly digitizing banking sector or the state-led consolidation model. Traditional antitrust metrics overlook innovation, data concentration, and financial inclusion concerns, central to the Indian banking ecosystem.

A paradigm shift in regulatory governance is required to meet these challenges—moving from rigid, static antitrust enforcement towards a dynamic, context-specific framework. This must balance immediate financial stability with long-term competition and innovation. Institutional coordination between RBI and CCI is indispensable, supported by mechanisms like post-merger reviews, adaptive remedies, and explicit balancing tests for regulatory decisions.

Ultimately, a successful competition policy in India's banking industry cannot stand in isolation. It must align with larger economic governance goals, embrace the socio-economic context of India, and evolve with technological innovation. India would strengthen its banking system and set a benchmark for integrated, forward-looking antitrust regulation by developing an enforcement system that ensures stability, fosters competition, and advances inclusive growth.