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A LEGAL ANALYSIS OF MERGERS & ACQUISITIONS UNDER THE COMPETITION ACT, 2002

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Abstract

The legal measures regarding M&A under the "Competition Act, of 2002" have indeed been very crucial for India to preserve competitive markets. This, together with the "Companies Act, 2013," and the "Takeover Code," also regards corporate growth and competition law within CCI in India. The Act requires notification of mergers in cases where they are likely to produce anti-competitive effects and will harm consumers. Nevertheless, many issues persist, like confusion over notification standards, new and developing markets, and inequalities in how the CCI conducts its review. The paper examines issues with the regulation process and presents potential amendments, including the clarification of thresholds and implementation of a dynamic, tiered notification system, as well as the enhancement of the review process and incorporation of further economic analysis techniques such as the Herfindahl-Hirschman Index (HHI). Increasing transparency, involving stakeholders, and integration of the international best practices of such countries as the U.S. as well as the EU may potentially improve the study of sector-specific guidelines in India. Because notification standards can be tightened up, remedies improved, and CCI capability developed, the framework will be more flexible in quickly evolving markets. Genesis of the problem Also, an analysis of the CCI's jurisprudence in some of the seminal cases is informative of the concerns of economic efficiency and fairness in the context of competition.

Keywords:

Competition Act, 2002; mergers and acquisitions; Competition Commission of India; competition law, corporate growth; consumer protection

INTRODUCTION

the legal structure regulating M&As in India has developed to address competition issues while seeking to foster company development with equitable competition. Research established that M&A plays a critical role as a major strategic growth option as it provides a firm with improved production effectiveness and economies of scale. Yet, it also results in anti-competitive behaviors for which the need arises for policy interventions that foster both allocative and productive efficiencies as well as consumer welfare.[500]

The "Competition Act, 2002" is the primary piece of legislation governing M& A from a competition law point of view. They want to eliminate the cases where some companies tend to control a large part of the market that may be dangerous for competition, protect consumer's rights and minimize monopolization. These are the Companies Act of 2013 which deals with the structural and procedural aspects of the corporates' M&A

[500] Avtar Singh, *Company Law* 124 (Eastern Book Company, New Delhi, 17th edn., 2024).

process and Securities Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations which sets out special regulations for acquisition of shares where the acquirer reaches a certain stake, usually in the publicly listed firms.

The Competition Commission of India (CCI) plays an important role to which it examines the transactions of a certain size under Section 6 of the Competition Act. Generally, CCI analyses M&A deals for their capacity to cause Appreciable Adverse Effect on Competition (AAEC) based on market structure, concentration, and the likely entrants. As per this analysis, it can ratify, adjust or reject transactions as required. [501]

This paper analyses the Competition Act antecedents and the CCI's role in the regulation of M& A apply their provisions to thwart anti-competitive consolidation. Some successful implementations are going to be discussed based on the case analysis, and the potential further evolution of the act in Indian M&A regulation would be examined to imagine the competitive competition determined by these regulations.

UNDERSTANDING THE CONCEPT OF MERGERS AND ACQUISITIONS

M&A is the basic building blocks of organizational restructuring, which provide firms with the opportunities to increase their effectiveness and efficiency, diversify and penetrate new markets, and execute strategic development. These refer to actual sales of business assets alongside or coupled with the assumed acquisition of corresponding business liabilities with the intent of passing value among parties involved in the transactions. Whereas mergers refer to the legally agreed-upon process of companies' integration into one big company, acquisitions can mean that one company is bought by another. The legal rules and regulations that surround these transactions are to promote corporate development while preserving competitive advantage in the market. M&A Legal Framework in India M&A laws in India are well governed through various statutes, among which some by and large acts are the Companies Act, 2013, Competition Act, 2002, etc. It is therefore crucial to understand different types of M&As and the provisions of law that govern these deals when trying to comprehend the current state of regulation in India. [502]

Definition and Types of Mergers

M&A means the merging of more than two companies to bring them under one entity or group where either the merged or another different company can be a brand new one. As far as legal consequences are concerned, a merger leads to the winding up of one, two, or more companies and the surviving enterprise taking over all the properties, risks, and management obligations. Horizontal, vertical, conglomerate and concentrated mergers can be classified according to the nature and therefore objectives of the transaction. Horizontal acquisitions take place between two companies in the same trade or in related industries where the objectives are most commonly to diminish rivalry and scale economies. A good example in the Indian context is the case of Vodafone India committing to Idea Cellular Limited, where both are in the telecommunications business seeking to consolidate market dominance and coverage.

