REVERSE FLIP, FAST-TRACK MERGERS AND THE CCI NOTIFICATION GAP: FOREIGN PARENT ACQUISITIONS ESCAPING INDIAN COMPETITION REVIEW

AI DISCLOSURE STATEMENT

The author used an AI-assisted writing tool solely for language editing, grammar refinement, and formatting assistance. All legal research, analysis, case law interpretation, arguments, and conclusions presented in this manuscript are the author's own work.

ABSTRACT

India has seen a wave of reverse flips, with startups like Groww, Zepto, PhonePe and Razorpay moving their holding structure back to India.[1] This article is more particularly concerned with the acquisition of control or material influence by a third-party investor over the foreign holding company of a business. Reading sections 2(h), 5, 20 and 32 of the Competition Act, 2002 with the 2024 Combination Regulations and Exemption Rules, it finds a particular void. The INR 500 crore floor in the substantial business operations test, the absence of a specific look-through rule for holding companies, and a one-year bar on ex post review are three key limitations of the existing framework. A hypothetical tests whether the gap is real, and the proposed reforms are divided into those within CCI's power and those requiring amendment. This article proposes reforms to ensure that foreign-parent acquisitions that may affect Indian markets receive appropriate competition scrutiny.

KEYWORDS

Reverse Flip, Deal Value Thresholds, Merger Control, Substantial Business Operations, Competition Commission of India.

[1] Tanushree Bhuwalka & Viraj Puri, Reverse-Flipping: Indian Startups Return 'Home' Amid Regulatory Reforms, Khaitan & Co. (Nov. 18, 2024), https://khaitanco.com/sites/default/files/2024-11/Reverse-Flipping_%20Indian%20startups%20return%20%E2%80%98home%E2%80%99%20amid%20regulatory%20reforms.pdf (last visited Oct. 20, 2026) (archived copy on file with author).

I. INTRODUCTION

i. The Rise of Reverse Flip in India

For nearly two decades now, Indian startups moved their holding companies and corporate structures mainly to Singapore and Delaware. According to the 2022-2023[2] Economic Survey, many startups moved abroad because those countries offered more favourable corporate regulations and fewer restrictions on cross-border movement of capital. Recently, however, an unexpected reverse trend has been emerged: where startups are moving their holding companies back to India.

ii. Growing Importance of Merger Control and Research Framework

Merger control represents a key regulatory challenge in reverse flip transactions. The Competition (Amendment) Act, 2023 introduced the Deal Value Threshold requiring prior approval from the Competition Commission of India (CCI)[3] for transactions exceeding INR 2,000 crore where the target has substantial business operations in India.

iii. Research Question

This paper raises a question of what would happen if a third-party investor were to acquire control over a foreign holding company that already has an operating subsidiary company in India. This paper will explore the feasibility of the application of the deal value threshold and substantial business operations (SBO) test in case of the holding company, availability of any exceptions for this type of acquisition and the ex-post remedies available to the CCI under Section 32.

iv. Methodology and Scope

This paper is based on doctrinal and analytical research methodology. It will study the provisions of the Companies Act, 2013 and the Competition Act, 2002 along with the CCI Regulations. A comparative approach is also adopted, drawing on the merger control frameworks of the European Union, the United States, Germany, Austria, and Singapore.

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[2] Dep't of Econ. Affs., Ministry of Fin., Economic Survey 2022-23, ch. 9 (Jan. 31, 2023), https://www.indiabudget.gov.in/economicsurvey/ (last visited Oct. 15, 2026) (archived copy on file with author).
[3] Competition (Amendment) Act, 2023, No. 9 of 2023, § 5(d) (India) (amending Competition Act, 2002, No. 12 of 2003, § 5).

