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THE TROJAN HORSE OF EFFICIENCY: RETHINKING JOINT VENTURE REGULATION UNDER INDIAN COMPETITION LAW

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ABSTRACT

Joint ventures occupy a precarious space between cooperation and collusion. While intended as mechanisms for innovation, risk-sharing, and technological advancement, they can also serve as conduits through which competitors soften rivalry under the guise of efficiency. Indian competition law attempts to navigate this tension through the efficiency proviso to Section 3(3) of the Competition Act, 2002. This paper contends that the proviso, as currently framed and applied, lacks the doctrinal clarity and analytical structure necessary to distinguish genuine economic integration from strategic coordination.

Through a doctrinal analysis informed by competition economics, the paper examines how the absence of a statutory definition of "joint venture," coupled with the unstructured application of Section 19(3) efficiency factors, has produced a regulatory grey zone. In this space, efficiency claims risk becoming elastic defences rather than carefully bounded exceptions, insulating conduct that imposes immediate and measurable harm on competition. The problem is not the recognition of efficiency per se, but its recognition without thresholds, evidentiary rigour, or temporal limits.

The paper first diagnoses the structural weaknesses of the Indian joint venture regime, focusing on the efficiency proviso, the lack of clear enterprise classification, the indeterminate application of Section 19(3), and the unresolved overlap between Sections 3 and 6. These gaps collectively allow coordinated conduct to masquerade as pro-competitive collaboration. It then reconstructs an analytical framework through comparative insights from European Union and United States jurisprudence, introducing an integration-focused inquiry to distinguish genuine entity creation from mere coordination, and applying the doctrine of ancillary restraints to ensure that restrictions within joint ventures are necessary, proportionate, and demonstrably linked to efficiencies benefiting consumers. Together, these measures provide a coherent, economically grounded approach that aligns innovation with competitive integrity.

The paper concludes that without doctrinal recalibration, the efficiency proviso risks functioning as a Trojan Horse, admitting collusion under the language of collaboration. Anchoring the analysis in integration and indispensability would allow Indian competition law to safeguard innovation while preserving its core commitment to competitive markets.

I. INTRODUCTION: WHEN COLLABORATION BECOMES A TROJAN HORSE

Competition law is often described as a discipline of paradox. As Judge Learned Hand famously observed, "*The successful competitor, having been urged to compete, must not be turned upon when he wins."*[1127] Antitrust law must therefore perform a careful balancing act, it must dismantle agreements that distort

[1127] *United States v Aluminum Co of America* 148 F 2d 416 (2nd Cir 1945).

markets through collusion, while simultaneously preserving forms of cooperation that are indispensable to economic progress. This balance lies at the heart of the enduring tension between static efficiency, which protects present-day price competition, and dynamic efficiency, which secures innovation, technological advancement, and long-term consumer welfare.

Modern economies do not innovate in isolation. In sectors characterised by high fixed costs, uncertainty, and rapid technological change, rivalry alone may be insufficient to generate socially optimal outcomes. Joseph Schumpeter famously argued that competition is driven not merely by price, but by *"the perennial gale of creative destruction"* [1128], a process fuelled by innovation rather than immediate cost minimisation. Joint Ventures (JVs) emerge as a central institutional response to this reality. By allowing firms to pool resources, share risk, and integrate complementary capabilities, JVs function as engines of dynamic efficiency, enabling projects that would otherwise remain unrealised.

Recognising this economic logic, competition regimes across jurisdictions have carved out space for collaborative arrangements. The OECD defines a Joint Venture as an arrangement where firms agree to combine, other than by merger, significant productive assets[1129], tangible or intangible, by going beyond mere ad hoc cooperation. The defining feature of such collaboration is integration: the creation of a new economic activity through the alignment of assets, risks, and decision-making. In theory, this integration distinguishes a lawful Joint Venture from a cartel, which merely coordinates conduct while preserving independent market presence.

The conceptual distinction between lawful collaboration and unlawful collusion, though theoretically sound, proves far more elusive in practical enforcement. Under the guise of cooperation, competitors may cloak naked restraints, such as price coordination or market allocation, within the formal architecture of a Joint Venture. In such cases, collaboration ceases to function as a vehicle for efficiency and instead operates as a Trojan Horse, permitting cartels to pass undetected through the gates of antitrust scrutiny.[1130]

II. THE INDIAN ANTITRUST DILEMMA: EFFICIENCY AS A VEIL FOR COLLUSION

This distinction is far clearer in principle than in practice. Under the guise of collaboration, competitors may cloak naked restraints, such as price coordination or market allocation, within the formal architecture of a Joint Venture. In such cases, cooperation ceases to be a tool for efficiency and becomes a *Trojan Horse,* allowing cartels to pass undetected through the gates of antitrust enforcement.

