

ROLE OF COMPETITION COMMISSION OF INDIA IN REGULATION OF COMBINATIONS: AN ANALYTICAL STUDY

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Abstract

The regulation of combinations—comprising mergers, acquisitions, and amalgamations—is a critical aspect of modern competition law, aimed at preserving fair market structures and preventing undue concentration of economic power. In India, the Competition Commission of India (CCI) is the statutory authority entrusted with scrutinizing such combinations under the Competition Act, 2002. This research paper provides an analytical study of the CCI's role in regulating combinations, focusing on the legal framework, regulatory procedures, and practical implementation. It explores the statutory provisions under Sections 5 and 6, the concept and application of the *De Minimis* exemption, and the procedural framework established under the Combination Regulations, 2011. The study also evaluates key decisions and orders passed by the CCI in notable cases, identifying emerging patterns in merger review and their implications on market dynamics. A critical analysis highlights both the strengths and challenges of the current regulatory regime, particularly in balancing the goals of promoting business growth and safeguarding competition. The paper concludes with recommendations to enhance the effectiveness of the combination review process in light of evolving market complexities and global best practices.

Key words: Anti-Competitive Practices, Combinations, Competition Commission of India (CCI), Appreciable Adverse Effect on Competition (AAEC), Relevant Market

Introduction

In this evolving economy, competition plays a crucial role in fostering innovation, promoting efficiency and enhancing consumer welfare. However, anti-competitive practices like cartel formation, abuse of dominant position or restrictive trade agreements that cause an appreciable adverse effect on competition, undermine the essence of a competitive market. To address these issues, India enacted the Competition Act, 2002, which applies to all enterprises operating within the country irrespective of their size.

One of the most crucial aspects of this legislation is the regulation of 'combinations', which refers to mergers, acquisitions and amalgamations. These are situations where two or more companies come together, either directly or indirectly, which can lead to changes in market control. Such combinations can significantly influence competition, either by creating a monopoly or fewer choices for consumers.

To monitor and regulate these combinations, the Act establishes a quasi-judicial body to be called the Competition Commission of India which is also responsible for promoting

competition advocacy by creating awareness and providing training on competition-related issues. The CCI evaluates whether proposed combinations could negatively impact competition in India. If it determines that a particular merger or acquisition poses a serious threat to the competitive environment, it can take appropriate actions such as imposing conditions to address these concerns or even prevent the combination entirely.

With its comprehensive mandate, the CCI acts as the guardian of market fairness. Its efforts to eliminate anti-competitive practices and promote an equitable trading environment not only protect consumers but also enable businesses to thrive through fair competition, thereby contributing significantly to the nation's economic development.

Scope and objectives

This scope of the paper is to explore the regulatory framework governing combinations under the Competition Act, 2002, emphasising the role and efficiency of the Competition Commission of India (CCI).

This study aims to achieve the following objectives:

- To analyse the regulatory framework governing combinations as outlined in the Competition Act, 2002.
- To evaluate the CCI's effectiveness in regulating combinations through case study and assess the implications for businesses and consumers.
- To explore the recent trends and challenges faced by the CCI in regulating combinations.
- To understand how the CCI's efforts contribute to safeguarding consumer interests and ensuring a fair market environment.

Background

The regulation of combinations in India has undergone significant transformation since the

economic reforms of the early 1990s. Before the enactment of the Competition Act, 2002, competition laws were governed by the Monopolies and Restrictive Trade Practices (MRTP) Act of 1969. Although the MRTP Act aimed to curb monopolistic behaviors, it fell short of addressing the complexities of rapidly changing economy and modern business practices, focusing mainly on monopoly control, without the necessary frameworks for robust market competition and handling mergers and acquisitions.

The economic liberalization of the 1990s prompted India to transition towards a more market-oriented economy, highlighting the need for an updated competition policy. This ultimately led to the introduction of the Competition Act, 2002, which repealed the MRTP Act and set the stage for a more competitive and transparent market system. This new law established a comprehensive regulatory framework for competition, including specific provisions for regulating combinations with the main goal of fostering competition and while preventing anti-competitive practices.

Under the Competition Act, combinations are defined as mergers, acquisitions, and amalgamations that meet specific asset or turnover thresholds. A key aspect of this Act is the establishment of the Competition Commission of India (CCI) which is empowered to evaluate and regulate combinations to determine whether they may negatively impact competition in the market or result in market dominance. This is essential to prevent the emergence of monopolistic structures and maintain equitable conditions for businesses of all sizes.