II. CONCEPTUAL AND REGULATORY FRAMEWORK

i. Definition of Reverse Flip

The term "reverse flip" refers to a corporate restructuring process in which a startup merges with, or winds up, its offshore holding company, typically incorporated in jurisdictions such as Delaware, Singapore, or Germany, into its Indian subsidiary. As a result, the parent company moves from a foreign country to India.[4]

ii. The Fast-Track Route under Section 233

Section 233 of the Companies Act, 2013 enables a fast-track merger between a holding company and its wholly owned subsidiary, and after the introduction of Rule 25A (5) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in 2024, between a foreign holding company and its wholly owned Indian subsidiary, without requiring NCLT sanction[5]. Under this route, final approval is granted by the Central Government after prior clearance from the Regional Director, the Registrar of Companies, and the Official Liquidator[6]. This mechanism considerably shortens the timeline for such mergers, bringing a process that might otherwise take years down to approximately three to four months[7].

iii. Merger Regulation under the Competition Act

Applicable merger control requirements must independently be met wherever a transaction qualifies as a ***"combination."*** If an acquisition, acquisition of control or a merger qualifies as a combination due to the satisfaction of the asset and turnover thresholds provided under clauses (a) to (c), or alternatively the deal value threshold under clause (d) starting from 2023, the 2024 threshold are INR 2,500 crore of Indian assets or INR 7,500 crore of Indian turnover, and at group level, INR 10,000 crore of assets or INR 30,000 crore of turnover[8].

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[4] Bhuwalka & Puri, supra note 1.

[5] Ministry of Corp. Affs., Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024, G.S.R. 555(E) (Sept. 9, 2024) (India) (inserting Rule 25A(5)); Corporate Professionals, Regulatory Boost: How India Is Winning Back Its Startups Through Reverse Flipping, Mondaq (June 17, 2025), https://www.mondaq.com/india/corporate-and-company-law/1637830/regulatory-boost-how-india-is-winning-back-its-startups-through-reverse-flipping (last visited Oct. 15, 2026) (archived copy on file with author).

[6] Companies Act, 2013, No. 18 of 2013, § 233 (India); Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, r. 25 (India).

[7] Corporate Professionals, supra note 5.

[8] Ministry of Corp. Affs., Notification S.O. 1130(E) (Mar. 7, 2024) (India) (revising the monetary thresholds under Section 5 of the Competition Act, 2002).

iv. The Deal Value Threshold

The Competition (Amendment) Act, 2023 introduced Section 5(d)[9], establishing the Deal Value Threshold. Under this provision, any transaction exceeding INR 2,000 crore requires prior approval from the CCI where the target has "substantial business operations in India." This requirement applies even where the transaction does not meet the ordinary asset and turnover thresholds and where a de minimis exemption would otherwise apply. Following the introduction of the CCI (Combinations) Regulations, 2024[10], this threshold took effect on 10 September 2024[11]. Value of the transaction under Regulation 4(1) of the Combination Regulations, 2024 will be determined taking into account all forms of valuable consideration either directly or indirectly or immediately or deferred or an acquisition in the same target made by the acquirer's group within the past two years[12].

v. Substantial Business Operations Test

SBO will be considered to exist in the case of an enterprise in India under Regulation 4(2) when (a)-for digital services, 10% or more of the business or end users of the enterprise globally is located in India, (b)- the gross merchandise value (GMV) from India for the previous 12 months is 10% or more of global GMV and exceeds INR 500 crore, (c)- the turnover of the enterprise from India for the previous financial year is 10% or more of the global turnover and exceeds INR 500 crore[13]. The test applies to the enterprise that is being taken over. Section 2(h)[14] provides that 'enterprise' includes a person acting through its subsidiary, thereby allowing, the Indian subsidiary of the holding company to be included. There is no mention made to that effect in either Section 5(d) or Regulation 4(2), and there does not seem to be any order by the CCI on this point.

[9] Competition Act, 2002, No. 12 of 2003, supra note 3, § 5(d) (India).
[10] Competition Commission of India (Combinations) Regulations, 2024, Notification No. 07 of 2024 (Sept. 9, 2024) (India).
[11] George Cyriac & Rahul Kapoor, Competition Commission of India Provides Updated Deal Value Threshold, Morgan Lewis (Sept. 19, 2024), https://www.morganlewis.com/pubs/2024/09/competition-commission-of-india-provides-updated-deal-value-threshold (last visited Oct. 15, 2026) (archived copy on file with author).
[12] Competition Commission of India (Combinations) Regulations, 2024, reg. 4(1) (India).
[13] Competition Commission of India (Combinations) Regulations, 2024, reg. 4(2) & Explanation 1 (India).
[14] Competition Act, 2002, No. 12 of 2003, § 2(h) (India).