Section 3(3) of the Competition Act[1131] reflects India's attempt to reconcile this dilemma. While the provision presumes certain horizontal agreements to have an appreciable adverse effect on competition, its proviso[1132] exempts Joint Ventures that increase efficiency. Yet, this exemption rests on an unstable foundation. The Act offers no statutory definition of a "Joint Venture," nor does it articulate a structured test to determine when collaboration embodies genuine economic integration rather than coordinated restraint. The proviso thus operates in a conceptual vacuum, relying on an undefined notion of "efficiency" without clarifying its content, limits, or evidentiary requirements.[1133]

This ambiguity has produced a regulatory grey zone with asymmetric consequences. Sham arrangements may exploit the elasticity of the proviso to evade strict scrutiny[1134], while legitimate Joint Ventures face uncertainty

[1128] Joseph A Schumpeter, *Capitalism, Socialism and Democracy* (Harper & Brothers 1942) 82–84.
[1129] OECD, *Glossary of Industrial Organisation Economics and Competition Law* (OECD 1993) 53.
[1130] Robert H Bork, *The Antitrust Paradox: A Policy at War with Itself* (Basic Books 1978).
[1131] Competition Act 2002, s 3(3).
[1132] Competition Act 2002, s 3(3) proviso.
[1133] SM Dugar, *Guide to Competition Law* (6th edn, LexisNexis 2016).
[1134] *Association of Third Party Administrators v United India Insurance Co Ltd* (Case No 107 of 2012, Competition Commission of India).

regarding their legal status. As a result, the proviso risks undermining both objectives of competition law: effective cartel deterrence and the protection of efficiency-enhancing collaboration. What was intended as a safety valve for innovation may instead function as a loophole for strategic collusion.

This paper contends that the Joint Venture proviso under Section 3(3)[1135] is structurally ill-equipped to perform the filtering function it is meant to serve. By examining the economic rationale of Joint Ventures, the doctrinal gaps within Indian competition law, and comparative insights from European jurisprudence, this study exposes the inefficiencies and vulnerabilities embedded in the current framework. It argues for a more disciplined analytical structure, one that distinguishes collaboration from collusion not by form or assertion, but by integration, indispensability, and demonstrable consumer benefit.

A. *LACK OF A COHERENT JOINT VENTURE FRAMEWORK UNDER INDIAN COMPETITION LAW*

Joint ventures (JVs) occupy a delicate space in competition law, sitting at the intersection of collaboration and concentration. Economically, JVs can generate substantial efficiencies: they allow firms to pool resources, share risk, reduce duplication of investment, and accelerate innovation. From an economic standpoint, such arrangements can enhance productive efficiency (lowering costs of production), dynamic efficiency (accelerating technological progress), and even allocative efficiency (by improving the availability of goods and services).

The Indian competition framework, however, exposes a profound paradox. The proviso to Section 3(3) exempts JVs that enhance efficiency, while Section 19(3) mandates that the Competition Commission of India (CCI) consider factors such as consumer benefits and technological advancement when assessing combinations.[1136] In theory, this is a balancing mechanism: short-term market distortions, such as higher prices, could be tolerated if the arrangement generates long-term efficiency gains.

In practice, this balancing exercise is riddled with uncertainty. The statute does not define what constitutes a joint venture, nor does it specify the threshold or type of efficiency necessary to justify immediate consumer harm.[1137] Consider a high-stakes scenario where two competing pharmaceutical firms collaborate to develop a life-saving drug or vaccine, such as for COVID-19. Here, temporary price increases may be economically justifiable and socially desirable due to the immense long-term health benefits. Yet, the law provides no guidance on less extreme scenarios: if firms collaborate to streamline R&D, reduce overhead, or marginally improve production efficiency, could such gains be invoked to justify higher prices, reduced output, or limited rivalry in other markets? This creates a regulatory paradox with both economic and legal implications.

On one hand, efficiency is theoretically a tool to promote social welfare; on the other, the lack of boundaries allows it to become a blanket justification for anti-competitive behaviour. The law treats efficiency claims as potentially limitless, without providing a structured framework for assessing whether the claimed gains truly outweigh immediate harm to consumers.[1138] Economically, this undermines the principle of maximising net social welfare, even modest or speculative efficiencies can be invoked to rationalise real and measurable

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1135 Competition Act 2002, s 3(3) proviso.

1136 Mayer Brown, 'Joint Ventures under India's Competition Act' (February 2011) https://www.mayerbrown.com/-/media/files/perspectives-events/publications/2011/02/joint-ventures-under-indiascompetition-act/files/10438/fileattachment/10438.pdf accessed 2 January 2026.

1137 Wolters Kluwer Competition Law Blog, 'Treatment of Joint Ventures under Indian Competition Law' https://legalblogs.wolterskluwer.com/competition-blog/treatment-of-joint-ventures-under-indian-competition-law/ accessed 10 January 2026.

1138 ACC Docket, 'Competition Law in India: Top Ten Things to Know about the Merger Control Regime' https://docket.acc.com/competition-law-india-top-ten-things-know-about-merger-control-regime accessed 10 January 2026.

costs, distorting market incentives and potentially harming innovation in the long run.

Moreover, the absence of a formal definition of JVs compounds the problem. Without a taxonomy distinguishing full-function JVs, which operate independently and can affect market structure, from non-full-function collaborations, such as research partnerships with limited market impact, all collaborations are treated uniformly.[1139] This creates legal uncertainty and increases compliance costs.

In sum, the Indian JV framework highlights a tension at the heart of competition economics that efficiency is desirable, but unchecked efficiency claims can undermine competition and consumer welfare. Addressing this paradox requires a function-based, economically grounded approach that clearly delineates the scope of JVs, defines permissible efficiency justifications, and establishes structured criteria for balancing short-term harm against long-term gains. Without such reform, the efficiency proviso risks evolving from a narrow exception into a broad defence for anti-competitive coordination, contradicting the very purpose of competition law.

