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Rising Scrutiny of Interlocking Directories in India: Corporate Governance Issues vs. Anti-Competitive Risks

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Abstract

Interlocking directorship refers to a person who is acting as a director on the board of multiple companies, that may have a competitive streak with one another in the market. Such kind of directors can pose as a threat to the transparency and accountability factor that is being established through laws for corporate governance and fair market competition.

If a closer look is taken into the company law of India, The Companies Act, 2013 permits directors to hold multiple board positions and there is necessarily no explicit statutory prohibition on interlock between competing firms, provided the fiduciary duties are upheld by the person acting as a director.

However, since interlock raise various corporate governance concerns such as conflict of interest, dilution of independence within board, and high risks at breach of fiduciary duties when directors juggle overlapping responsibilities for two competitive firms in the market, it becomes necessary to regulate the same.

This article will try to focus on such posed risks of interlocking directories in India with a significant focus upon governance and competition risks and how they are being approached in recent Indian corporate and competition jurisprudence. Finally, how the regulation of these interlocking directories are necessary will be further discussed along with regulatory gaps and suggestions to reconcile this issue and uphold governance integrity with competition protection in a fair manner.

Key words: Interlocking Directories, Corporate Governance, Board of Directors, Anti-competitive acts, Companies Act 2013, Competition Act 2002, Board of Directors.

Introduction

The Indian Corporate ecosystem in recent times has witnessed heightened regulatory attention to curb frauds and ensure transparency and accountability within the corporate institutions. Among many other highlighted practices and acts, one of the most significant one which has gained scrutiny recently is the phenomenon of interlocking directorship, where a single individual acts as a director for multiple companies at the same time, wherein the overlapping corporate governance concerns and tactic collusion under the competition act 2002 and their intersection has become a subject of increasing legal and economic relevance in India.

The term "interlocking Directories" is not explicitly defined under the Indian Company law. However, a general meaning of the term is that of an individual acting as a director of multiple companies, creating an interlock in a horizonal, vertical or conglomerate format. Implidly, the Company Act, 2013 permits such arrangements, subject to certain statutory limitation as mentioned in the provisions of the act[1]

While The Company Law, 2013 primarily regulates such interlocking directorships through statutory regulations such as fiduciary duties, disclosures etc., Competition law approaches this subject differently by prioritising market structure, competitive neutrality and market structure and the Competition Act, 2002 instead of focusing on the internal corporate governance issues more prioritises the external factor of such interlocking, such as anti-competitive acts that can result in appreciable adverse effect on the market.

Like the Company Act, the Competition law in India does not explicitly prohibit interlocking directories, however if the interlocking results in any of the anti-competitive acts mentioned in the statute[2] then the competition law, which is a preventive and effective based law, gives CCI (Competition Commission of India) power to take action, even if there isn't a proof of actual misconduct.

Regulatory Disconnect: Corporate Governance Issues vs. Anti-Competitive Risks

[1] The Company Act, §165, 166, 184, 18, Act of Parliament, 2013, India.
[2] Competition Act, § 3, 4, 5, 6, 12, Act of Parliament, 2002, India.

The objective which both the laws hold in regulation of interlocking directories is fundamentally different as company law is more concerned with the internal effects of such directorships while competition law prioritises external factors and effect of it on the market which reveals a structural divergence and creates a regulatory disconnect in regards to the same subject between both the statutes which further leads to uncertainties for corporations, directors and regulators alike.

After the analysis of The Company Act of 2013, it can be stated that the corporate law in India has adopted a more permissive and form-based approach towards interlocking directorship, such as:

- **Section 165:** This section merely imposes numerical caps, to limit an individual from holding office in a maximum of 20 companies and a stricter limit of 10 under public companies[3]. This limitation reflects the lenient approach of corporate law in India wherein this presumption is made that governance risk arises under over-commitment rather than market coordination. Also, the fact that no distinction between competitive and non-competitive firm is made leads to more corporate governance risk via leaking of sensitive information, etc.

- **Section 184:** The section 184 of the Company Act deals with the fiduciary duty of the directors[4] under which they must act in the benefit of the company instead of personal interest and such duty ensures transparency from the side of the director. Thus, only when there is evidential value of certain proofs established the directors are held liable for breach of this duty, unlike the approach taken by the competition act.

These assumptions of director integrity may uphold governance in fragmented market, however can become problematic in oligopolistic market where even subtle coordination can affect the market behaviour.

