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NAVIGATING INDIA'S EVOLVING MERGER CONTROL LANDSCAPE: ANALYZING THE EVOLUTION OF MERGER CONTROL AND ITS REGULATORY IMPACT

AUTHOR – SARA CHARAN, STUDENT AT UNIVERSITY SCHOOL OF LAW AND LEGAL STUDIES

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Abstract

The Competition Commission of India was established in the year 2003 as a critical regulatory body for enforcing the Competition Act, 2002, aimed at controlling anti-competitive practices, especially in mergers and acquisitions. This paper discusses the development of India's merger control regime, with a focus on recent amendments that have brought significant changes aimed at enhancing regulatory efficiency and responding to the emerging dynamics of the market. It introduces, inter alia, a deal value threshold and a substantial business operations test to capture high-value transactions from the technological vertical, which were otherwise escaping scrutiny under traditional asset and turnover metrics. The study thus looks at the tightrope walk that the CCI has to do in balancing the facilitation of business operations with the preservation of competitive integrity in the market. It also discusses the streamlined timelines for CCI review, which, although statutorily shortened, may not necessarily result in quicker times due to the procedural complexities inherent in the process. It examines the formalization of exemptions regarding ordinary course and investment-based transactions, offering greater predictability and clearer guidelines for businesses. Taken together, these reforms reflect a transformation of the Indian Merger Control Regime in a progressive direction towards international best practices, while also addressing public interest and market competition. The findings highlight the need for businesses to actively adapt to these regulatory changes in order to navigate the evolving landscape effectively.

Keywords: Competition Commission of India, Deal Value Threshold, Substantial Business Operations in India, De Minimis Exemption, Regulatory Amendments, Appreciable Adverse Effects on Competition, Green Channel Approval, and Exemptions

Introduction

The first and foremost question is, what is the Competition Commission of India and its role? The CCI has been set up as a sector neutral regulatory body. It was established by the Central Government on 14th October 2003. The objective of the CCI is to enforce the Competition Act, 2002. The regulatory body comes under the Ministry of Corporate Affairs. It plays a fundamental role in preventing anti-competitive practices within India, particularly in the context of mergers, acquisitions, and deal-making activities. CCI conducts screening to make sure that it approves only those transactions which don't have any significant competitive harm on the Indian market. It reviews merger and acquisition transactions to avoid any competitive concerns related to mergers and acquisitions which breach certain predetermined and objective criteria based on assets and turnover threshold tools. It also examines whether the consideration value is truly the metric employed by the CCI to ensure that only high-value deals with a potentially

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significant impact on the Indian market are being reviewed. For instance, if a company is engaging in a deal within a highly regulated sector that has a specialized regulator, the deal might need approval from authorities such as the IRA in the case of an insurance-related deal or the RBI. Additionally, approval from the CCI, which serves as the competition regulator, is necessary.

A merger, also known as a combination, is described under Section 5 of the Competition Act, 2002.[1061] These combinations take place when one or more businesses are bought by someone or when two or more businesses merge. Mergers occur for various reasons, which includes increasing operational efficiency, gaining more control over the market, or influencing prices. These reasons raise concerns for different groups, including consumers, competitors, and stakeholders. The main objective of the competition law is to make sure that all enterprises can compete in a free and fair manner. Therefore, one of the main reasons for the merger control regime is to prevent companies from misusing their market power and to make sure that consumers have reasonable prices and a variety of choices.

When mergers meet certain financial criteria, the enterprises have to notify the CCI, which is outlined in Sections 5 and 6. The CCI then reviews the merger and decides whether to approve it, approve it with conditions, or simply reject it. Section 20 of the Act explains how the CCI needs to investigate a merger to check if it could harm competition in the market in a significant way, a concept known as 'Appreciable Adverse Effects on Competition' (AEEC). While AEEC is not strictly defined, Section 20(4) lists several factors that the CCI should consider when evaluating whether a merger could have a negative impact on competition.[1062] With the evolution of the merger control regime and significant changes in the regulatory environment in India, an arms-length check on transactions through merger control is vital. Such a response has on the one hand tackled concerns from the industry while on the other hand ensured sound regulation toward a competitive landscape. Establishing the historical progression of this regime entails tracing the alterations that were instituted before the reforms adopted in the control regime.