B. ABSENCE OF CLASSIFICATION OF JOINT VENTURES

One of the most persistent challenges in the Indian regime is the lack of classification of different types of JVs. Under the Competition Act, 2002, every JV that qualifies as a "combination" is mandatorily subject to scrutiny by the Competition Commission of India (CCI), irrespective of whether it has any meaningful or lasting impact on market structure or competition.[1140]

This approach stands in sharp contrast to the position adopted in mature jurisdictions such as the European Union. EU competition law draws a clear distinction between full-function joint ventures and non-full-function joint ventures. Full-function JVs operate as autonomous, long-term economic entities capable of independently participating in the market and altering its structure; accordingly, they are assessed under EU merger control and must be notified to the European Commission.[1141] Non-full-function JVs, by contrast, are limited-purpose collaborations, often confined to functions such as research and development, and do not operate independently in the market. As they do not bring about durable structural change, they are examined only under anti-competitive agreement rules and are exempt from merger notification requirements. [1142]

The absence of a similar taxonomy in India collapses fundamentally different collaborations into a single regulatory bucket. Introducing such a classification would not only help distinguish JVs based on their competitive impact but would also provide predictability to parties and significantly reduce the administrative burden on the CCI.

C. SIMULTANEOUS APPLICATION OF SECTIONS 3 AND 6

A central source of uncertainty in the Indian joint venture regime lies in the unclear relationship between Sections 3[1143] and 6[1144] of the Competition Act, 2002. Section 6 governs the ex ante review of combinations, requiring parties to notify and obtain approval from the Competition Commission of India (CCI before implementing a joint venture that meets the statutory thresholds. Section 3, in contrast, regulates anti-competitive agreements and permits ex post scrutiny of conduct that restricts competition.

The Act, however, does not explain how these two provisions are meant to operate together. In

1139 Law.asia, 'JVs and Competition Law: Uncertain Times Ahead?' https://law.asia/jvs-and-competition-law-uncertain-times-ahead/ accessed 10 January 2026.

1140 ACC Docket, 'Competition Law in India: Top Ten Things to Know about the Merger Control Regime' https://docket.acc.com/competition-law-india-top-ten-things-know-about-merger-control-regime accessed 10 January 2026.

1141 K Carpi and A Badia, 'Joint Ventures and Competition Law' (College of Europe) https://www.coleurope.eu/sites/default/files/uploads/event/carpi_badia.pdf accessed 10 January 2026.

1142 European Commission, 'Merger Legislation: Notices and Guidelines' https://competition-policy.ec.europa.eu/mergers/legislation/notices-and-guidelines_en accessed 10 January 2026.

1143 Competition Act 2002, s 3.

1144 Competition Act 2002, s 6.

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particular, it offers no clarity on whether a joint venture that has been notified to and approved by the CCI under Section 6 is protected from subsequent investigation under Section 3. As a result, JV partners face the risk that an arrangement cleared as a lawful combination may later be examined, and even penalised, as an anti-competitive agreement.

This uncertainty is not resolved by the efficiency proviso to Section 3(3). While the proviso exempts joint ventures that enhance efficiency, it does not create a statutory safe harbour, nor does it specify when regulatory scrutiny should end. Approval under Section 6 therefore does not guarantee immunity, and reliance on the efficiency proviso remains uncertain and fact-intensive. Joint venture parties are left without clear guidance on whether regulatory approval translates into legal finality.

The practical consequence is a chilling effect on legitimate collaboration. Firms are required to make significant investments and structural commitments without assurance that regulatory clearance will protect them from future liability. This increases transaction costs, discourages efficiency-enhancing joint ventures, and undermines business certainty.

III. COMPARATIVE JURISPRUDENCE: TESTING FOR "ENTITY": THE INTEGRATION TEST

The core weakness of the Indian Joint Venture proviso lies in its failure to distinguish genuine economic integration from strategic coordination. By exempting all efficiency-enhancing joint ventures under the proviso to Section 3(3), the Act assumes, without inquiry, that collaboration necessarily reflects integration. This assumption is economically flawed. Not every cooperation that generates efficiencies constitutes a new economic entity; some merely soften competition under the guise of innovation. Although the cartel-prohibiting provisions notionally allow competitors to rebut the presumption of appreciable adverse effect on competition by demonstrating efficiencies, the absence of a structured threshold means that efficiency claims are often asserted abstractly rather than proven rigorously.[1145] Without a principled filter, the proviso risks shielding what are, in substance, cartels in corporate form.

Comparative jurisprudence offers a structured solution. The European Union addresses this concern through the concept of the full-function joint venture, which operates as an integration threshold rather than a mere formal classification. Under the Consolidated Jurisdictional Notice under the EU Merger Regulation[1146] a JV qualifies as an autonomous economic entity only if it (i) possesses sufficient assets, staff, and financial resources to operate independently on a day-to-day basis; (ii) performs activities beyond a single auxiliary function for its parent companies and maintains its own presence in the market; (iii) has limited sale or purchase relations with its parent firms so as to preserve commercial autonomy; and (iv) operates on a lasting basis, capable of bringing about a durable change in market structure.[1147] Where these conditions are absent, the arrangement is treated not as a joint venture but as a coordination of conduct between competitors.

