

**Comparative Study of Competition Law in Combination
Integration: A Legal Contemplation for ensuring fair market
dynamics**

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Abstract

In an open market economy, some enterprises may undermine the market by resorting to anti-competitive practices for short-term gains. These practices can completely nullify the benefits of competition. Unfair combinations are one of the facets of these anti-competitive practices. Combinations mean mergers, amalgamations of companies or acquisition of control by another company. Clayton Anti-Trust Act, 1914 regulate the monopolistic trade practices in U.S. In U.K the European Competition Law regulate the Anti-Competitive conduct by companies in European Single market. The objective of this paper is to analyse the recent changes done to the Competition Act, 2002 with respect to combination in India and its comparative study with the Competition Laws of U.S and U.K. This paper came up with the result that after enactment of the Competition Act the merger and amalgamation process has to be according to the law to maintain the Competition in the relevant market. It also underscores the significance of adapting regulatory frameworks of Competition Commission of India (CCI) to the dynamic nature of industries, fostering healthy competition and promoting consumer welfare. As India continues to witness economic growth, the findings of this research contribute to the ongoing discourse on effective competition policy, offering recommendations to enhance regulatory mechanisms and maintain a competitive and vibrant marketplace.

Keywords: Anti-Competitive Practices, Competition Act, Clayton Act, Competition Commission of India, Open Market Economy

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II. Introduction

In the wake of liberalisation and privatisation that was triggered in India in the early nineties a realisation gathered momentum that the existing *Monopolistic and Restrictive Trade Practices Act, 1969*, was not equipped adequately enough to tackle the competition aspect of the Indian economy. Competition is a situation in market, in which sellers independently strive for buyer's patronage to achieve business objectives. Competition and liberalisation, together unleash the entrepreneurial forces in the economy. Competition offers wide array of choices to consumers at reasonable prices, stimulates innovation and productivity, and leads to optimum allocation of resources. With starting of the globalisation process, Indian enterprises started facing the heat of competition from domestic players as well as from global giants, which called for level playing field and investor-friendly environment. Hence, need arose with regard to competition laws to shift the focus from curbing monopolies to encouraging companies to invest and grow, thereby promoting competition while preventing any abuse of market power.

In an open market economy, some enterprises may undermine the market by resorting to anticompetitive practices for short-term gains. These practices can completely nullify the benefits of competition. It is for this reason that, while countries across the globe are increasingly embracing market economy, they are also reinforcing their economies through the enactment of competition law and setting up competition regulatory authority. In India, in line with the international trend and, to cope up with the changing realities, the *Competition Act, 2002* was enacted, establishing the Competition Commission of India (CCI) as the competition regulatory authority.³

In *Competition Commission of India v. SAIL*,⁴ the Supreme Court of India held that the main objective of competition law is to promote economic efficiency using competition as one of the means of assisting the creation of market

³ Anti-trust and competition issues in India are governed by the Competition Act, 2002. In addition, the Companies Act, 2013 contains provisions with regard to the acquisition and transfer of shares by or to enterprises having a dominant position or which will become dominant as a result of such acquisition or transfer *available at*: <https://globalcompetitionreview.com/insight/the-asia-pacific-antitrust-review-2013/1066019/india-overview> (last visited on April 21 2020).

⁴ (2010) 10 SCC 744.

responsive to consumer preferences. The advantages of perfect competition are three fold: *allocative efficiency*, which ensures the affective allocation of resources; *productive efficiency*, which ensures that cost of production is kept at a minimum; and *dynamic efficiency*, which promotes innovative practices. These factors, by and large have been accepted all over the world as the guiding principles for effective implementation of Competition Law. In view of the Preamble of the *Competition Act, 2002*, it requires not only protection of free trade but also protection of consumer interest.

III. Objectives of Study

The following are the main objectives of study:

- (i) To study why *MRTP ACT, 1969* failed to make effective provisions for regulation of combination.
- (ii) To analyse the recent changes done to the *Competition Act, 2002* with respect to combination in India.
- (iii) To study the positive and negative effects of the changes done to the Competition law for regulation of combination.

III. Research Methodology

A comprehensive study has been undertaken to study the recent changes which have been done in the *Competition Act, 2002*. The research undertaken is doctrinal and exploratory in nature. The sources of research consist of both, primary as well as secondary sources. The primary sources consist of Statues and statutory instruments, Indian Judgments. On the other hand, secondary sources consist of books, *Articles*, Reports, agreements, online database.