Changes Prior to the Recent Control Regime

The changes that can now be observed in the Indian merger control regime have been effective since 2011. The year 2011 saw extensive discussions, particularly with the Chamber of Commerce and Industry, regarding whether the Indian Merger Control Regime should be notified. The main concern of businesses was the 210-day waiting period to get approval for non-problematic transactions. Industries were concerned about having to wait for seven months to obtain approval for a transaction that was non-adversarial. This concern was ultimately addressed through the evolution of the law. On June 1, 2011, the Government of India issued a notification regarding merger control rules in Sections 5 and 6 of the Act.[1063] From that point on, more and more transactions were being filed before the CCI. Since the legislation is sector-agnostic, it began to cover all sectors of the Indian industry. Inter alia, CCI, being the only agency tasked with reviewing combinations under the Competition Act, took extra care not to exacerbate the concerns that had been raised by industries. It aimed to balance both the industry's apprehensions and the need for regulation.

With the evolution of the law, the initial concerns surrounding these changes gradually eased as the law moved in a direction that ultimately benefited the entire sector. A few key amendments included the removal of the 30-

[1061] *Competition Commission of India, Government of India. (2017). Cci.gov.in. https://www.cci.gov.in/combination/combination/filing-of-combination-notice/introduction*

[1062] *India Code: Section Details. (2025). Indiacode.nic.in. https://www.indiacode.nic.in/show-data?abv=null&statehandle=null&actid=AC_CEN_22_29_00005_200312_1517807324781&orderno=21&orgactid=AC_CEN_22_29_00005_200312_1517807324781*

[1063] *Competition Commission of India, Government of India. (2022). Cci.gov.in. https://www.cci.gov.in/regulation-of-combination*

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day waiting period and the introduction of the De Minimis provision. Initially, industries were required to file their merger details within 30 days of agreeing on a deal. However, this was amended in June 2017, allowing industries to file at any time after the agreement, reducing the risk of gun jumping. The de minimis notification issued by the Government of India under the special provision of the Competition Act also helped by exempting transactions that fell within the de minimis thresholds for targets in India from the notification requirement. This gave the parties some comfort regarding the filing process. On 14th August 2019, the Government of India, along with the CCI, introduced an interesting departure from the filing process called the Green Channel.[1064] The Green Channel notification required the parties to pay the filing fee but exempted them from the competition assessment, provided they could prove to the CCI that there would be no overlap in the horizontal, vertical, or complementary markets.

For the corporate mergers, the average time period in the present day is between 25 and 45 working days. The mergers which are somewhat complicated extend beyond the 45 working days mark. The question of whether CCI has ever reached 210 days in this timeframe requires further investigation. The answer is mostly no, unless the parties have not been able to respond to the notice on time because of the complexity of the transaction or because of some other problems. For instance, Holcim Ltd. and Lafarge S.A.[1065] case where CCI approved the merger but ordered Lafarge S.A. to sell two cement plants, which were in Chhattisgarh and Jharkhand. Lafarge was unable to finalize the trade because of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, which hindered the transfer of limestone mines linked to cement production units. In February 2016, the CCI gave the merger the green light once more, but only on the condition that Lafarge divested all of its assets in India. The matter got delayed because of the amendments made in the act but the matter was resolved within 120 days. Similarly, the merger between Sun Pharma and Ranbaxy[1066] faced delays due to disinvestment issues, still it did not take 120 days. These cases are among the few which went beyond the average time yet got resolved within 120 days. Therefore the Merger Control Regime is considered a positive policy for its prompt and effective merger control framework.

The factors listed in Section 20(4) focus on market power and effective competition but it excludes considering the nature and extent of innovation. Although, the Act does not mention public interest as a specific reason for evaluating mergers. In the merger control regime, public interest is usually inferred in a broader manner, going past the competition concerns like the appreciable adverse effect on competition. Public interest is concerned with whether a merger might cause long-term harm, making a company vulnerable to hostile takeovers, concentration of wealth in the hands of a few, increase unemployment, or raise national security concerns. The assessments are mainly done in the best interest of the market, as stated in the Preamble of the Act, but the public interest concerns go beyond that. These concerns include competition related issues but also cover broader social and economic impacts.

Changes in Merger Control Regime

The old thresholds which are now recast into new avtaar were popularly known as the De Minimis thresholds or the Small Target Exemption thresholds.[1067] The De Minimis threshold are essentially local Nexus criteria which presupposes that if the target does not meet a certain asset or turnover criteria, then the acquisition of the target will not result in

[1064] *Amended Combination Rules, 2019, as amended, Reg. 5A.*
[1065] *Holcim Ltd. v. Lafarge S.A., Case No. 190, (Competition Commission of India July 2014). https://www.cci.gov.in/images/caseorders/en/1652519618*
[1066] *Sun Pharma and Ranbaxy, Case No. 170, (Competition Commission of India December 5, 2014). http://164.100.58.95/sites/default/files/C-2014-05-170_0*
[1067] *De minimis Regulations of the Act, Reg 3.*

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alteration of the market dynamics and therefore, it is excluded from merger review. The thresholds were primitively set at 350 Crores and 1000 crores, in terms of assets and revenue turnover. Subsequently it was revised in March 2024, to 450 crores and 1250 crores for assets and revenue, respectively.[1068] Contemporary to it, section 5 thresholds were modified, which includes eight asset and turnover thresholds (based on parties and groups), significantly there was a 25% jump in these thresholds.