Whereas a vertical merger is where the acquisition takes place between the companies being in different ranks of a value chain in the same industry. Such mergers were intended to provide value through integration, where upstream and downstream activities were merged to control the entire production process and bring efficiency to costs. For example, a firm manufacturing a car acquiring a firm dealing with the marketing of tires is a vertical merger.

[501] G. K. Kapoor and Sanjay Dhamija, *Company Law and Practice* 1170 (Taxmann, New Delhi, 27th edn., 2024).

[502] R. K. Bangia, *Company Law* 350 (Allahabad Law Agency, Allahabad, 2023).

Conglomerate mergers, for example, take place when firms in totally unrelated industries merge with a view of expanding their business risk portfolio. Last are concentric mergers, which comprise companies in industries that are related but do not compete directly with each other, thus leading to improvements in product portfolios or market access. Every type of merger has legal and economic reverberation, which should be reviewed under the competition law to avoid the creation of a combination that may result in anti-competitive conduct or dominance in a relevant market. [503]

Overview of Acquisitions and Their Types

An acquisition, also known as a takeover, is when one party acquires the controlling interest of another party, business, or corporation to have managerial control over it. Such mergers can be either voluntary or involuntary, depending on whether the target organization has a nod for the merger or not. In a friendly takeover, the transaction is approved by the board of directors of the target firm, hence no conflict. On the other hand, a hostile acquisition takes place where the acquirer moves to take over a target firm without the willing cooperation of the target company's management.

The cross-sectional is further distinguished by the share acquisition, asset acquisition, and management acquisition. Where share acquisitions occur, the acquirer gains a controlling interest in the target firm by owning a bloc of its shares and then takes control of the management of the enterprise. Usually, this type of acquisition is found in those companies that are already listed in the stock exchange market. Acquisitions of assets are made directly to specific assets or operating divisions of the target firm in contrast to its shares. This approach is usually used when the buyer doesn't want to take over debts that are being bought. The last kind of acquisition is called management acquisitions or management buyouts when the company's management takes over a large interest in the company, possibly with the help of an external financier. They are effective in that they allow the companies involved the latitude to tailor how a transaction is affected in light of overall strategies as well as necessary regulations.

Legal Framework Governing Mergers and Acquisitions in India

The developing legislation on M&A in India is brought about by several statutes and regulations that may touch on different issues of the transaction: procedural rules, competition law, etc. The Companies Act currently in force in India, lays out provisions for corporate restructuring for amalgamation, compromise, and arrangement of companies under sections 230-240. These provisions outline the formalities for the formation of mergers, such as a confirmation from the NCLT and filing of documents, and the legal necessities of their shareholders and creditors. The Companies Act, 2013 has placed some requirements regarding the accounting standards or discloser, which are to be maintained during the M&A process. [504]

Another major set of rules that readers should also be aware of is the rules of the "Competition Act, 2002" that deal with the competition law elements of M&A deals. According to Section 6 of the Competition Act, of 2002, every agreement between enterprises that has the effect or is likely to have an effect, whether by way of causation or otherwise, of an appreciable adverse effect on competition within the relevant market is prevented. To measure AAEC in a merger or an acquisition, CCI looks into factors such as market share after the merger, the concentration in the market, barriers to entry, and consumer impact. If the transactions exceed the thresholds mentioned in the "Competition Act, of 2002," then the intended transaction must be notified

[503] Avtar Singh and Rinita Das, *Company Law* 450 (Eastern Book Company, New Delhi, 17th edn., 2022).

[504] Komal Sandhu, *Law Related to Mergers and Acquisitions* 684 (Thomson Reuters, Mumbai, 1st edn., 2021).

to the CCI, which can either approve the transaction, alter it, or reject it completely. In "*CCI v. Thomas Cook (India) Ltd.*[505], the CCI placed conditions on the merger of Thomas Cook India with Sterling Holiday Resorts, stating that the post-merger operations by the merged entity must not reduce competitive pressure on other players in the travel and tourism segment.