IV. Result and Discussion

1. Combination in United States and United Kingdom

Combinations include mergers, amalgamations and acquisition of control, shares, voting rights or assets. Combinations are classified into:

- (i) Horizontal Combinations⁵

⁵ Horizontal combinations are those that are between rivals and are most likely to cause appreciable adverse effect on competition.

(ii) Vertical Combinations⁶

(iii) Conglomerate Combinations⁷

If a proposed combination causes or is likely to cause appreciable adverse effect on competition, it cannot be permitted to take effect. The scrutiny of a combination under the *Competition Act*, 2002 in India is usually expected to take place before it comes into effect with an idea of preventing a possible anti-competitive behaviour which may adversely affect the consumers. Combinations likely to have an anticompetitive effect can be permitted after such effects are removed by modifications.⁸ It is pertinent to note that the worldwide term used for this concept of regulation of combinations is merger review or merger control, which is done by competition regulators to prevent mergers and acquisitions that are likely to reduce competition in the market and lead to higher prices, lower quality of goods or services, or less innovation. Some countries have voluntary regimes while most have mandatory regimes, regulating combinations. Mandatory regime implies that, enterprises having thresholds above the defined thresholds as under the governing Competition Law; have to mandatorily notify the competition regulator for merger clearance.

In the US anti-trust law was enacted in 1890 primarily to control the concentration of economic and industrial power. However, *Section 7* of the *Clayton Act* is the primary legislation in the U.S. governing mergers and acquisitions, but limits itself to the territory of the U.S. The *Clayton Act* applies to both mergers and acquisition with immediate effects and those that have a future probability of substantially reducing competition. In addition, the principal legislation *Sherman Act* broadly states that every contract, combination, or conspiracy that restrains trade or commerce among the states, or with foreign

⁶ Vertical combinations are those that are between enterprises that are at different stages of the production chain and are less likely to cause appreciable adverse effect on competition.

⁷ Conglomerate combinations are those that are between enterprises not in the same line of business or in the same relevant market and are least likely to cause appreciable adverse effect on competition.

⁸ Competition Commission of India, Regulation of Combinations, *available at*: <https://www.cci.gov.in/regulations>. (Last visited on April 20 2020).

nations, is illegal and that every person who monopolises, or attempts to monopolise is guilty of a felony.⁹

The European competition law is governed primarily by *Articles 85 and 86*¹⁰ of the Treaty Establishing the European Community. Article 85 is designed primarily to achieve the same goals as the *Sherman Act* in the U.S. legislation in so far as it prohibits all agreements and concerted practices that affect trade among the EU members and which have as their main objective the prevention, restriction or distortion of competition. Article 86 is designed to meet the policy objectives of the *Clayton Act* that it prohibits the abuse of dominant market position through unfair trading conditions, pricing, limiting production, tying and dumping. In the EU the mergers and acquisitions are taken care of by the Merger Regulation of the European Commission¹¹ and the Implementation Regulation of the European Commission.¹²

In the U.K., the *Competition Act, 1998* and the *Enterprise Act, 2002* are the most important statutes with purely national dimension. However, *Section 60* of the *Competition Act, 1998* provides that U.K. rules are to be applied in line with European jurisprudence. The prime purpose of competition law in U.K. as is there in competition laws of other jurisdictions is prevention of cartelisation resulting in appreciable adverse effect on competition; prevention of abuse of dominant position and supervising mergers and acquisitions of large corporations, including some joint ventures. As already stated, the term combination for the purposes of the Indian Competition Law is defined very broadly, to include any acquisition of shares, voting rights, control of assets or merger or amalgamation of enterprises. Under the Indian Competition Law Regime, where the parties to the acquisition, merger or amalgamation satisfy the prescribed monetary threshold in relation to size of the acquired enterprise and the combined size of the acquiring and acquired enterprise, then such combinations are approved. The thresholds are unambiguously specified in the *Competition Act, 2002* in terms of assets or turnover in India and abroad.

⁹ Versha Vahini, *Indian Competition Law*, (Lexis Nexis Publication, New Delhi, 2017).

¹⁰ Article 86 of EC is designed to meet policy objectives of the Clayton Act.

¹¹ Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).

¹² The Implementing Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.

Entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India is prohibited and such combination would be void. The provisions relating to regulations of combinations (M&A) in the Act have come into force from June 1, 2011.¹³ The main enforcement provisions of regulation of combinations are given under the following *Sections*: *Section 5* (Combination), *Section 6* (Regulation of combinations), *Section 20* (Inquiry into Combination by Commission), *Section 29* (Procedure for Investigation of Combinations), *Section 30* (Procedure in Case of Notice under Sub-*Section* (2) of *Section 6*) and *Section 31* (Orders of Commission on certain Combinations).

The review process for combination under the Indian *Competition Act* involves mandatory pre-merger notification to the Commission (CCI) of combinations that exceed the prescribed threshold. In case of a merger to be notified is not notified, the Commission has the option to inquire into it within one year of the taking into effect of the merger. In case such an inquiry finds appreciable adverse effect on competition, the Competition Commission of India may order de-merger which would involve social and economic costs. The Commission is also authorised to impose a fine which may extend to one percent of the total turnover or the assets of the combination.¹⁴

In case of combination, CCI may pass the following orders:¹⁵

- (i) Approval of the combination if no appreciable adverse effect on competition is found.
- (ii) Disapproval of the combination in case appreciable adverse effect on competition is found.
- (iii) It may propose suitable modification as accepted by the parties.
- (iv) During enquiry grant interim relief by way of temporary injunctions.
- (v) Award compensation.

¹³ The Central Government notification S.O. 479(E) dated 4th March, 2011.

¹⁴ Regulation of Combination, available at: http://arthapedia.in/index.php?title=Regulation_of_Combinations (last visited on April 20 2020).

¹⁵ *Competition Commission of India v. SAIL*, (2010) 10 SCC 744.

2. Classification of Combination

Combinations mean mergers¹⁶, amalgamations of companies¹⁷ or acquisition of control¹⁸, shares¹⁹, voting rights or assets of one company²⁰ by another company or group. As such, combinations are usual business activities, which allow companies to consolidate their position in markets. A merger is a combination of two or more businesses into one business. Laws in India use the term ‘amalgamation’ for merger the Income Tax Act, 1961, *Section 2(1A)* defines amalgamation as the merger of one or more companies with another or merger of two or more companies to form a new company, in such a way that all assets and liabilities of the amalgamating companies become assets and liabilities of the amalgamated company and shareholders not less than nine-tenth in value of shares in the amalgamating company or companies become shareholders of the amalgamated company.

Merger in India may take place in either of the two forms:

- (i) Merger through absorption, absorption is a combination of two or more companies into an ‘existing company’. All companies except one lose their identity in such a merger.
- (ii) Merger through consolidation, consolidation is a combination of two or more companies into a ‘new company’. In this form of merger, all companies are legally dissolved and a new entity is created.

¹⁶ Siddharth Bawa, *Law of Competition in India*, 28 (Allahabad Law Agency, Faridabad, 2005).

¹⁷ An amalgamation is distinct from a merger because neither of the combining companies survives as a legal entity, *available at*: <https://www.investopedia.com/terms/a/amalgamation.asp> (last visited on April 22, 2020).

¹⁸ According to Section 2(a) of the Competition Act, 2002, acquisition means directly or indirectly, acquiring or agreeing to acquire:

1. Shares, voting rights or assets of any enterprise;
2. Control over management or Control over assets of any enterprise

¹⁹ As per Section 2(v) of the Competition Act, 2002, the term “Shares” means shares in the share capital of a company carrying voting rights and includes-

1. Any security which entitles the holder to receive shares with voting rights;
2. Stock except where a distinction between stock and share is expressed or implied.

²⁰ The term person includes a company. The term person has been defined under Section 2(l) of the Competition Act, 2002.