The CCI carefully examines proposed combinations, analysing their potential effects on competition within the Indian market. This regulatory review is essential for market equilibrium, promoting fair competition, and protecting consumer interests. Since the enactment of the Competition Act, various amendments and developments have been

introduced to strengthen the regulatory framework for combinations. Notably, in 2011, the CCI issued guidelines for determining the AAEC, which provided businesses with clearer criteria for evaluation. The CCI has consistently refined its approach to combination regulations, adapting to evolving market dynamics and addressing emerging challenges.

By setting clear standards for evaluating combinations, the Act is instrumental in protecting consumer interests and supporting smaller enterprises, while also fostering economic growth and innovation.

Combinations

Mergers and acquisitions (M&As) that satisfy the asset and turnover criteria outlined in Section 5 of the Competition Act, 2002, are classified as combinations. These play a crucial role in shaping the competitive landscape of the market. According to this section, the acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises. Therefore, only M&As that fulfil these established criteria must be reported to and approved by the Competition Commission of India prior to their completion. This ensures that combinations which have the potential to cause or are likely to cause an appreciable adverse effect on competition within the relevant market in India undergo thorough investigation by the Competition Commission of India (CCI). This scrutiny is essential to safeguard competition, consumer choices and the overall market integrity.

Types of combinations recognized under the Competition Act, 2002, includes:

1. Mergers – This occurs when two or more companies combine to form a single new entity or one company absorbs another. However, they may also raise concerns about reduced competition if they create a monopoly or diminish consumer choices.

2. Acquisitions – In an acquisition, one company purchases a controlling interest in another company, either through buying shares or assets. The CCI evaluates acquisitions to determine whether they may substantially lessen competition in the market.
3. Amalgamations – Amalgamation is similar to merger involving the combination of two or more companies into a single new entity, merging their assets and liabilities.
4. Joint venture – These involve two or more companies collaborating to establish a new business entity for a specific purpose or project.

The thresholds under Section 5 of the Competition Act, 2002, are essential in determining whether a combination (acquisition, merger, or amalgamation) must be notified to the Competition Commission of India (CCI) for approval. These thresholds are based on the value of assets and turnover of the entities involved in the combination, referred to as the enterprise-level threshold, and the group to which the target will belong after the merger or acquisition, known as the group-level threshold. Additionally, the geographical scope of the business operations is also considered. Under Section 20(3) of the Act, the Central Government is required to review these thresholds every two years. The current thresholds as per the notification released by the Ministry of Corporate Affairs, Government of India²⁴⁹ are as follows:

²⁴⁹ Notification No. S.O. 1130(E), Enhancement of Value of Assets and Turnover for the Purpose of Section 5 of the Competition Act, 2002, (Mar. 7, 2024).

Thresholds For Filing Notice				
		Assets		Turnover
Enterprise Level	India	More than INR 2500 crore		OR More than INR 7500 crore
	Worldwide with India nexus	More than USD 1.25 billion with at least INR 1250 crore in India		
OR				
Group level	India	More than INR 10000 crore		OR More than INR 30000 crore
	Worldwide with India nexus	More than USD 5 billion with at least 1250 crore in India		

De minimis exemption

The Central Government, exercising its powers under clause (a) of Section 54 of the Competition Act, 2002, has exempted the following types of combinations from the provisions of Section 5. These include:

- Any acquisition referred to in clause (a) of Section 5, where the value of the assets being acquired is not more than ₹450 crores in India, or the turnover does not exceed ₹1,250 crores in India.
- Acquiring control by a person over an enterprise when the acquirer already has direct or indirect control over another enterprise engaged in similar or substitutable goods or services, as referred to in clause (b) of Section 5. The value of the assets being acquired should not exceed ₹450 crores in India, or the turnover should not exceed ₹1,250 crores in India.
- Any merger or amalgamation, as referred to in clause (c) of Section 5, where the value of the assets involved is not more than ₹450 crores in India, or the turnover does not exceed ₹1,250 crores in India.

This exemption will remain in effect for two years following its publication²⁵⁰ in the Official Gazette and aim to reduce the regulatory burden on smaller enterprises, enabling the CCI

to focus on transactions that are more likely to affect competition.