In addition, the takeover code specified by the 'Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011' assembles other requirements for the full-fledged listed companies to acquire a significant portion of stakes by mandating a public offer. This regulation protects the shareholders of the companies during mergers and acquisition transactions, and it also sets the base for dealing fairly and honestly. Both these laws provide a package deal about how M&A transactions are controlled in India, in a manner that seeks to harness corporate advancement while trying to sustain the rights of a level playing field in the marketplace.

THE COMPETITION ACT, 2002: A KEY LEGAL FRAMEWORK

The legislation on competition law in India is the "Competition Act, 2002," which focuses on different kinds of anti-competitive agreements, conduct, and practices to prevent such related practices in the country. The Act covers mergers, acquisitions, and other matters that are prejudicial to competition. It aims at checking and prohibiting anti-competitive and unreasonable-deceptive conduct in business transactions that is adverse to the general public. The formulation of this legislation was prompted by the realization that law in the subject had to evolve and be able to provide an adequate legal solution within this emerging economy, especially about liberalization and globalization. Since mergers and acquisitions remain strategic growth models in corporate management, the "Competition Act, of 2002" prevents excessive consolidation of power or economic control by prohibiting transactions that would create monopolies and thereby restores balance within the market. The provisions under combination can be used for grazing, as the CCI is empowered to review whether the acquisition might have adverse effects on the market. [506]

Historical Development of Competition Law in India

The emergence of competition law in India dates back to 1969 with the passing of the "Monopolies and Restrictive Trade Practices Act, 1969," also referred to as the MRTP Act, which was India's first try at trying to control anti-competitive practices. The MRTP Act was intended to control the formation of economic dominance and monopoly, but for that, it was time and again blamed for inapposite coverage and inadequacy to stop modern-day economic practices. Thus, with the liberalization of the Indian economy in the early 1990s, the inefficiencies of the MRTP Act started unfolding, and there was a search for a more effective legal regime to facilitate competition and regulate behavior in the market. This led to the repeal of the MRTP Act and the coming into operation of the "Competition Act, 2002," in full by 2009 with the creation of CCI.

The "Competition Act, of 2002" is a distinctly new shift in the methodology of regulating competitiveness in India compared to earlier legislation that only addressed monopolies. The block of provisions under the Act also encompasses a much larger spectrum of anti-competitive agreements, abuse of dominant position, and combinations as compared to its precedent. The conceptual framework was created when the CCI was set up as the legal body entrusted with the duty of enforcing the Act and controlling anticompetitive conduct in the economy. The legal rules attributed to the CCI have changed by amendment acts and various court decisions that define its regulatory

505 [2017] 8 SCC 825.

506 Kush Kalra, *Law Related to Mergers and Acquisitions* 360 (Central Law Publication, New Delhi, 1st edn., 2024).

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mandate, including within the M&A context. [507]

Objectives of the Competition Act, 2002

The whole framework of the "Competition Act, of 2002" is anchored on some main aims and objectives that inform its implementation and adoption. Firstly, it seeks to prohibit activities that have a notifiable impact on competition, which in turn checks on the markets to be competitive and accessible. Secondly, the Act tries to improve the status of consumers by offering them differentiated choices and fair prices for products and services. This is especially important for the topic of M&A because if combinations lead to monopoly formation or the mere removal of the competitive environment, the market is distorted. Third, the Act seeks to enhance and maintain competition in markets for the manifold positive effects of competition on innovation, efficiency, and growth. The focus on maintaining competition can be interpreted based on the need to avoid a situation where a few organizations control the economy and no one is protecting competitors.

Further, the Act facilitates the flow of trade in the Indian markets for their growth in the economy. This objective is further echoed in the provisions of the Act that call upon the CCI to consider the effect that mergers and acquisitions have on players already in the market and those who may wish to enter the same market in the future. Consequent to the provisions of Section 3(a) of the Act, the social control by CCI aims at creating a balance of companies' growth accompanied by checking the anti-competitive structures. Remarkably, this schizophrenic approach is plausible for the attainment of the objective of the legislative act—the "Competition Act, "2002"—anchoring protection of the consumers with pieces of economic advancement. [508]

Key Provisions Related to Mergers and Acquisitions

The laws governing mergers and acquisitions under the "Competition Act, of 2002" depend on several crucial provisions that explain how combinations will be recognized, reported, and evaluated. This power vested in the CCI allows it to scrutinize combinations that satisfy the test to determine that they do not produce an AAEC in the relevant market. These provisions are intended to mean that whenever a company is involved in an M&A transaction, there will be clear legal statutes against which the company is measured; at the same time, vesting the power in the CCI to place conditions or to prohibit combinations that are detrimental to competition.