In contrast to this the competition law adopts a more effective based and market sensitive approach as per which the CCI does not necessarily seek evidence rather approach the situation in a more effective based manner, wherein if there seems probability of the interlocking

[3] The Company Act, §165, 18, Act of Parliament, 2013, India.
[4] The Company Act, §184, 18, Act of Parliament, 2013, India.

resulting in adverse effect over the market then the CCI has the power to look into the matter, not necessarily focusing upon whether directors have complied with their fiduciary duty or not.

Thus, from the perspective of the competition law, intent and disclosure are largely irrelevant and major focus is upon ability and incentive to coordinate. Consequently, an interlock directorship may be fully complaint with the company law but still be considered as a risk factor if looked from the competition law perspective[5].

The co-existence of both these regimes places the directors in a state of dual compliance risk, wherein a director may be fully accepted for his position as interlocking director for multiple companies, but the same position may be seemed to be highly risky with a possibility of anti-trust activity under the veil, resulting in heavy scrutiny from the CCI, as it works under preventive measures.

This regulatory disconnect creates post regulatory intervention, wherein scrutiny often arises after corporate decisions have already been made. The CCI to protect the market from anti-competitive activities can conduct such scrutiny, especially under sector-specific board structuring. For instance, India's telecom sector is highly concentrated and dominated by few major companies. When in such a market common directors are appointed within different competitive companies it leads to heightened concerns such as leaking of sensitive information, strategic alignment on price or tariff structures, etc. As a result, telecom companies avoid appointing directors from rival companies, even if such appointments could enhance governance or technical expertise. This strategy is basically accepted due to fear of probable scrutiny from CCI in future[6].

Such kind of avoidance strategy which can be beneficial in the governance aspect for many firms is avoided because of scrutiny fear from CCI which can be easily cleared if a formal regulatory framework and statutory rules are set up.

Another regulatory disconnect to this subject is the lack of institutional coordination between cooperate regulators and competition authorities, which is SEBI and CCI. Unlike some jurisdictions where competition authorities issue guidance notes for interlocking directories, India lacks such cross-regulatory framework.

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[5] International Bar Association, https://www.ibanet.org/Interlocking-directorates-in-India , (Last visited Dec. 25, 2025.)

[6] Competition Commission of India, https://www.cci.gov.in/images/marketstudie/en/market-study-on-the-telecom-sector-in-india1652267616.pdf , (last visited Dec. 25, 2025)

Suggestions

For better regulation of interlocking directories in India there are various suggestions which can be implemented to ensure better functioning of such directories which fulfils the objective of both the competition and corporate laws, some of such suggestions are as follows:

1. **Coordination mechanism of authorities:** Various authorities which regulate the functioning of competition and corporate law in India to ensure fair market and sustenance of corporate governance need to coordinate together in a harmonised manner, for which a more formal mechanism needs to be established between Ministry of Corporate Affairs, CCI, SEBI, etc.

2. **Competition-Sensitive Disclosure Framework:** Current section 184 of the companies act focuses more upon interest disclosure rather than competition impact. Thus, more enhanced disclosures where directors serve on boards of companies operating in the same relevant market or economically linked market needs to be established.

3. **Issuance of Guidelines by CCI:** The uncertainty exists because of absence of guidelines from the Competition Commission of India in regards to their scrutiny for preventive measures in order to keep a free and fair market. For enabling such scrutiny CCI should issue certain sector-specific guidelines as to in which situations will appointment of interlocking directors may likely raise to anti-competitive acts in the probable future or factors relevant for such assessment. Such guidelines will lead to better predictability instead of uncertainty and interlocking directors will be able to better comply with the competition law guidelines while also benefitting in governance within the corporations[7].

Conclusion

The rising scrutiny of interlocking directorships in India will eventually lead to a better coordinated and regulated regime under which both the corporate governance issues and anti-competitive risks can be redeemed, while establishing a better regime of jurisprudence for the application of both the laws.

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[7] Bar and Bench, https://www.barandbench.com/view-point/when-directors-collide-navigating-the-competition-concerns-arising-from-interlocking-directorates , (last visited Dec. 25, 2025.)

The companies act, 2013 which has a more formalistic approach and competition act 2002 which focuses more on an effect based preventive approach for the protection of market rather than the internal affairs of a company leads to a conflict that can only be harmonised by specific sector-based guidelines, disclosure framework and coordinated mechanism.

Once such regulatory approach is established, interlocking directories will become more of secure and safe, further stabilising the market and also resulting in better governance within the corporates, thus achieving the objectives of both the laws. Therefore, rather than approaching unpredictable scrutinises for safeguarding competition or post regulations after appointment of interlocking directors India must adopt a coordinate framework which will harmonise both the laws and safeguard competitive markets and corporate governance.