III. FOREIGN PARENT ACQUISITIONS AND GAPS IN NOTIFICATION REQUIREMENTS

i. Typical Reverse Flip Structure

Generally, a reverse flip structure has two layers- the Indian operating company, which generates revenue in India, and the foreign holding company, which is often incorporated in Singapore, Germany or Delaware, places from where global investors have traditionally invested. From a competition-law perspective, however, the transaction of greatest concern may occur earlier, when a global investor acquires shares or control in the foreign holding company.

ii. Why Certain Transactions Remain Unnotified

Two structural features explain why certain transactions may escape CCI scrutiny despite their ultimate impact on the Indian market. First, there may be a threshold mismatch. The de minimis exemption, now codified in the Competition (Minimum Value of Assets or Turnover) Rules, 2024, eliminates a transaction from the notification requirement where the target's assets in India do not exceed INR 450 crore, or its turnover in India does not exceed INR 1,250 crore[15]. It does not apply in cases where the deal value test is met. Where the acquirer has no presence in India and target's Indian involvement is small, only the deal value route, carrying with the SBO test, can trigger a notification.

Second, a transaction may be characterised as an offshore transaction. A deal may be structured as a foreign-to-foreign share transfer. The fact that jurisdiction is not thereby eliminated is evident since Regulation 4(1) includes indirect consideration and Section 32 covers combinations which take place outside India.

[15] Competition (Minimum Value of Assets or Turnover) Rules, 2024, G.S.R. 547(E) (Sept. 9, 2024) (India); Competition Comm'n of India, Filing of Combination Notice: Introduction, CCI, https://www.cci.gov.in/combination/combination/filing-of-combination-notice/introduction (last visited Oct. 15, 2026) (archived copy on file with author).

iii. Fast-Track Mergers and Regulatory Procedure

This gap becomes more pronounced once Section 233 of the Companies Act, 2013 enters the sequence. Since the review by the Regional Director is mainly focused on issues of procedure and solvency, and not on the effects of the transaction on the competitive environment, the failure to notify an earlier acquisition at parent-company level, for the reasons explained above, means that there is no independent competition law assessment of the merger under the Section 233.

iv. Ambiguity in the Definition of "Control"

The next concern is the definition of "control". Section 5 of the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2023, defines control as the ability to exercise "material influence, in any manner whatsoever," over the affairs, management or strategic commercial decisions of an enterprise. This lowers the threshold from the earlier "decisive influence" standard[16].

Section 2(h) supports treating a holding company's enterprise as including its India subsidiary, and Section 32 lets the CCI inquire into an offshore combination that appreciably harms competition in India[17]. The difficulty is procedural: Section 32 operates through Section 20, whose proviso bars an inquiry begun more than one year after when the combination takes effect[18].

v. Hypothetical Transaction

StartCo Inc. is a Singaporean holding company which has an Indian subsidiary, StartCo India, that does non-digital manufacturing and distribution business. A foreign fund which does not have any prior presence in India acquires a 30% shareholding in StartCo Inc. for INR 2,600 crore, together with a board seat and veto power over the annual budget. The veto power amounts to substantial

[16] Competition Act, 2002, No. 12 of 2003, § 5, Explanation (a) (India), as amended by Competition (Amendment) Act, 2023, No. 9 of 2023 (India).
[17] Competition Act, 2002, No. 12 of 2003, §§ 2(h), 32 (India).
[18] Competition Act, 2002, No. 12 of 2003, §§ 20(1) proviso, 32 (India); Aastha Gupta & Bianca Bhardwaj, Traversing the Statutory Period of Limitation on Merger Review, TCCLR (June 24, 2023), https://www.tcclr.com/post/traversing-the-statutory-period-of-limitation-on-merger-review (last visited Oct. 15, 2026) (archived copy on file with author).

influence, thereby preventing the use of the minority acquisition exemption rule. Notification thus would depend upon whether the DVT applies and whether the SBO test is satisfied.

For Variant A, StartCo Inc. does not earn any revenue on its own, whereas StartCo India earns a revenue of INR 600 crore, which constitutes 40% of the turnover of the whole group. If the SBO test takes into account the subsidiary's turnover, the DVT is triggered. However, if the SBO test is evaluated on the basis of independent evaluation of StartCo Inc. alone, notification would be unnecessary because of the absence of any Indian turnover by StartCo Inc.