Section 5: Combinations (Acquisition, Mergers, and Amalgamations)

Subsection 5 of the Competition Act, 2002 The term 'combination' under the Act and how the Act determines whether a certain transaction is a combination or not. A combination means an acquisition, a merger, or an amalgamation that meets or crosses the prescribed asset or turnover filter either globally or in India in the case of the overseas acquisition, merger, or amalgamation. These thresholds are periodically adjusted to the changing economy. With these criteria set, what is known as 'Section 5' allows the CCI to review transactions that pose to reshape markets. It categorizes the combinations under different classes, such as takeover of shares, voting rights, assets, amalgamation of enterprises, as well as merger.

The classification under "Section 5" is not restrictive and includes not only mergers but also takeovers in any other form. This provision enables the CCI to capture a large number of transactions that are other than the conventional mergers, which may lead to a substantial lessening of competition. In the "*CCI v. "Bharti Airtel Ltd.*[509]*,"* the CCI assessed the

[507] Gurpreet Kaur, "Regulation of Combinations Under the Competition Act, 2002: An Analysis", 9(4) *International Journal of Novel Research and Development* 43 (2024).

[508] Ambarish Bharadwaj Sivashankaran, "Cross Border Mergers and Competition Law", 5(3) *International Journal for Multidisciplinary Research* 123 (2023).

[509] [2018] SCC OnLine SC 2671.

acquisition of assets by Bharti Airtel to ascertain whether or not what has taken place would meet the requirement of falling under Section 5.

Section 6: Regulation of Combinations

Section 6 of the Competition Act, 2002 makes it unlawful for any person to enter any concerted practice that has had or is likely to have, the effect of an AAEC within the relevant market. Where combinations/transactions satisfy the thresholds set in "Section 5," the combinations are required to be reported to the CCI for clearance before implementation. The mandatory notification obligation makes sure that concentrations that might be anti-competitive in the markets are looked at by the regulatory authority before they can make their impact felt on the market. The CCI shall then evaluate the proposed combination according to such factors as structure and degree of competition as defined in "Section 20(4)." When the CCI feels that the combination will not raise or have an AAEC, it approves the transaction; otherwise, it may allow the transaction subject to agreed conditions on how the anti-competition impacts are to be addressed, or it will disallow the transaction. [510]

Section 6" of the CCI has been explained in some of the cases as "*UltraTech Cement Ltd. v. Competition Commission of India*[511]," in which the CCI evaluated the acquisition of cement assets under the effects of competition laws. The CCI has also applied its powers to approve conditions of change like the terms of a combination to reduce competition issues, as witnessed in *Holcim Limited v. Lafarge SA*[512], where several divestiture conditions were ordered.

Threshold Limits and Notification Requirements

The criteria by which it is decided whether or not a combination necessitates notification to the CCI are based on the asset or turnover values of the parties involved, globally as well as domestically. These thresholds are stated 'by reference to value' so that the CCI targets its attention towards large transactions that are most likely to alter the industry landscape. Any merger or acquisition that is below these thresholds does not demand notification, an exemption Role of the Competition Commission of India (CCI) in Regulating Mergers and Acquisitions

Under the "Competition Act 2002," the "Competition Commission of India" (CCI) has the major responsibility of dealing with mergers and acquisitions (M&A) that may likely create adverse impacts on competition in the market. Being the regulatory authority under the Act, the CCI has the mandate of investigating combinations that may be prejudicial to competition, acting against market control, and maintaining fairness and equity in trading. The need for regulation of M&A arises due to potential consolidation and change in market structure, and this brings about issues of high prices, low innovation, and few options available to the consumers on the market. Hence, the functions of the Commission involve reviewing the effect that a given combination will have in the market and inflicting penalties or conditions to ensure that the market is competitive. It should be noted that in the course of its orders and decisions, the CCI has introduced a body of jurisprudence that goes a long way towards defining or staking out the future of competition law in India.