This framework performs a crucial economic function: it separates entity creation from conduct coordination. Only those collaborations that involve a genuine pooling of assets, risks, and decision-making power, creating efficiencies unattainable by the parents individually, escape cartel scrutiny. As Whish and Bailey observe, "without the integration of assets and the sharing of risk, cooperation is

[1145] Shardul Amarchand Mangaldas & Co, 'Is Indian Competition Law ESG-Ready?' https://www.amsshardul.com/insight/is-indian-competition-law-esg-ready/ accessed 10 January 2026.
[1146] European Commission, 'Commission Notice on the Concept of Full-Function Joint Ventures under Council Regulation (EEC) No 4064/89' http://www.euchinacomp.org/attachments/article/7/21_Commission_Notice_on_the_concept_of_full_function_joint_ventures_under_Council_Regulation_EEC_No_4064_89_EN.pdf accessed 10 January 2026.
[1147] European Commission, 'Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the Control of Concentrations between Undertakings' [2008] OJ C95/1, paras 94–103 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008XC0416(08) accessed 10 January 2026.

nothing more than coordination of competitive behaviour."[1148]

India's Competition Act contains no equivalent integration test. As a result, even paper-thin arrangements, lacking independent resources, market presence, or transformative integration, may claim protection under the JV proviso by invoking abstract efficiency narratives. This absence of an entity-based threshold allows efficiency to be asserted without proving that a new economic actor has actually come into existence. The consequence is doctrinal drift: the law protects cooperation not because it restructures markets, but merely because it is labelled a joint venture.

Incorporating an Economic Integration Test into Indian competition law would realign the proviso with its intended purpose. The standard should be clear: unless a JV reflects genuine, structural integration that creates a new locus of economic activity, it should not qualify for exemption under Section 3(3). In the absence of such integration, the arrangement must be stripped of its JV label and assessed as a horizontal agreement. This shift would prevent the efficiency proviso from operating as a blanket defence and restore its role as a narrow exception for authentic, pro-competitive collaboration.

IV. COMPARATIVE JURISPRUDENCE: TESTING FOR "CONDUCT": THE DOCTRINE OF ANCILLARY RESTRAINTS

Passing the "entity" or integration test does not conclude the competition law inquiry. Even a genuinely integrated joint venture may embed restraints that go beyond what is necessary for its legitimate functioning. It is at this second stage that comparative competition law shifts focus, from the existence of a joint venture to the nature of the conduct it authorises. This is addressed through the Doctrine of Ancillary Restraints[1149], which acts as a safeguard against overreach by otherwise lawful collaborations.

An ancillary restraint refers to a restriction that is not the principal object of the agreement but is directly related and necessary for the implementation of a legitimate joint venture. Typical examples include limited non-compete obligations, exclusivity clauses, or restrictions on independent exploitation of jointly developed intellectual property. The doctrine accepts that some restraints are inevitable, and even efficiency-enhancing, when firms pool assets and share risk. However, it draws a clear line between supportive restraints and independent restraints that suppress competition in their own right.[1150]

The United States Supreme Court's decision in *Texaco Inc. v. Dagher*[1151] provides an important starting point. The Court held that pricing decisions made within a lawful, fully integrated joint venture should not automatically be treated as per se illegal price-fixing, but instead assessed under the Rule of Reason. The rationale was straightforward: once firms have merged their operations for a legitimate economic purpose, certain coordinated decisions may reflect internal decision-making rather than cartel conduct.

However, *Dagher* does not grant blanket immunity to all restraints within a JV. The decisive analytical tool, shared across US and EU jurisprudence, is the Indispensability Test. The question is not whether the restraint produces efficiencies in the abstract, but whether those efficiencies could reasonably be achieved without the restraint. If the answer is yes, the restriction fails.

This inquiry leads directly to the principle of Least Restrictive Means. Under EU competition law, particularly as articulated in *Wouters v. Algemene Raad van de Nederlandse Orde van*

[1148] Richard Whish and David Bailey, *Competition Law* (10th edn, OUP 2021) 648.
[1149] European Commission, 'Commission Notice on the Concept of Full-Function Joint Ventures under Council Regulation (EEC) No 4064/89' http://www.euchinacomp.org/attachments/article/7/21_Commission_Notice_on_the_concept_of_full_function_joint_ventures_under_Council_Regulation_EEC_No_4064_89_EN.pdf accessed 10 January 2026.
[1150] AZB & Partners, 'Non-Compete Clauses as Ancillary Restraints under Indian Competition Law' https://www.azbpartners.com/bank/non-compete-clauses-being-ancillary-restraints-and-implications-under-indian-competition-law/ accessed 10 January 2026.
[1151] *Texaco Inc v Dagher* 547 US 1 (2006).

Advocaten[1152] a restraint will be lawful only if it is proportionate and strictly necessary to achieve the claimed efficiency. Any restriction that exceeds what is required, even if efficiency-enhancing, remains unlawful.

Consider a joint venture formed to develop green hydrogen technology. A clause preventing the parent firms from independently exploiting the specific technology under development may be indispensable to protect sunk R&D investments and avoid free-riding. In contrast, an agreement fixing the downstream price at which hydrogen will be sold to consumers bears no necessary connection to the innovation objective. Such a restraint is not the least restrictive means of achieving R&D efficiencies and therefore remains anti-competitive.

The Indian Competition Act lacks an explicit framework to conduct this second-stage analysis. In the absence of an indispensability inquiry, once a JV clears the efficiency proviso under Section 3(3), even peripheral or excessive restraints risk being insulated from scrutiny[1153]. This creates a dangerous asymmetry; efficiency is assessed broadly, while restraints are assessed shallowly.