For Variant B, StartCo India earns a turnover of INR 400 crore, which is 90% of the turnover of the whole group. Therefore, there is no need for notice under these circumstances. Any Section 32 inquiry would have to begin within one year ambit.

IV. CRITICAL ANALYSIS OF THE CURRENT REGIME

i. The Form-Over-Substance Problem

The CCI's competence under Section 5 of the Competition Act, 2002 is triggered by the architecture of a transaction, the value of assets, turnover, and, since 2023, deal value[19] rather than by an independent examination of its competitive effect. Regulation 9(4) requires one notice for interrelated procedures, while 9(5) requires that notification should be based on substance, ignoring any structure that evades notice.[20] These Regulations respond to evasion, not an offshore structure. The problem lies not in the fact that "control" is too narrowly defined, or that the subsidiary is the wrong entity to test, given that Section 2(h) allows look-through, but that no Regulation mandates the use of such test by holding companies.

ii. The Reverse Flip Itself and the Exemptions

The reverse flip structure allows for a certain type of regulatory arbitrage through the exemption provisions applicable to combinations. Where the acquirer holds 50 percent or more of the target and the transaction does not lead to a change from joint control to sole control, then the acquisition of shares or voting rights is exempt from notification under Item 2 of Schedule I to the CCI

[19] Competition Act, 2002, No. 12 of 2003, § 5(a)-(d) (India), as amended by Competition (Amendment) Act, 2023, No. 9 of 2023 (India).
[20] Competition Commission of India (Combinations) Regulations, 2024, regs. 9(4)-(5) (India).

(Combination) Regulations[21]. This is the author's own interpretation of the law, and no CCI order has confirmed it yet.

iii. Extraterritorial Competition Concerns

Under the Competition Act, the CCI has jurisdiction to investigate a combination that produces an appreciable adverse effect on competition (AAEC) in India, irrespective of where the combination takes place[22] as illustrated by India -specific remedies imposed in Dow/DuPont and, more recently, Bayer/Monsanto[23]. Recent literature has noted, however, that the effects doctrine in India lacks an articulated nexus requirement specifying the degree of Indian effect necessary to found jurisdiction[24].

iv. Is the Deal Value Threshold Sufficient?

Modelled on the German and Austrian thresholds adopted after the Facebook/WhatsApp deal fell entirely outside merger-control scrutiny[25], India's Deal Value Threshold addresses low-turnover, high-value acquisitions, but nonetheless retains a quantitative floor and an SBO criterion that, for non-digital targets, add a second floor.

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[21] Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, sched. I, item 2 (India) (since superseded); Competition (Criteria for Exemption of Combinations) Rules, 2024, G.S.R. 548(E), sched., item 5 (Sept. 9, 2024) (India).

[22] Competition Act, 2002, No. 12 of 2003, § 32 (India) ("Acts taking place outside India but having an effect on competition in India").

[23] Dow Chem. Co. & E.I. du Pont de Nemours & Co., Combination Registration No. C-2016/05/400, Order of the Competition Comm'n of India (June 8, 2017) (India); Bayer Aktiengesellschaft & Monsanto Co., Combination Registration No. C-2017/08/523, Order of the Competition Comm'n of India (June 14, 2018) (India); Shardul Amarchand Mangaldas & Co., GCR Merger Remedies Guide: Fourth Edition, India Chapter, https://www.amsshardul.com/insight/gcr-merger-remedies-guide-fourth-edition-india-chapter/ (last visited Oct. 21, 2026); The Indian Competition Authority Approves Acquisition of Global Agricultural Company by Global Pharmaceutical Company (Bayer/Monsanto), Concurrences (June 2018), https://www.concurrences.com/en/bulletin/news-issues/june-2018/the-indian-competition-authority-approves-acquisition-of-global-agricultural (last visited Oct. 21, 2026).