Powers and Functions of the CCI

The CCI draws its powers and functions from Section 19 and Section 31 of the Competition Act, 2002. There is entrusted with the duties of approving combinations as well as monitoring compliance with the provisions of the Act to prevent such combinations that may lead to an AAEC or are likely to do so from taking place. Some of the tasks of the CCI include, for instance, determining whether the proposed merger or acquisition meets the notification

[510] Avaantika Kakkar and Vijay Pratap Singh Chauhan, "Evolving Character of the Indian Merger Control Regime", 3 *Journal on Competition Law and Policy* 1 (2022).
[511] [2018] SCC OnLine Del 6521.
[512] [2015] COMPAT 36case.

thresholds set in "Section 5" and whether the intended merger will affect the market equilibrium. In any case, if a combination satisfies these criteria, then the CCI is required to evaluate the anti-competition effect before it can approve the combination. As such, the CCI holds the key to permitting only such combinations that are anti-competitive and otherwise permitting them while requiring that the adverse effects be addressed through certain conditions.

The CCI also has the power to investigate any transaction to further clarify information given by the merger parties, issue notices to the involved, and seek expert advice, when necessary, since the merits of the combination may not be clear. Instead, it can obtain the opinions of third parties or even carry out market research on the effects of the transaction. In the case of "*CCI v. Walmart-Flipkart*[513], the CCI provided a very comprehensive analysis of the scope of the investigation into the retail markets and their implications to arrive at the decision. However, the CCI can also fine companies for not abiding by the rules of notification or for submitting false information in the process of combination notification.

Procedure for Approval of Combinations

The given regulation on combinations by the "Competition Act, 2002" recognizes a multiple-stage clearance procedure aimed at analysing the competition merger and acquisition scenario. The process starts with the Filing of a combination notification is necessitated by "Section 6(2)," under which any parties to a combination that meets the threshold laid out are required to notify the CCI of the transaction. In particular, the notification shall contain the information to be presented on the companies, the nature of the transaction, and the relevant market. After receipt of the notification, the CCI initiates a 'Phase I' assessment to evaluate if the combination raises any issue of competition at its face value. [514]

In the absence of these adverse effects, the CCI provides approval for the combination in question. However, if competition problems are found, the CCI proceeds to a phase II review where the effects of the proposed transaction on competition are carefully assessed. In "Phase II," the CCI may seek more information from the parties, may allow public comment, and may conduct market studies. The conclusion of this investigation forms the benchmark for approving, changing, or banning a combination. In "*CCI v. Sun Pharmaceuticals Industries Ltd.*[515], for example, the CCI investigated the structure of the pharmaceutical market before signing off on a merger and acquisition with conditions that were likely to hurt competition.

Criteria for Assessment of Anti-Competitive Practices

When evaluating the effects of the combinations on competition, the CCI uses factors stated under "Section 20(4)" of the "Competition Act, 2002." The factors considered are the amount of market share concentration; the degree of market exclusion that the combination would bring about; barriers to entry into the market; the likelihood of new competitors who may be locked out of the market; and the consumer and supplier detriment. Market share and concentration ratios are singular demand statistics that are needed to measure the likely prospect of the creation of a merger monopoly in the future. The CCI also considers the balance of buyer power and likely efficiencies that may emerge from the combination, including lower costs or better products and services.

Orders and Decisions of the CCI in M&A Cases

The analysis of the CCI's decision-making in M&A cases constitutes a part of the legal bibliography of the Indian competition law,

[513] [2019] SCC OnLine CCI 66.

[514] Siddharth Kawadia and Khushi Bansal, "Evolution of Competition Law Regime - Prospects and Implications in the Realm of Mergers and Acquisitions", 4(1) *Vishwakarma University Law Journal* 15 (2024).

[515] [2015] SCC OnLine CCI 45.

which in turn holds an impact on its interpretation and application. Along with either permitting or prohibiting transactions, the CCI also offers a rationale that helps to explain the principles on which the regulation of combinations is based. The requirements set in instances where the CCI sees signs of establishment of anti-competition are always a benchmark for future M&As. For instance, in *Holcim Limited v. Lafarge SA*[516]; in this case, the CCI's order was those certain assets be divested to address perceived dwindling competition in the cement space. Similarly, in "*CCI v. PVR Ltd.*[517], the CCI provided behavioural regulation to the merged joint entity with an aim not to hamper the competition in the market of cinema exhibitions.

Such an environment has emerged owing to the CCI following procedures that can be described as transparent and economically rational in their decision-making grounds. Sometimes the orders give information about the market conditions and business practices, which are beneficial to those operating in the environment regulated. In addition, by following the international best practices and principles of natural justice, the CCI has received accolades for its attempt to provide a level playing field in the Indian markets. Where approvals are subject to conditions, the CCI reviews the compliance with intent to enforce the execution of the stipulations to preserve the efficiency of the competitive process.