Adopting a structured ancillary restraints doctrine would restore balance. Even where a JV qualifies as a genuine economic entity, each restrictive clause must independently justify its necessity. Only those restraints that are indispensable and proportionate to achieving the JV's legitimate objectives should survive scrutiny. All others must be severed and assessed as standalone anti-competitive agreements.

Taken together with the Integration Test, this conduct-based inquiry completes the analytical framework. It ensures that Indian competition law protects innovation without surrendering enforcement against strategic collusion, and transforms the JV proviso from a flexible defence into a disciplined economic exception.

V. THE 'SOFT' CARTEL INFORMATION EXCHANGE AND STRATEGIC TRANSPARENCY

The conundrum of the efficiency defence is perhaps most acute in the realm of information exchange, where the distinction between pro-competitive benchmarking and anti-competitive collusion is frequently blurred. In modern oligopolistic markets, competitors do not necessarily need to congregate in smoke-filled rooms to fix prices; they can simply exchange granular, disaggregated data to achieve strategic transparency. This transparency reduces market uncertainty, allowing firms to predict rival behaviour and align their commercial strategies without an explicit agreement, thereby facilitating tacit collusion. From an economic perspective, the exchange of historical, aggregated data can enhance efficiency by allowing firms to benchmark performance and plan inventory. However, the exchange of future pricing intentions or individualised sales data serves no legitimate efficiency purpose other than to artificially stabilise the market.

The Competition Commission of India (CCI) has struggled to articulate a consistent standard for when information exchange transitions from an efficiency-enhancing practice to a violation of Section 3(3) of the Competition Act, 2002. This jurisprudential inconsistency creates a 'soft cartel' loophole where firms may mask collusive intent under the guise of industry transparency. The dichotomy is most visibly manifested in the divergent approaches taken by the CCI in the *Flashlights* case and the *Dry Cell Batteries* case, despite both involving the same set of market players.

In *In Re: Alleged Cartelisation in Flashlight Market in India*, the Commission was presented with evidence that four major flashlight manufacturers—Eveready Industries India Ltd., Panasonic Energy India Co. Ltd., Indo National

[1152] Case C-309/99 *Wouters v Algemene Raad van de Nederlandse Orde van Advocaten* (Judgment of 19 February 2002) [2002] ECR I-1577, ECLI:EU:C:2002:98, paras 97–110.
[1153] Shardul Amarchand Mangaldas & Co, 'Towards New Horizons: Developments in Indian Competition Law (2018–19)' https://www.amsshardul.com/insight/towards-new-horizons-developments-in-indian-competition-law-2018-19/ accessed 10 January 2026.

Ltd., and Geep Industries—had exchanged commercially sensitive information, including production and sales data, through the Association of Indian Dry Cell Manufacturers (AIDCM).[1154] The investigation revealed that the parties had even exchanged draft press releases concerning intended price increases, a practice that is generally regarded in mature jurisdictions like the European Union as a restriction of competition by object.[1155] However, the CCI adopted a remarkably high standard of proof, holding that the mere exchange of information, in the absence of evidence that it was acted upon to determine prices, did not constitute a contravention of Section 3(3)(a).[1156]

The Commission reasoned that the flashlight market was facing declining demand due to technological obsolescence, and the data exchange was a mechanism for survival rather than monopoly profit-seeking. By exonerating the parties because the agreement was not implemented to the extent of uniform pricing, the CCI effectively validated a defense where ineffective collusion or strategic information sharing is permissible as long as the market outcomes do not show perfect parallelism. This creates a dangerous precedent that efficiency (in the form of market monitoring) can justify the exchange of sensitive strategic data, provided the cartel is not entirely successful in its execution.

This permissive stance stands in stark contrast to the CCI's ruling in *In Re: Cartelisation in the Supply of Dry Cell Batteries*, decided around the same period. Here, the Commission penalized the exact same set of players for exchanging price adjustment data in the zinc-carbon battery market.[1157] The evidence was qualitatively similar—exchange of data via the AIDCM and personal meetings—but the outcome differed because the investigation established a clear pattern of 'price leadership',where price increases announced by the market leader were immediately followed by others.[1158] In this context, the information exchange was viewed not as benign benchmarking but as the substrate for a primary cartel and a bilateral ancillary cartel between Panasonic and Geep.[1159] The CCI noted that the exchange of data regarding the timing of price increases allowed the manufacturers to coordinate their market conduct with precision.

The jurisprudential gap between *Flashlights* and *Dry Cell Batteries* suggests that Indian competition law currently employs a *de facto* rule of reason for information exchange: the conduct is judged by its fruit rather than its nature. If the exchange produces efficiency (benchmarking) without demonstrable price parallelism, it is tolerated. This approach ignores the strategic uncertainty principle established in EU jurisprudence (e.g., *T-Mobile Netherlands*), which holds that the mere receipt of a competitor's strategic future information is presumed to be taken into account in determining one's own market conduct.[1160] To close this loophole, India must adopt a stricter standard where the exchange of future pricing intentions is considered a hardcore restriction or restriction by object, illegal *per se*, because it serves no efficiency purpose other than collusion. The efficiency defence for information exchange must be strictly limited to historical, aggregated, and anonymised data that does not allow for the de-anonymisation of specific competitor strategies.