The law allows the government to amend the thresholds based on the economic parameters. These were initially established through official notifications and were valid for a period of two years. As mentioned earlier, the law has undergone numerous revisions and modifications and it now officially includes this process. Thus, these rules are bestowed in the form of minimum asset and turnover criteria which, even after several amendments, yet continues to maintain it's original structure and intent. This is like an old rule placed in a new package, and the difference here is how it is presented now. So, these rules still apply.

There is a new concept called the Deal Value Threshold, and the reason why India believed it was important to introduce a deal value criteria, or deal value threshold, is similar to what most regulators are considering globally. The reason this criteria has come into being in its current form is due to a perceived enforcement gap. Many high-value deals, particularly in the tech space, were not being submitted to the Commission for review. There were concerns that large targets, which were highly innovative and commanded enormous valuations, were escaping scrutiny. Why? Because the old conventional thresholds, based on assets and turnover, were not necessarily relevant for sectors like tech. It is not always the case that the revenue generated from a transaction truly reflects the competitiveness or market power one gains, which is why it was thought that a new test was needed to capture transactions with potentially significant repercussions in the Indian context. India is clearly not the first to adopt or pioneer this approach; other countries like Austria and Germany have already implemented similar laws and have had a size-of-transaction test for some time. So, it's not a completely novel concept, but it has been "Indianized," with certain local nuances added.

With that context in mind, the deal value threshold is as follows: If the value of the transaction exceeds 2,000 crore Indian rupees (approximately 240 million USD, depending on the forex rate), and the target has substantial operations in India (i.e., a local nexus), then the transaction is potentially notifiable.[1069] In this case, the De Minimis test mentioned earlier will not apply. These are independent, mutually exclusive tests that must both be applied: one under the target exemption and the statutory thresholds under Section 5, and the other under the deal value threshold. There can be no overlap, where, for instance, the deal value exceeds 2,000 crore but meets the De Minimis criteria, thus making it exempt. These are separate tests with no interaction.

Another test used by the CCI to determine whether a transaction requires prior approval is the Substantial Business Operations in India (SBOI) test.[1070] This is again very important because there are two key elements: one is the Value of Transaction[1071], and the other is the SBOI test. So, while the value of transaction globally may exceed the threshold and appear significant, if the target does not meet the SBOI test, it remains exempt. This acts as a kind of De Minimis threshold designed for the deal value threshold.

So, what exactly is SBOI? As mentioned at the outset, the rationale behind the deal value threshold was to address the fact that transactions, particularly in the tech space, were not being notified. There were numerous

[1068] *Competition Commission of India, Government of India. (2017). Cci.gov.in. https://www.cci.gov.in/combination/legal-framwork/notifications/details/9/0*

[1069] *Competition Act, 2002, § 5(d), as amended by the Competition Amendment Act, 2007; Amended Combination Rules, 2009, Reg. 4(2).*

[1070] *Amended Combination Rules, 2009, Reg. 4(2).*

[1071] *Amended Combination Rules, 2009, Reg. 4(1).*

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transactions colloquially referred to as "killer acquisitions" in that space, which is why there is a separate criterion for Digital Services and other services, i.e., digital and non-digital. What qualifies as a digital service? When is SBOI met? If the target entity is engaged in rendering digital services, which is broadly defined (any activity rendered via the Internet, and it doesn't necessarily have to be for consideration—it can still qualify as a digital service), the scope is wide. However, to meet the SBOI test, if the target's user base in India is at least 10% of its global user base (whether end users or business users), it qualifies. Similarly, if the target generates more than 10% of its revenue or turnover from India, it also meets the criteria. Likewise, if the Gross Merchandise Value (GMV) from India exceeds 10%, it satisfies the test as well.[1072] For non-digital service providers, the first criterion is not applicable. In that case, the test focuses on turnover—whether the turnover from India exceeds 10%, along with a minimum revenue threshold of 500 crores (roughly 60 million USD). In such cases, the target must have more than 10% of GMV from India, plus over 500 crores of revenue from India. Similarly, the revenue criterion applies: 10% or more of revenue from India, along with 500 crores or more in revenue from India.