From this active institutional engagement, it can be concluded that the CCI has become an important gatekeeper for competition in India's complex and fluid market. It has not only restrained anti-competitive behaviours but also offered models of dealing structuring for mergers and acquisitions, which are efficient for the general public interest. [518]

[516] [2015] COMPAT 36.

[517] [2017] SCC OnLine CCI 51.

[518] Satyam Sharat, "Mergers & Acquisitions Under the Competition Act, 2002", *available at:* https://articles.manupatra.com/article-details/Mergers-Acquisitions-Under-the-Competition-Act-2002 (last visited on October 15, 2024).

ANALYSIS OF KEY CASE LAWS ON MERGERS AND ACQUISITIONS UNDER THE COMPETITION ACT, 2002

The Competition Act, of 2002, about mergers and acquisitions (M&A), has been largely defined by the Competition Commission of India (CCI). Through outstanding cases, the CCI has been able to explain how it addresses competition laws with an emphasis on M&A issues, primarily aiming at retaining competition in the market and eliminating anti-competitive effects. This paper shows that in its analysis, the CCI tends to conduct a sectoral study of the likely effects of the transaction on the structure of the market, prices, and consumers. By way of these cases, the CCI has evolved guidelines and principles for M&A activity, and therefore there is the creation and sustaining of a favourable regulatory structure that enables economic efficiency and fair competition. Presenting several important case laws, this section highlights the basic concepts addressed by the CCI that vary from anti-competitive impact to structural changes needed to conform to the competition law. These cases do not only set legal cases but also act as benchmarks for subsequent M&A transactions across India.

Notable Cases Examining Anti-Competitive Effects of Mergers

Holcim Limited v. Lafarge SA[519] is one of the first cases that touched some topics related to anti-competitive mergers. In this case, two of the world's biggest cement producers as far as the market share is concerned aimed at merging both their business as well as operational strategies. The CCI considered the magnitude in terms of its impact on the competition within the cement market which was already in a concentrated state of product market competition. Concerning the competitive conditions, the CCI detected anti-competitive effects which are thus listed below, they include suppression of competition between the merging entities, probable formation of high

[519] 2015 COMPAT 36.

prices by the merged firm, and a limitation of market access by other rival firms. In order to consider these concerns, the CCI squeezing it in the form of certain conditions which was divestiture of particular assets to make certain that there are substantial competitors lining in the market. This decision also explained that CCI's attitude to the market concentration in mergers, especially in sectors where structural remedies such as divestment are employed to ensure that the merged entity does not become monopolistic and cause a harm to consumers.

Other major occurrences that relate to anti-competitive effects include *CCI v. Sun Pharmaceuticals Industries Ltd.*[520] case relating to the merger of Sun Pharmaceuticals and Ranbaxy Laboratories. The CCI considered that since both companies were great players in the pharmaceutical market, the merger would decrease competition in definite therapeutic segments. The market share assessments, the degree of market consolidation after the merger, and consumer reliance on cheap medicines were also examined by the CCI. This is on condition that the companies agreed to divest some of the products that had an overlap in some therapeutic areas to avoid harming competition much as the CCI approved their merger. This case again highlights that the CCI focuses on keeping competition interlaced in markets that are deemed vital and where a lack of competition directly impacts the health and welfare of the consumers, especially in developing countries.

Decisions Impacting the Structure of Transactions

The CCI has many times conditioned its clearance of proposed M&A transactions by requiring structural remedies to avert unlawful anti-competitive consequences. In *UltraTech Cement Ltd. v. Competition Commission of India*[521], the CCI had a chance to scrutinize UltraTech's acquisition of certain cement assets belonging to Jaiprakash Associates. This was deemed to cause a massive improvement in the market share of UltraTech cement in many regions, which is deemed unhealthy due to the market power concentration. To address these issues, the CCI asked Ultra-Tech to sell some of the acquired structures to ensure that the competition was a healthy one. As this instance showed, the CCI's regulation of M&A influenced the structure of transactions and made changes to the structure to meet the needs of the new competition law.