VI. THE DIGITAL FRONTIER ALGORITHMIC EFFICIENCY AND THE HUB-AND-SPOKE PARADOX

The digitisation of commerce has introduced the most sophisticated "Trojan Horse" for collusion: the Algorithm. In the digital economy, platforms argue that their centralised pricing algorithms are engines of efficiency—matching supply and demand in real-time, reducing

[1154] In Re: Alleged Cartelisation in Flashlights Market in India Suo Motu Case No 01 of 2017 (CCI).
[1155] European Commission, 'Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements' (2023) OJ C 259/1
[1156] Flashlights Market (n 1).
[1157] In Re: Cartelisation in the supply of Dry Cell Batteries Suo Motu Case No 02 of 2016 (CCI).
[1158] ibid.
[1159] In Re: Cartelisation in the supply of Dry Cell Batteries Suo Motu Case No 03 of 2017 (CCI).
[1160] Case C-8/08 T-Mobile Netherlands BV v Raad van bestuur van de Nederlandse Mededingingsautoriteit ECR I-4529.

transaction costs (search costs), and optimizing capacity utilisation through dynamic pricing (e.g., surge pricing). However, these same algorithms can facilitate 'Hub-and-Spoke' cartels where the platform (the Hub) coordinates prices for all sellers or service providers (the Spokes), effectively eliminating intra-brand price competition without any direct communication between the competitors.

The tension between algorithmic efficiency and cartel prohibition was tested in the landmark case of *Samir Agrawal v. Competition Commission of India (Ola/Uber)*.[1161] The informant alleged that the cab aggregators, Ola and Uber, acted as 'Hubs,' and the individual drivers as 'Spokes.' By delegating their pricing power to the platform's algorithm, the drivers—who are legally independent third-party contractors—effectively engaged in a price-fixing conspiracy. The pricing algorithm ensures that no driver can undercut another, thereby maintaining prices at a level determined by the Hub.

The Competition Commission of India and subsequently the Supreme Court of India rejected this characterization, accepting the platform's efficiency defense.[1162] The Court held that for a Hub-and-Spoke cartel to exist, there must be a conspiracy between the spokes. In this case, there was no evidence of an agreement between the drivers to delegate pricing power; rather, they individually acceded to the terms of the platform. The algorithm was viewed as a legitimate tool for 'transactional efficiency'that calculated fares based on complex data sets (time, distance, traffic) which individual drivers could not compute.[1163] This decision effectively immunized algorithmic pricing from Section 3(3) scrutiny in the absence of horizontal conspiracy, prioritizing the innovation of the platform economy over the elimination of price competition between providers. It validated the efficiencies of the platform model—real-time matching and reliability—as superior to the loss of price competition.

However, recognizing the enforcement gap regarding indirect coordination and the role of non-competitors in facilitating cartels, the Parliament enacted the *Competition (Amendment) Act, 2023*. This amendment expanded the scope of Section 3(3) to explicitly cover Hub-and-Spoke arrangements. A new proviso was inserted stating that an enterprise or association "though not engaged in identical or similar trade shall also be presumed to be part of the agreement under this sub-section if it participates or intends to participate in the furtherance of such agreemen't."[1164]

This amendment introduces a critical intent requirement—the hub must *intend* to facilitate the cartel. This creates a new frontier for the efficiency defense in digital markets. Platforms will now argue that their algorithms are intended purely for efficiency (market matching and clearing), and that any price parallelism among sellers is an unintended consequence of rational reaction to market signals (conscious parallelism). The regulator will face the challenge of distinguishing between efficiency by design and collusion by design. If an algorithm is programmed to punish deviators or reward adherence to a focal price, the intent to participate in the furtherance of a cartel may be inferred.[1165] Conversely, if the algorithm merely aggregates data to suggest a market-clearing price, it may remain protected as an efficiency-enhancing tool. The 2023 amendment forces a nuanced inquiry into the *design architecture* of the algorithm, moving beyond the simple search for a horizontal agreement between the spokes.

[1161] Samir Agrawal v Competition Commission of India Case No 37 of 2018 (CCI).
[1162] Samir Agrawal v Competition Commission of India (2021) 3 SCC 136.
[1163] ibid.
[1164] Competition (Amendment) Act 2023, s 3.
[1165] Bharat Budholia, Anmol Awasthi and Khushi Agarwal, 'The intent dilemma in hub and spoke offences' (Law.asia, 29 December 2025) https://law.asia/hub-spoke-cartel-liability/accessed 09 January 2026.

VII. THE ECONOMIC LITMUS TEST: EVIDENTIARY BURDENS AND CONSUMER PASS-THROUGH

The adjudication of the efficiency justification ultimately turns on the standard of proof and the allocation of the evidentiary burden. Section 3(3) of the Act places a presumption of Appreciable Adverse Effect on Competition (AAEC) on horizontal agreements. This presumption shifts the burden to the defendant to prove that the agreement generates efficiencies that outweigh the harm. However, the standard for rebutting this presumption has been the subject of intense judicial debate, fluctuating between a rigid "per se" approach and a more flexible "rule of reason" analysis depending on the market structure.