An acquisition is defined in Indian context as an act of acquiring effective control by one company over assets or management of another company without any combination of companies. Thus, in an acquisition two or more companies may remain independent, separate legal entities, but there may be a change in control of the companies. When an acquisition is 'forced' or 'unwilling', it is called a takeover. In an unwilling acquisition, the management of 'target' company would oppose a move of being taken over. But, when managements of acquiring and target companies mutually and willingly agree for the takeover, it is called acquisition or friendly takeover.²¹

3. Regulation of Combinations

Most combinations do not raise serious prospect of an increase in market power; some however may raise serious concerns, which can be detrimental to competition. The core purpose of regulating combinations is to prevent the prospective anti-competitive effects of such combinations through appropriate remedies, including prohibition, if necessary. It is ex-ante in nature and aims to ensure that firms do not acquire such a degree of market power after the combination so as to harm the interests of consumers, the economy and society as a whole. The *Competition Act, 2002* provides for mandatory filing of proposed combinations based on thresholds, which were further raised by 50 percent through notification by the Government of India. The relevant provisions of the Act relating to Combinations have come into effect from 1st June, 2011 after an extensive consultation process with stakeholders.²² In order to minimise regulatory compliance cost on the industry, the Regulations lay down the categories of transactions that ordinarily are not likely to have an appreciable adverse effect on competition and, therefore, ordinarily not required to make any filing. The Regulations also provide certainty on the applicability of the law by stipulating that only combination proposals approved by their boards, or for

²¹ Merger and Acquisition, available at: <http://www.mca.gov.in/MinistryV2/mergers+and+acquisitions.html> (last visited on March 28 2020).

²² Regulation notified by the Competition Commission of India: The Competition Commission of India (Procedure in regard to the Transaction of business relating to combination) Regulation 2019, available at: <https://www.cci.gov.in/sites/default/files/notification/210553.pdf> (last visited on April 26, 2020).

which binding documents were executed, on or after June 1, 2011, are required to make a filing to the Commission.

3.1 Merger Control Thresholds:²³

The criteria that will trigger a merger filing in India relate to either the turnover or assets of:

- (i) The acquirer and the target (the individual or parties); or
- (ii) The group to which the merged entity will belong after the acquisition (the Group).

The current merger control thresholds are as follows:

Individual

Either the combined assets of the enterprises are more than Rs. 1500 crores in India or the combined turnover of the enterprise is more than Rs. 4500 crores in India. In case either or both of the enterprises have assets or turnover outside India also then the combined assets of the enterprises are more than U.S. \$ 750 million, including at least Rs. 750 crores in India, or combined turnover of the enterprises is more than U.S. \$ 2250 million, including at least Rs.2250 crores in India.

Group

The group to which the enterprise (whose control, shares, assets or voting rights are being acquired) would belong after the acquisition or the group of which the enterprise remaining the merger or amalgamation would belong has either, assets of more than Rs. 6000 crores in India or turnover more than Rs. 18,000 crores in India. Where the group has presence in India as well as outside India then the group has assets more than U.S. \$ 3 billion including at least Rs.750 crores in India or turnover more than U.S. \$ 9 billion including at least Rs. 2250 crores in India.

²³ Krishan Keshav & Divya Verma, *Competition and Investment Laws in India* 83 (Singhal Law Publications, New Delhi, 2018).

4. Evaluation of Appreciable Adverse Effect on Competition in Combination

It is significant to note that, not all combinations are deemed to be anti-competitive. Some instances of such combinations are:²⁴

- (i) Combinations within the same group of companies;
- (ii) Acquisition of not more than 15% of voting rights, not leading to control;
- (iii) Acquisition of shares where the acquirer already has 50% or more shareholding;
- (iv) Combinations taking place entirely outside India which, have insignificant local nexus and effects on markets in India.

Mergers are subject to review because of their potential adverse effect on competition in the relevant market. Such adverse effect could be the result of a unilateral conduct (exercise of dominance) or of coordinated conduct between two or more enterprises facilitated by the merger. Control of either type of conduct is prospective and aimed at preventing such conduct post-merger.

Effect of merger on competition is thus classified into two broad categories: unilateral effects and coordinated effects.

Unilateral Effects

When a merged enterprise gains sufficient market power to enable it to behave independently of market forces, such conduct results in ‘unilateral’ effect on competition. This happens when the rivals in the market are not able to increase output in response to a unilateral increase in price by the merged enterprise. It can also occur when the products are differentiated and are not close substitutes of each other.