Regulation of Combinations and the Role of CCI

Section 6 of the Act mandates for the regulation of combinations, stating that no person or enterprise may enter into a combination that causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India. Such combinations are deemed void. Subject to this provision, any person or enterprise intending to enter into a combination must notify the Competition Commission of India (CCI) in the prescribed form, accompanied by necessary fee. This notice should disclose all details of the proposed combination and must be filed within thirty days of either the board of directors approval of a merger or amalgamation or the execution of an agreement for acquisition or control.

A combination cannot take effect until 210 days have passed from the date of notice to the CCI, or until the CCI has issued orders under Section 31, whichever is earlier. During this period, the CCI will review the notice in accordance with the procedures laid out in Sections 29, 30, and 31 of the Act ensuring that all proposed combinations undergo a thorough examination to prevent any negative impact on competition in the market.

Under Section 29 of the Act, if the Competition Commission of India, forms a prima facie opinion that a combination may likely cause an appreciable adverse effect on competition (AAEC) in the relevant market, it will issue a show cause notice to the parties involved, asking them to respond within 30 days as to why an investigation should not be initiated. The CCI may seek a report from the Director General to assist in its assessment. If AAEC is suspected, the parties must publish details of the combination, inviting public objections within 15 working days. The CCI can request additional information from the parties before making its final decision.

²⁵⁰ Notification No. S.O. 1131(E), Exemption of Certain Combinations Under Section 5 of the Competition Act, 2002, (Mar. 7, 2024).

According to section 31, after concluding its investigation, the CCI can make several orders regarding the combination. It can:

1. Approve the combination if no AAEC is found.
2. Block the combination if it causes AAEC.
3. Propose modifications to address concerns, which the parties can accept or amend. If parties fail to comply with modifications, the combination may be declared void.

The CCI is required to make its decision within 210 days, failing which the combination is deemed approved. The CCI can also impose a penalty of up to 1% of the total turnover or assets of a combination if a person or enterprise fails to notify the CCI as required under Section 6(2) of the Competition Act, 2002.

However, certain exemptions apply to the regulation of combinations. The provisions of Section 6 do not extend to share subscriptions, financing arrangements, or acquisitions made by public financial institutions, foreign institutional investors, banks, or venture capital funds pursuant to any loan or investment agreement. These entities are required to file details of such acquisitions with the CCI within seven days of the acquisition, including the details of control, the circumstances under which such control is exercised, and the consequences of any default under the agreement.

Key judgments and rulings

Over the years, the Competition Commission of India (CCI) has made several significant rulings that have shaped the regulation of merger & acquisitions, while also clarifying various contentious issues under the Competition Act, 2002. These rulings are essential in understanding the CCI's approach in ensuring that combinations do not cause an appreciable adverse effect on competition (AAEC) in India. Among the notable judgments that have contributed to the evolving legal framework on combinations are as follows:

On May 6, 2014, the Competition Commission of India (CCI) reviewed the merger between *Sun Pharmaceutical Industries Limited and Ranbaxy Laboratories Limited*²⁵¹. While the CCI approved the merger, it imposed certain conditions to prevent anti-competitive practices, including the divestment of several overlapping products, including Tamsulosin + Tolterodine (Tamlet), Leuprorelin (Eligard and Lupride), and others. Emcure Pharmaceuticals Limited was approved as the buyer of these divested products, meeting CCI's standard for independence and capability. The CCI found no significant horizontal or risks of vertical foreclosure that could harm competition. Furthermore, rather than transferring specific trademarks, the Parties opted for a licence arrangement, which Emcure accepted. The CCI required that the divestment be finalised within a specified period and mandated compliance reports to ensure adherence to its directives.

In the case involving *PVR's acquisition of DT Cinema's multiplexes and single-screen theatres in Delhi NCR and Chandigarh*²⁵² The CCI assessed the acquisition of 39 screens (29 existing and 10 upcoming) by PVR from DLF's film exhibition business 'DT Cinemas'. The CCI identified the relevant geographic markets as Gurgaon, South Delhi, North, West and Central Delhi, Noida, and Chandigarh, with the relevant product market being multiplexes and high-end single-screen theatres. The CCI determined that the acquisition could have an Appreciable Adverse Effect on Competition (AAEC) in Noida, Gurgaon, and South Delhi. To address these concerns, PVR proposed behavioral remedies and the CCI approved the combination under Section 31(7) with structural modifications, excluding DT Savitri (one screen) and DT Saket (six screens) from the acquisition to mitigate anti-competitive effects.