The Supreme Court's judgment in *Rajasthan Cylinders and Containers Ltd. v. Union of India* represents the high-water mark for the rebuttal of the AAEC presumption.[1166] The case involved forty four manufacturers of LPG cylinders who submitted identical bids to the state-owned Indian Oil Corporation Ltd. (IOCL). The CCI inferred a cartel based on price parallelism and the existence of a trade association. However, the Supreme Court reversed this finding, introducing a significant defense based on market structure: Oligopsony.[1167] The Court held that in a market with few buyers (oligopsony) and few sellers (oligopoly), price parallelism is often an inevitable economic consequence of the buyer's power and standardized product specifications rather than proof of collusion. The Court accepted that the suppliers were price takers and that their identical bids were a rational response to the rigid tender conditions set by the dominant buyer. This judgment effectively creates a market structure defense, where efficiency is interpreted as the viability of the industry mandated by a dominant buyer, and parallel conduct is excused if the market conditions explain it.[1168]

However, for voluntary Joint Ventures that operate in less distorted markets, the burden of proving efficiency remains strict. The critical missing link in Indian adjudication is the rigorous application of the Pass-Through standard under Section 19(3)(d) (accrual of benefits to consumers). It is not sufficient for a JV to prove that it generates cost savings (producer welfare); it must prove that these benefits are passed on to the consumer in the form of lower prices, better quality, or innovation.[1169]

This principle was vividly illustrated in the *Cement Cartel* case (*Builders Association of India v. Cement Manufacturers Association*).[1170] The cement manufacturers argued that their coordination through the trade association (CMA) ensured supply stability and efficient capacity utilization. The CCI rejected this defense, noting that while the manufacturers may have optimized their own profits, these benefits did not accrue to the consumers, who faced artificially high prices due to coordinated output restrictions. The CCI found that the manufacturers were utilizing only about 73% of their capacity to create artificial scarcity.[1171] The decision affirms that private profit maximization disguised as supply management efficiency is not a valid defense under Section 19(3). To successfully invoke the efficiency defense, a JV must demonstrate a quantifiable pass-through rate, showing that a significant portion of the efficiency gain (e.g., synergy savings) is transferred to the consumer, thereby enhancing total consumer welfare.

Furthermore, in *In Re: Cartelisation in Industrial and Automotive Bearings*, the CCI clarified that the presumption of AAEC under Section 3(3) holds even if the cartel is unsuccessful in

[1166] Rajasthan Cylinders and Containers Ltd v Union of India (2020) 16 SCC 615.
[1167] Shivani Chauhan, 'Case Study: Rajasthan Cylinders and Containers Limited v Union of India' (Legal Wires, 2 October 2018) https://legal-wires.com/case-study/case-study-rajasthan-cylinders-and-containers-limited-v-union-of-india/accessed 09 January 2026.
[1168] ibid.
[1169] Competition Act 2002, s 19(3)(d).
[1170] Builders Association of India v Cement Manufacturers Association Case No 29 of 2010 (CCI).
[1171] ibid.

implementing price increases.[1172] The parties argued that the Original Equipment Manufacturers (OEMs) had countervailing buying power that neutralized the cartel's efforts. The CCI held that the mere *agreement* to coordinate prices compromised the independent decision-making process and was sufficient to trigger the presumption of harm, regardless of the ultimate market impact. This underscores that 'failed efficiency' or 'failed collusion' is not a defense; the law punishes the conspiracy itself.[1173]

VIII. PROPOSED REGULATORY FRAMEWORK: RECOMMENDATIONS FOR REFORM

To resolve the efficiency paradox and fortify the distinction between innovation and collusion, Indian competition law must move beyond ad-hoc adjudication to a structured regulatory framework. The current reliance on the broad factors of Section 19(3) without a hierarchy or specific test creates uncertainty for businesses and enforcement gaps for the regulator. The following reforms, drawing on comparative best practices from the EU and evolving Indian jurisprudence, are recommended.

First, the Competition Commission of India should issue detailed Guidelines on Horizontal Cooperation Agreements, similar to the European Commission's 2023 Horizontal Guidelines.[1174] These guidelines should formally define Joint Venture based on the Economic Integration Test. A qualifying JV must involve the integration of assets, risks, and resources to create a new product, service, or technology. This would filter out sham JVs where competitors merely coordinate conduct without any integration of economic activity. The guidelines should clarify that agreements failing this integration test will be treated as naked cartels, ineligible for the efficiency defense.

Second, the CCI should codify the 'Indispensability Test' (or the Least Restrictive Means test) as a mandatory step in its Section 19(3) analysis. When a JV claims an efficiency defense for a specific restriction (e.g., non-compete clause, exclusive supply), the burden should be on the parties to prove that the restriction is reasonably necessary to achieve the claimed efficiencies.[1175] If the same efficiency could be achieved through a less restrictive alternative, the defense should fail. For instance, if a Research and Development (R&D) JV involves price-fixing for the final product, the parties must prove why price-fixing is indispensable to the R&D innovation—a burden that is nearly impossible to meet. This separates the "gift" (the legitimate JV) from the Trojan Horse (the ancillary restraint).