Therefore, the focus is primarily on tech deals, which is why a separate category of tests has been prescribed for digital services. Another important point to note is that, while India was initially considered a very business-friendly jurisdiction, it is uniquely positioned in this regard. However, the definition of turnover has also been updated. It still relates to revenue from the provision of goods and services, but export turnover is now explicitly excluded. So, if an enterprise is based in India and exports goods or services outside the country, that revenue will not be included as India turnover. Accordingly, intra-group revenue and trade discounts will also be excluded.

There are a few practical points. First, it was a bit of a surprise and caused a lot of controversy around the deal value threshold. The law came into effect on 10th September 2024 and clearly states that deals signed before 10th September but not fully closed need to take approval for the limbs of the transaction that have not closed i.e. a partially closed transaction even if signed before 10th September needs to take CCI approval if the DVT is met for the limbs or transaction steps that are not fully closed yet. It was a bit of a hornet's nest but that's the law. Initially there was a lot of flutter as many deals were about to close and then suddenly there were concerns that their closing timelines would be delayed. This is what the provision says, so if an enterprise has existing deals that are still underway and not fully closed it may be worth taking a step back and evaluating where the transaction is headed based on the new law. The second point is taken as delight for everyone, deals that become notifiable as a result of this law for the limbs that have closed will not face gun-jumping penalty. So it seems fair; for the limbs that have closed it's a balancing act. The third point is if there is no certainty in the calculation of the deal value one should defer to board decisions or approving authority decisions. If that also cannot be estimated with reasonable certainty, then file. Fourthly, if the deal value threshold is breached, De Minimis or small target exemption will not apply. Overall, although there are practical factors to consider, the new regulations will certainly impact deal-making, particularly in terms of adapting to the updated timelines and approval procedures.

Timelines

The recent amendments to India's competition law framework have introduced key changes to the statutory timelines applicable to merger control, particularly in relation to the Competition Commission of India's (CCI) review process. Previously, the CCI was required to form its prima facie view on whether a transaction was likely to cause an appreciable adverse effect on competition (AAEC) within 30

[1072] *Amended Combination Rules, 2009, Reg. 4(1), Explanation 2(a).*

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working days, or to approve the transaction within that period. This timeline has now been reduced to 30 calendar days, and the overall outer limit for clearing a transaction, including all aspects of Phase I and Phase II proceedings, has been reduced from 210 calendar days to 150 calendar days.

On the face of it, this appears to be a welcome and positive development, aimed at facilitating ease of doing business in India. However, upon a closer reading of the amended provisions and underlying regulations, it becomes evident that the practical impact of these changes may be limited, and the timelines may largely remain similar to those previously observed. This is largely attributable to the introduction of additional clock stops that have now been formally built into the process.

Under the new framework, once a formal notification is filed with the CCI, the Commission has a 10-working-day window to conduct an initial scrutiny of the form and seek clarifications or corrections, if required. If the CCI identifies gaps or deficiencies in the filing during this period, it may ask the parties to address them, and upon resubmission of the complete form, the statutory clock is reset to day zero. This effectively delays the commencement of the actual review period.

Further, as was the case earlier, the CCI continues to have the authority to seek additional information from the parties during the substantive assessment stage. These requests lead to intervening clock stops, pausing the review period until the requisite information is submitted. In addition, the Commission may seek information from third parties, such as market participants, which similarly trigger clock stops and extend the timeline for final disposal.

As a result, despite the reduction in statutory deadlines, the aggregate duration for transaction review may remain comparable to the earlier framework. At the same time, the reduced outer limit will likely place greater pressure on the CCI to act efficiently within the prescribed timelines. Notably, these changes to the timeline framework have been accompanied by modifications in the exemption process, which have now been more clearly defined and formalized. While these reforms may reflect an intention to expedite the review process and enhance regulatory clarity, their actual impact will depend on how the new timelines and procedural tools are operationalized in practice.

Exempted Combinations

The recent amendments have brought greater clarity and structure to a set of practices that were previously informal, by formally codifying them within the legal framework. The law itself now explicitly provides the Ministry of Corporate Affairs (MCA) with the power to prescribe rules for exempting certain categories of transactions from merger review under the Competition Act. Acting on this statutory mandate, the MCA has introduced a comprehensive set of rules dealing with the framework for exempted combinations, which, while largely consistent with the earlier position, now benefit from greater precision and objectivity in drafting. The codification of these exemptions is a welcome step as it enhances regulatory certainty, improves predictability for stakeholders, and ensures more consistent application of the merger control regime. Although the substance of the exemptions has not changed drastically, the clearer and more specific language used in the revised framework represents a significant improvement.