[24] Kratika Jaswani, The Effects Doctrine in Action: Extraterritorial Jurisdiction, AAEC and the Limits of CCI's Cross-Border Merger Control (2020-2025), IJLLR (May 8, 2026), https://www.ijllr.com/post/the-effects-doctrine-in-action-extraterritorial-jurisdiction-aaec-and-the-limits-of-cci-s-cross-bo (last visited Oct. 20, 2026) (archived copy on file with author).

[25] Ulrich Quack & Oliver Fleischmann, German and Austrian Competition Authorities Publish Draft Guidelines on New Transaction Value Merger Control Thresholds, WilmerHale (June 18, 2018), https://www.wilmerhale.com/en/insights/client-alerts/20180618-german-and-austrian-competition-authorities-publish-draft-guidelines-on-new-transaction-value-merger-control-thresholds (last visited Oct. 20, 2026) (archived copy on file with author); Gesetz gegen Wettbewerbsbeschränkungen [GWB] [Act Against Restraints of Competition], June 26, 2013, Bundesgesetzblatt, Teil I [BGBl. I] at 1750, 3245, § 35(1a) (Ger.) (as amended by Neuntes Gesetz zur Änderung des Gesetzes gegen Wettbewerbsbeschränkungen, June 1, 2017, BGBl. I at 1416); Kartellgesetz 2005 [KartG] [Cartel Act], BGBl. I No. 61/2005, § 9(4) (Austria) (as amended by BGBl. I No. 56/2017).

v. Emerging Enforcement Challenges

Enforcement against offshore reverse flip structures is difficult. Although Section 32 gives the CCI authority beyond India's borders, applying this principle against a foreign parent without Indian assets still requires cross-border service of process, evidence collection, and inter-agency cooperation that India's limited network of bilateral agreements does not fully support[26].

V. COMPARATIVE ANALYSIS

i. European Union

The EU Merger Regulation is principally based on turnover thresholds for the allocation of jurisdiction. Here, Article 22 allows a member state to refer a deal to the European Commission when it affects trade between Member States, even when the referring state cannot review it under their own laws.

Reliance on this mechanism was sharply curtailed by the Court of Justice's 2024 ruling in Illumina/GRAIL, which held that Article 22[27] cannot be invoked by a Member State that lacks jurisdiction under its own national law, restoring primacy to codified thresholds over discretionary referral[28].

ii. United States

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 requires pre-merger notification to the Federal Trade Commission and the Department of Justice once the transaction-value and size-of-person thresholds are exceeded[29], the US nexus floor is analogous to the India SBO floor; however, it excludes foreign firms that do not have any business operations or investment in the US[30].

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[26] Competition Comm'n of India, International Cooperation, CCI, https://www.cci.gov.in/international-cooperation/abouts (last visited Oct. 20, 2026) (archived copy on file with author) (listing ten memoranda and cooperation arrangements with foreign competition agencies).
[27] Council Regulation 139/2004, art. 22, 2004 O.J. (L 24) 1 (EC).
[28] Joined Cases C-611/22 P & C-625/22 P, Illumina, Inc. v. Comm'n, ECLI:EU:C:2024:677 (Sept. 3, 2024) (Grand Chamber).
[29] 15 U.S.C. § 18a (2018).
[30] 16 C.F.R. §§ 802.50-.51 (2025); see also supra note 29.

iii. Germany and Austria

In Germany and Austria, transaction-value thresholds were introduced in 2017, requiring notification where turnover thresholds are not otherwise met but the transaction value exceeds €400 million (Germany) or €200 million (Austria), and the target carries out substantial domestic activities[31]. However, their nexus test is qualitative, where the joint guidance considers users, local resources, and research and development, not an absolute monetary threshold[32].

iv. Singapore

The Competition Act, 2004 of Singapore prohibits mergers that substantially lessen competition in any market in Singapore illegal and does not have a limitation period to assess unnotified mergers or thresholds in terms of asset or turnover[33]. However, the regime cannot readily be transplanted to India because it is voluntary[34].

v. Comparative Evaluation with India

Two design features emerge from these regimes: first, a trigger based on effects or transaction value that is independent of the formal location of the transaction; and second, a domestic-nexus condition that prevents indefinite extraterritorial reach. The Indian nexus is based on transactional value which is similar to the German approach, now supplemented with the clear cut 10% share and INR 500 crore threshold for non-digital acquisitions. The former approach is more similar to the foreign issuer exemption in the USA[35] than the German and Austrian qualitative nexus, and much less similar to the Singaporean threshold-less voluntary regime.