In *Flipkart-Walmart Acquisition*²⁵³, Walmart acquired a 77% controlling stake in Flipkart, a leading Indian e-commerce platform,

²⁵¹ Combination registration No. 2014/05/170

²⁵² Combination registration No. 2015/07/288

²⁵³ Combination registration No. 2018/05/571

representing a significant entry into the Indian retail market. This raised concerns over potential vertical integration and increased market concentration in the e-commerce sector. Nonetheless, the CCI approved the acquisition without imposing any conditions, concluding that it would not create an appreciable adverse effect on competition due to the presence of other strong competitors, particularly Amazon.

These rulings not only set important standards for future mergers and acquisitions but also clarify how to ensure fair competition across different sectors. As the business landscape changes, the CCI's decisions will continue to shape the regulatory framework for combinations, ensuring that they do not negatively impact competition in India.

Critical Analysis

The regulation of combinations under the Competition Act, 2002, is crucial for maintaining competitive markets in India. The Competition Commission of India (CCI) plays an essential role in scrutinising mergers, acquisitions, and amalgamations, which promotes a fair competitive environment and stimulates economic growth. However, while the existing framework offers opportunities, it also poses significant challenges that necessitate critical examination.

One notable advancement in the regulatory landscape is the introduction of the Green Channel mechanism by the CCI in 2019²⁵⁴. This initiative aims to simplify the approval process for combinations that are unlikely to raise competition concerns. By adopting an automatic approval system, the CCI seeks to reduce the time and costs associated with transactions. This proactive approach balances facilitation and enforcement, fostering a culture of compliance and supporting economic growth in India. Such a mechanism enhances

the CCI's efficiency and responsiveness to market dynamics.

The CCI's approach to defining relevant markets²⁵⁵ has evolved, particularly regarding the separation of online and offline distribution channels. This change appears to be a strategic move to address the rapid growth of the digital economy and monitor potential anti-competitive practices in the e-commerce sector. This re-evaluation may strengthen the CCI's regulatory oversight, it risks creating artificial distinctions that could misinterpret market power dynamics, potentially stifling innovation and growth in the digital space.

Despite these advancements the CCI faces both internal and external challenges²⁵⁶ in implementing competition laws, especially due to evolving business models centred on the digital economy and e-commerce. Traditional competition laws, which focus on assets and turnover, are inadequate for addressing digital market issues. There is also a need to expand the number of CCI benches to expedite case resolutions. Additionally, to remain relevant in the digital economy, competition laws must include considerations like data accessibility and network effects, which are critical in the modern business landscape.

To remain effective, the CCI must adapt its framework to consider aspects like data accessibility and network effects. By doing so, it can better safeguard competition and support sustainable economic growth in an increasingly digital landscape.

Conclusion

The role of the Competition Commission of India (CCI) in regulating combinations under the Competition Act, 2002, is paramount for maintaining a fair and competitive market in India. Through its rigorous examination of

²⁵⁴ The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, No. 3 of 2011, (2011).

²⁵⁵ Unnati Aggarwal, Delineation of Relevant Market by the CCI: Change in Practice, *Bar & Bench* (May 25, 2022), <https://www.barandbench.com/columns/delineation-of-relevant-market-by-the-cci-change-in-practice>.

²⁵⁶ Competition Commission of India, The Competition Commission of India, BYJU'S (2021), <https://byjus.com/free-ias-prep/the-competition-commission-of-india/>.

mergers, acquisitions, and amalgamations, the CCI ensures that anti-competitive practices are effectively curbed, thereby protecting consumer interests and fostering innovation. Its proactive approach helps maintain a level playing field in the market, fostering fair competition and promoting economic growth.

The introduction of the Green Channel mechanism reflects the CCI's commitment to streamlining the approval process for combinations that are unlikely to raise competition concerns. This initiative not only reduces regulatory burdens on businesses but also enhances the efficiency of the CCI's operations. However, as the market landscape continues to evolve, particularly with the rise of digital economies, the CCI faces new challenges that require adaptive regulatory measures.

To address the complexities of digital markets, including data accessibility and network effects, it is important for the CCI to refine its approach. By doing so, the CCI can enhance its efforts to protect competition and facilitate sustainable economic growth in an increasingly digital environment. Ultimately, the CCI's vigilance and adaptability will be essential in maintaining a competitive marketplace that benefits consumers and businesses.

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