One of the key changes pertains to acquisitions made in the ordinary course of business. This exemption had existed in practice but was never as clearly articulated as it is now. Under the revised rules, this exemption applies only to three well-defined scenarios: share acquisitions by underwriters, stock brokers, and mutual funds. Importantly, the amended rules introduce quantitative thresholds to delineate the scope of these exemptions. For underwriters, the exemption is available only for the acquisition of up to 25% of unsubscribed shares, and any

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acquisition beyond this limit will fall outside the exemption. Similarly, for stock brokers, the 25% threshold applies in the same manner. In the case of mutual funds, the exemption is limited to acquisitions not exceeding 10%; any acquisition above this limit would no longer be considered as falling within the ordinary course of business. These thresholds, which were previously absent, are a notable development, as they introduce a clear objective standard for determining eligibility, thereby reducing interpretational ambiguity.

Another widely used exemption, especially by private equity investors and financial sponsors, is the exemption for acquisitions made solely for investment purposes. This exemption continues to apply to acquisitions of up to 25%, provided that such acquisitions do not result in the acquisition of control. However, the revised rules introduce a critical nuance: previously, the focus was on the presence or absence of special rights in the target company. Now, the test has shifted to whether the acquirer obtains access to commercially sensitive information. This new criterion replaces the earlier "special rights" standard and is broader in scope, thereby likely to disqualify a greater number of transactions from benefiting under this exemption. If the acquirer obtains any right that enables access to commercially sensitive information of the target—such as customer data, pricing strategies, or business plans—the exemption would not apply. The other conditions remain unchanged, such as the acquisition not resulting in a board seat, observer position, or other controlling influence. In addition, for acquisitions involving competitors, or those with a vertical or complementary relationship, a 10% shareholding threshold has now been clearly specified. If this threshold is breached, the transaction will not be treated as solely for investment, even if it remains below the overall 25% cap. That said, it is still unclear whether the CCI will be open to arguments from acquirers who are below the 25% limit and can demonstrate that no control has been acquired, despite a potential breach of the 10% threshold.

A new exemption that has now been introduced—and was not previously available—relates to demergers. In past cases before the CCI, there were several instances—at least three or four reported matters—where part of a business was carved out and transferred to a new entity, with shareholders of the original company receiving mirror shareholding in the resultant entity. Despite the absence of a change in control or ultimate ownership, these transactions were not previously covered under any specific exemption. The revised framework now formally recognizes such mirror-image demergers and provides a clear exemption for them. If the shareholding pattern in the resultant entity is exactly the sameas the original entity, the transaction will qualify for exemption from merger notification. This change addresses a longstanding gap in the framework and is a welcome clarification that will aid business reorganizations involving internal restructuring without any substantive change in control.

Overall, while the amended exemption rules do not significantly alter the scope of transactions that are exempt, they do mark an important shift towards a more transparent, codified, and predictable regulatory regime. This formalization is expected to streamline compliance and reduce unnecessary filings, without compromising the CCI's oversight of transactions that may raise genuine competition concerns.

Conclusion

The recent amendment of the Indian merger control regime is a leap forward in its evolution of fine-tuning the regulatory regime such that it is both agile enough to address changes in the market as well as robust enough to guard against competition concerns. One of the most significant developments to allay the concerns on high-value deals, especially for tech deals, where the traditional metrics like revenue and assets, do not translated correctly into real competition impact. This was a significant change in India's commitment to align its legal

framework with the best practices available around the world.

At the same time, the shortening of statutory timeframes for CCI's review process, intended to ease deal-making, has been tampered with the introduction of mechanisms such as 'clock stops' to ensure that the reviews remain rigorous and complete. This formalization of exemptions — for ordinary course transaction and purely investment-based acquisitions, in particular — adds clarity and predictability to the regulatory landscape. The amendment in these rules, apart from establishing a minimum threshold of clarity in respect of determining substantial business to be carried out in India, also serves to ensure that the test within India and outside are maintained at a deterrent threshold level.

Taken in their entirety, these changes would go a long way toward making mergers and acquisitions far more efficient in India, with a sharp eye kept on the protection of competition and the interest of the public. Consequently, with India trying to fine-tune its merger control regime, businesses will be required to take proper cognizance and be quite agile in considering changes in the revised thresholds and timelines. Finally, the envisaged reforms promise a more accommodative regulatory ecosystem-but one that retains the integrity of the competitive process in the Indian market.