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[31] GWB § 35(1a) (Ger.); KartG § 9(4) (Austria); see Quack & Fleischmann, supra note 25 (describing the 2017 introduction of the €400 million (Germany) and €200 million (Austria) transaction-value thresholds); see also infra note 32, ¶ 19.

[32] Bundeskartellamt & Bundeswettbewerbsbehörde, Guidance on Transaction Value Thresholds for Mandatory Pre-merger Notification (Section 35 (1a) GWB and Section 9 (4) KartG) (July 2018) (courtesy translation), https://www.bwb.gv.at/fileadmin/user_upload/Downloads/standpunkte/2018-07_Guidance_Transaction_Value_Thresholds.pdf (last visited Oct. 15, 2026) (archived copy on file with author), ¶¶ 64-84.

[33] Competition Act 2004, § 54 (Sing.); Competition & Consumer Comm'n of Sing., CCS Guidelines on Merger Procedures (rev. ed., effective May 1, 2026), https://isomer-user-content.by.gov.sg/45/d81b233b-50a8-4fab-95c0-28a2dc67def1/CCS%20Guidelines%20on%20Merger%20Procedures%20.pdf (last visited Oct. 20, 2026) (archived copy on file with author), ¶¶ 3.2–3.3 (non-notified mergers may be investigated on CCS's own initiative; no time limit prescribed).

[34] CCS Guidelines on Merger Procedures, supra note 33, ¶¶ 2.3, 3.2 (notification is voluntary).

[35] 16 C.F.R. §§ 802.50-51 (2025); see supra note 30.

VI. REFORM FRAMEWORK

i. Measures within the CCI's Existing Powers

First, it may issue a clarification from the provisions of Regulation 32 of the Combination Regulations, 2024 that the assessment of SBO takes into account the target entity and its subsidiaries as per Section 2(h). Second, it may use Regulations 9 and 9(5), and Section 20(1) to inquire about an acquisition outside India if it looks like it is being made in a way that would evade coming to the notice of the CCI.

ii. Proposal that Require Legislative/Regulatory Change

First, the Parliament of India must increase the duration of the one-year limitation period provided in the proviso to Section 20(1) for non-notified combinations having an Indian connection from one to three years, as done by the Government of Canada[36]. Secondly, the CCI must make necessary changes to Regulation 4(2) under Section 64 so as to revise the monetary floor of INR 500 crore for the non-digital targets as per the qualitative test used by Germany and Austria. Thirdly, the Ministry of Corporate Affairs should require all Section 233 applicants to disclose investor acquisition in the foreign parent company, if any within the preceding year.

iii. Application of Proposals to Hypothetical Scenario

The proposed look-through rule is adequate for Variant A. For variant B, the qualitative nexus approach would be appropriate in light of StartCo's concentration in India and would also have a longer limitation period, preserving the ex-post assessment. The Section 233 determination would uncover the investment when StartCo turns around.

[36] Gupta & Bhardwaj, supra note 18 (discussing the Canadian limitation period for merger review); Competition Act, R.S.C. 1985, c. C-34, § 97 (Can.), as amended by Fall Economic Statement Implementation Act, 2023, S.C. 2024, c. 15 (Can.) (extending to three years the period for challenging non-notified mergers).

VII. CONCLUSION

Reverse flips are not suspicious by themselves. *PhonePe, Groww, Zepto and Razorpay* show a positive shift.[37] Section 233 is not flawed either. What matters more narrowly is a loophole. Acquisitions by third parties of foreign holding companies fall within the Competition Act, and the exemptions do not protect them. The problem is the INR 500 crore SBO floor for non-digitized targets, the absence of an explicit look-through rule, and the one-year limit on ex post review.

This can be plugged without affecting the flip. The CCI can clarify the look-through provisions and exercise its power of inquiry. Parliament and the CCI can reconsider the limitation period and revise the test for nexus, while the Ministry of Corporate Affairs can draw on the Section 233 filing as a source of information.

[37] Bhuwalka & Puri, supra note 1; Corporate Professionals, supra note 5.