One of the practical examples of how the CCI's decisions influence the transaction structures can be reviewed in the case of "*PVR Ltd. v. Competition Commission of India*[522]." Here, the proposed merger between PVR Cinemas and DT Cinemas was believed to make the cinema exhibition market less competitive, especially in certain regions. This investigation showed that the merger would have anti-competitive effects in that some areas would effectively become a monopoly for one of the major players, and customers would have to pay more and receive a much lower quality service. To counterpoint these problems, the CCI allowed the merger; however, it required additional behavior covenants, such as the presetting of ticket worth and shutting down of particular cinema screens. This decision was proactively taken by CCI to complete the policymaking that is necessary to carve the shape of its regulations according to the mergers and acquisitions transactions to nurture the competitive environment of the country while not interrupting the strategic plans of the companies.

REGULATORY CHALLENGES AND GAPS IN THE CURRENT FRAMEWORK

The current framework of mergers and acquisitions under the "Competition Act, of 2002" has been developed to prevent anti-competitive mergers and acquisitions while encouraging competitive mergers and acquisitions. Nevertheless, some issues and

[520] [2015] SCC OnLine CCI 45.
[521] [2018] SCC OnLine Del 6521.
[522] [2017] SCC OnLine CCI 51.

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shortcomings have been identified in connection with the regulation of corporate activities within the framework established in the given field of activity. All these challenges can negatively affect competition law enforcement as well as confuse firms that participate in M&A deals. Some of the critical concerns are concerns arising out of a lack of clarity on the aspects of notification; concerns flowing from the restricted scope of review that is available to the Competition Commission of India (CCI); and concerns relating to the challenge that is faced in addressing the anti-competitive concerns where markets are more and more complex and dynamic. Awareness of these regulatory issues is crucial in seeking to find out the lacuna, the interaction between them, and the proposed strategies that can be adopted to improve the enforcement of competition law in India.

Ambiguities in Notification Requirements and Thresholds

However, under the current regulatory framework, the main problem is the lack of clear preconditions and numerous questions concerning the notification thresholds and the notification procedure. As per "Competition Act, 2002, Section 5", any combinations if they possess assets or turnover beyond particular limits need to be notified to the CCI. These thresholds are aimed at identifying large transactions that may have an impact on competition, yet their meaning and implementation are not always clear, therefore causing uncertainty. For example, IPRS has differences in the determination of the values of tangible and intangible assets and turnover; global and domestic practices generate confusion in multinationals operating in India. Also, some exceptions, for example, the exception of "de minimis," which applies to small target enterprises, are not clearly defined, and therefore there remain doubts as to whether certain transactions meet the notification requirements. The continuing problem is to distinguish large transactions that may give rise to competition concerns as well as smaller transactions that may impose regulatory compliance costs but do not present competition risks.[523]

Thirdly, the notification thresholds have not been adjusted as regularly and comprehensively as economic growth rate and inflation; that would mean some transactions may be anti-competitive, but because they are below these notification thresholds, they would not be scrutinized. This issue becomes even more critical in industries characterized by highly increasing market concentration levels since even relatively small mergers could lead to prohibitive levels of consolidation. Even though some changes in thresholds have been made due to the improvement of the economic landscape, there is still a need to have more flexible criteria that could relate to the operations of various firms. Clearing up these uncertainties and altering notification specifications might facilitate increased certainty in the regulatory procedure and prove that important M&As are indeed not missed.

Issues with CCI's Review Process

While the method applied to the CCI's review is quite comprehensive, it has its drawbacks nonetheless. Some of the challenges that engender long working hours include the time taken to complete the project during what is considered "Phase II" of the investigations, which incorporates other activities such as market comprehensiveness. Despite the provisions of the Act providing timelines for the CCI to make its decision, the process is likely to take more time, especially where the transaction is complex, hence denying the parties certainty. For instance, when the CCI wants more information or when it seeks expert advice, time is likely to be elongated, thus being disadvantageous and causing developmental hitches to companies with strategic takeover

[523] Shikha Sharma Jaipuriar, "Merger Aspects under Competition Law in India", *available at:* https://articles.manupatra.com/article-details/Merger-Aspects-under-Competition-Law-in-India (last visited on October 15, 2024).

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intentions. There is also a likelihood of disrupting the ongoing business operations whenever there is a delay in the issuing of the regulatory approval, especially in times when the deal has to meet a time-sensitive deadline that is regularly compounded by the accrual of unnecessary costs.