Coordinated Effects

The anti-competitive effect of a merger is termed ‘coordinated’ when it facilitates collusive behaviour, either due to express agreement among competitors, as in

²⁴ The Combination Regulations 2011 [The Competition Commission of India (Procedure in regard to the Transaction of business relating to combination) Regulation 2011]. Also see: Competition Laws in India: An Overview, Kochhar & Co. *available at*: <http://www.kochhar.com/pdf/Rationale%20For%20Competition%20Laws.pdf> (last visited on April 25 2020).

cartels, or due to tacit coordination by competitors that have similar effects, irrespective of whether the coordination is legal or not. Markets that are highly concentrated make such coordination easy. Product markets that are homogenous are prone to such coordination. The *Competition Act, 2002*, envisages appreciable adverse effect on competition in the relevant market in India as the criterion for regulation of combinations. In order to evaluate appreciable adverse effect on competition, the Act empowers the commission to evaluate the effect of Combinations on the basis of factors mentioned in sub-*Section (4) of Section 20*. These factors are as follows²⁵:

- (i) Actual and potential level of competition through imports in the market;
- (ii) Extent of barriers to entry into the market;
- (iii) Level of concentration in the market;
- (iv) Degree of countervailing power in the market;
- (v) Likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- (vi) Extent of effective competition likely to sustain in a market;
- (vii) Extent to which substitutes are available or are likely to be available in the market;
- (viii) Market share in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- (ix) Likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- (x) Nature and extent of vertical integration in the market;
- (xi) Possibility of a failing business;
- (xii) Nature and extent of innovation;
- (xiii) Relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
- (xiv) Whether the benefits of the combination outweigh the adverse impact of the combination, if any.

²⁵ Combination Regulations, available at: <https://www.cci.gov.in/sites/default/files/faq/Combination%20Regulations%202016%20-%20FINAL.pdf> (last visited on May 1 2020).

In the case of the *Board of Trade of the City of Chicago v. United States*²⁶, it was held If the expression “appreciable adverse effect on competition” is not defined abstractly or in general terms in the *Competition Act*, every case has to be examined individually and facts are to be considered peculiar to the business condition before and after the restraint was imposed, the nature of restraint and its effect- actual or probable, as to the competition generally prevailing in the relevant market also in the case of *Haridas Exports v. All India Float Glass Manufacturers Association*²⁷, it was held the words “adverse effect on competition” embraces acts, contracts, agreements or combinations which operate to the prejudice of the public interests by unduly restricting competition or unduly obstructing due course of trade. Public interest is the first consideration. It does not necessarily mean interest of the industry. It is interesting to take note of the decision rendered by the U.S. Supreme Court in the case of *Brown Shoe Co. v. United States*²⁸, here the SC prohibited a merger under *Section 7* of the *Clayton Act*, 1914 between two shoe manufacturers stating that the paramount issue in the case was to protect small businesses against potential abuses of power by larger firms, despite acknowledging that the merger would allow the firms to ‘market their own brands at prices below those of competing independent retailers’.²⁹ Hence, the courts may apply the principles of judicial balancing and thereby may give more regards to one criteria pertaining to AAEC over the others. It shall be pertinent to take note of the Mahindra CIE Combination as so approved by the CCI. On July 12, 2013, CIE Group of Companies and certain Mahindra Group of companies filed a notice under *Section 6(2)* of the Act with regards to a proposed combination. As a consequence of the combination CIE would control approximately 45-52% stake in the post-resultant entity, Mahindra CIE Automotive Limited. Mahindra & Mahindra (M&M) would also hold approximately 20% stake in Mahindra-CIE. The transaction involved multiple agreements and stages but the trigger documents, i.e. documents whose execution triggers a *Section 6(2)* pre-merger notification requirement, were executed on June 15, 2013. CCI examined the proposed

²⁶ 246 (U.S.) 231 (1998).

²⁷ 2002 Comp LR. 617 (SC).

²⁸ 370 (U.S.) 294 (1962).

²⁹ Maher M. Dabbah, *International and Comparative Competition Law*, 253 (Cambridge University Press, London, 2010).

combination in light of the criteria given in *Section 20(4)* of the Act and made the following observations:

- (i) CIE had no presence or investment in India, either directly or indirectly, and was not engaged in any activity that either competed with, or was vertically related to, the business proposed to be acquired by way of the proposed combination.
- (ii) The proposed combination is not between two existing players in the relevant market.
- (iii) Post-combination, M&M would still hold 20% of the equity in Mahindra CIE and,
- (iv) Technologies used by Mahindra would continue to be used by Mahindra CIE post combination.