Third, to provide certainty for small businesses and genuine R&D collaborations, India should introduce Safe Harbor thresholds. The CCI could issue regulations stating that R&D agreements or Specialization agreements where the combined market share of the parties is below a certain threshold (e.g., 20% or 25%) will be presumed to be efficiency-enhancing and exempt from detailed scrutiny, provided they do not contain hardcore restrictions.[1176] This aligns with the EU's Block Exemption Regulations and encourages innovation by small and medium enterprises (SMEs) without the fear of antitrust litigation.[1177]

Fourth, the regulations should explicitly list 'Hardcore Restrictions' (Black List) that can *never* be justified by efficiency arguments, regardless of the JV structure. This list should include price-fixing (except for the specific products of a joint production JV), output restriction, and market allocation. The existence of such a Black List would prevent the 'Trojan Horse' of using a JV to fix prices in the wider

[1172] In Re: Cartelisation in Industrial and Automotive Bearings Suo Motu Case No 05 of 2017 (CCI).
[1173] CUTS International, 'Analysis of Competition Cases in India' (CUTS CCIER, 2020) https://cuts-ccier.org/pdf/Edition-17-Analysis_of_Competition_Cases_in_India.pdf accessed 09 January 2026.
[1174] European Commission (n 2).
[1175] Silky Mukherjee, 'Interface between Competition Law and Intellectual Property Law: A study of United States, European Union and Indian Law' (PhD Thesis, Gujarat National Law University 2016) 54.
[1176] Commission Regulation (EU) 2023/1066 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements OJ L 143/9.
[1177] Commission Regulation (EU) 2023/1067 of 1 June 2023 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements OJ L 143/20

market and would align India with global standards where certain conduct is deemed irredeemable.[1178]

Fifth, regarding the digital economy, the CCI must issue guidance on the application of the 'Intent' standard in the 2023 Hub-and-Spoke amendment. Guidelines should specify that the use of data-sharing algorithms that allow for real-time monitoring of competitor prices or automatic price matching will be presumed to evince an intent to participate in the furtherance of a cartel.[1179] This would shift the burden back to the platform to prove that pro-competitive safeguards (e.g., data silos, delayed reporting) are in place to prevent collusion.

Finally, the new Settlement and Commitment mechanisms introduced by the Competition (Amendment) Act, 2023, should be leveraged to address efficiency claims in vertical and non-cartel horizontal cases.[1180] The *Competition Commission of India (Settlement) Regulations, 2024* allow parties to offer settlements or commitments to close proceedings without an admission of guilt.[1181] This mechanism is ideal for grey zone JV cases where the efficiency benefits are genuine but the restrictions are excessive. Instead of a binaryguilty/not guilty verdict, the CCI can accept commitments to modify the JV agreement (e.g., removing a non-compete clause) to restore competition while allowing the efficiency-enhancing integration to continue.[1182]

IX. Conclusion

The efficiency justification under Section 3(3) of the Competition Act, 2002, was designed as a shield for legitimate economic cooperation, statutory recognition that in a developing economy, scale, synergy, and technology transfer often require collaboration between competitors. However, the decisional practice of the last decade reveals that this shield is frequently wielded as a sword, a Trojan Horse used to smuggle anti-competitive conduct past the gates of the CCI.

The ambiguity of the current statutory framework, particularly the lack of a clear definition for 'Joint Venture' and the unstructured balancing test of Section 19(3), has created a grey zone where cartels can thrive. The *Rajasthan Cylinders* judgment demonstrates judicial willingness to accept market structure (oligopsony) as a defense for parallel conduct, warning against false positives.[1183] Conversely, the *Flashlights* case reveals the risks of a permissive approach to information exchange, while the *Cement* and *Dry Cell Batteries* cases show the CCI's capability to pierce the veil of sham arrangements when it applies rigorous economic logic and demands evidence of consumer pass-through.

As India moves towards a five trillion dollar economy, the complexity of these justifications will only increase, particularly in the digital domain where algorithms blur the line between efficiency and collusion. The recently introduced 'Leniency Plus' regime, which incentivizes the disclosure of multiple cartels,[1184] along with the 2023 amendments targeting Hub-and-Spoke cartels, provides the CCI with sharper tools. However, tools alone are insufficient without a clear analytical map. The CCI must recalibrate the exemption by moving from a vague rule of reason to a structuredIntegration and Indispensability test. By insisting that JVs demonstrate genuine asset integration and

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[1178] Bird & Bird, 'The New EU Regime for Horizontal Agreements: Overview of the Main Changes' (Bird & Bird, 2023) https://www.twobirds.com/en/insights/2023/global/the-new-eu-regime-for-horizontal-agreements-overview-of-the-main-changes accessed 09 January 2026.
[1179] AZB & Partners, 'Hub and Spokes Cartels – Codification and Challenges' (AZB Partners, 2023) https://www.azbpartners.com/bank/hub-and-spokes-cartels-codification-and-challenges/ accessed 09 January 2026.
[1180] Competition Act 2002, ss 48A, 48B.
[1181] Economic Laws Practice, 'Key Regulatory Changes to the Indian Competition Law Regime' (ELP, 18 March 2024) https://elplaw.in/leadership/key-regulatory-changes-to-the-indian-competition-law-regime/ accessed 09 January 2026.
[1182] Dentons Link Legal, 'Antitrust and Competition Newsletter | June 2025' (Dentons, 11 July 2025) https://www.dentonslinklegal.com/en/insights/newsletters/2025/july/11/antitrust-and-competition-newsletter/antitrust-and-competition-newsletter-june-2025 accessed 09 January 2026.

[1183] Rajasthan Cylinders (n 13).
[1184] Competition Commission of India (Lesser Penalty) Regulations 2024.

that every restraint is indispensable to the consumer benefit, the regulator can ensure that the 'efficiencies' permitted under the Act are genuine engines of growth, not disguised instruments of monopoly.

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