The other two issues that need to be discussed are connected to the openness of the CCI's decision-making process and its predictability. Despite the releases of elaborate orders with clearly articulated reasons for decision-making, there could still seem to be irregularities in how the CCI approaches similar transactions. The parameters employed for determining the market concentration and anti-competitive impacts, including market share determination and the definition of market-relevant size, can be difficult to define and, as such, can generate contrasting results in similar instances. These fluctuations can determine whether or not various mergers are approved even more of a gamble for any companies and legal representatives involved in the process. Concerns about the predictability, impartiality, and objectivity of the CCI's review process, as well as the potential for protectionism, may be eased by refining guidelines on merger assessments for greater clarity and by providing clearer indications of how the CCI reviews specific mergers. [524]

Challenges in Addressing Anti-Competitive Concerns

The nature of M&A transactions suggests that the analysis of anti-competitive risks is not a straightforward task, especially in companies in fast-growing industries. Competitive dynamics in the markets serviced by hi-tech goods and services, including e-commerce, digital services, and pharmaceuticals, undergo drastic changes in short periods. In such sectors, it is often possible that the comparative assessment of the impact of a combination based on traditional competition law measures such as market share may not hold good. For instance, in digital markets where businesses may not necessarily occupy large market shares at the time of merger but may possess capabilities of disruption, the ability of CCI may be tested on its capacity to look into anti-competitive threats, only to discover them after the merger has been consummated and its impacts felt.

In addition, behavioural remedies that are sometimes used to address anti-competitive issues may not be very useful in dynamic markets. On the other hand, structural remedies, which include divestiture of certain assets, are more lasting but may not be possible or appropriate for most transactions. The major challenge is how to ensure that remedies that are flexible enough to accommodate changes in the actual market conditions are also capable of preventing anti-competitive results. Because the CCI is challenged in dealing with all these, more sophistication must be brought into the assessments relating to mergers with the use of economics as well as factors within markets that compete with the pull of modern business environments.

CONCLUSION

The mechanism of mergers and acquisitions (M&A) under the Competition Act of 2002 is critical in the promotion of competitive markets and business strategic development in India simultaneously. The legal order that consists of the 'Companies Act, of 2013', the 'SEBI's Substantial Acquisition of Shares and Takeovers Regulations, 2011' commonly known as the 'Takeover Code', and the 'Competition Act, of 2002' defines thorough rules of M&A affairs while encouraging company growth and bearing competition law in mind. The "Competition Commission of India" (CCI) acts at the central level and is endowed with the powers needed to appraise combinations in an endeavour to prevent the emergence of an AAEC through instruments such as structural remedies divestitures and behavioural covenants.

[524] Garima Rai, "Merger and Acquisition Transactions Under Competition Law Regime", 6(1) *International Journal of Creative Research Thoughts* 123 (2018).

Despite the advancement made in the legal provisions of M&A, there are challenges within the framework. These include lack of clarity in notification and procedural requirements; the dynamism of the market, making it hard to tackle anti-competitive concerns; and the non-clarity and inconsistency of the processes employed by CCI. It is an objective of the current notification thresholds to address important transactions; however, they can miss sectors that are fast consolidating and hence allow deleterious merger processes to go unchecked. Moreover, the procedures followed by the CCI may take a long time, thus leaving uncertainties for firms within the business environment. To overcome all of the above-mentioned challenges, it would be possible to reconsider the criteria for notification of combinations more keenly, look for work more uniformly in most cases, and also develop the use of economic instruments more effectively to understand the market in a much better way.

The studies with jurisdictions such as the U.S. and EU hold significant lessons for India. The U.S.'s focus on the use of economic analysis along with quantitative measures including the Herfindahl-Hersch index proves a model of a more robust assessment of market concentration. High concentration is likely to make the industry highly sensitive to measures such as unilateral and coordinated effects that the EU has rigorously adopted. For example, by changing its dynamic notification system, similar to those used in other countries, the CCI could increase its capacity for regulation, and through a more rigorous approach to reviews, resembling those of other international organizations, it could enhance its efficiency.

Summing up, it could be stated that the "Competition Act, of 2002" has contributed a lot to the problem of fair competition in the new Indian economy environment, but the necessity of its further development regarding the global levels and tendencies of changes and new conditions exists. The European approach beyond merely responding to current M&A regulation gaps and the adoption of best practices from other jurisdictions will improve the protection of consumers' interests and the development of a competitive economy.