Based on the above mentioned observations, CCI found no likelihood of any appreciable adverse effect on competition within the relevant market in India and approved the proposed combination under *Section 31(1)* of the Act also, in May 2012, the CCI approved the RIL's stake buy in Network 18.³⁰ A notice was filed by Independent Media Trust relating to a series of inter-connected and inter-dependent acquisitions intended to acquire control over Network 18 Group companies by Reliance Industries Limited. The Commission observed that the subscription to Zero Coupon Optionally Convertible Debentures (ZOCDs) which could be converted into equity shares of the target enterprises at any time before the expiry of ten years from the date of acquisition confers the acquirer with the ability to exercise decisive influence over the management and affairs of each of the target enterprises. This amounted to control for the purposes of the Act it was also held that since the acquisition of ZOCDs entitled the holder to receive equity shares of the target enterprises the ZOCDs are shares within the meaning of *Section 2(i)(v)* of the Act. The subscription to ZOCDs amounted to acquisition of shares of the target enterprises. CCI held that subscription to optionally convertible debentures enabling the acquirer to exercise decisive influence over

³⁰ Combination Filings, Acquisition of Control over Network 18 Group Companies by Reliance Industries cleared, *available at*: <https://www.thehindubusinessline.com/markets/stock-markets/Competition-panel-approves-RILs-stake-buy-in-Network18/article20439919.ece> (last visited on April 29 2020).

the management and affairs of a company would amount to acquisition of control.

The Commission assessed the effect of the combination on the businesses for supply of televisions channels, event management services and broadband internet services using 4G technologies and content accessible through such services. It was concluded that the combination was not likely to give rise to any appreciable adverse effect on competition and was cleared.

Procedure for Investigation of Combinations

The procedure for investigation into a combination is set out in *Section 29* of the *Competition Act, 2002* and Regulation 19 of the Combination Regulations 2011. Merger control can be divided into two phases:

Phase I

The Competition Commission of India must form a prima facie opinion as to whether a combination has caused, or is likely to cause an appreciable adverse effect on competition within the relevant market in India within 30 working days of receipt of the notification. The time period can be extended by 15 working days in cases where the parties offer to modify the terms of the combination. The CCI can either decide to approve the combination within this period or subject it to further investigation. If the CCI forms a prima facie opinion that a combination is likely to cause, or has caused, an appreciable adverse effect on competition, it initiates a detailed investigation (Regulation 19(1), Combination Regulations 2011).

Phase II

The CCI can conduct the investigation itself or direct its Director General to conduct an investigation. It must take a final decision on whether to approve, modify or reject the combination within an additional working 180 days, failing which the combination will be deemed to have approved (*Section 29(1A)* and *Section 31(11)* of the *Competition Act, 2002* and Regulation 28(6) of the Combination Regulations 2011). In forming its prima facie opinion, the CCI can:

- (i) Ask parties to the combination to file additional information.
- (ii) Accept modifications proposed by the parties.

- (iii) ask for information from any other enterprise in relation to a proposed combination.

If CCI is of a prima facie opinion that a combination is likely to cause appreciable adverse effect on competition, it will issue a show cause notice to the parties to the combination calling on them to respond within 30 days of the receipt of the notice to explain why an investigation should not proceed [*Section 29(1) of the Competition Act, 2002*]. After receipt of the response to the notice to show cause from the parties, the CCI can decide to call for a report from the Director General (Regulation 20(1) of the Combination Regulations 2011). Within seven working days of the receipt of the parties' response or receipt of the DG's report (whichever is later), the CCI will direct the parties to publish details of the combination to the public within a further ten working days. The CCI can invite affected or likely to be affected parties or members of the public to file written objections to the combination within 15 working days from the date of publication of details of the combination. The CCI can call for additional information from the parties to the combination within 15 working days of the expiry of the time for filing objections by affected parties or members of the public and the parties must file additional documents within a further 15 days. Once it has received the requested information, the CCI must deal with the case within 45 working days.

The procedure for investigating a Combination, comprise of three steps:

- (i) A relevant market³¹ is identified according to the definition accorded under the Act, this entails identifying both the relevant product market³² as well as the relevant geographic market³³.
- (ii) The Combination is scrutinised to determine whether the combination has an appreciable adverse effect on competition in the relevant market. The criteria for such an analysis are laid down under *Section 20(4)* of the Act.
- (iii) On the basis of (1) and (2), the Commission decides whether the combination should be approved, rejected or approved with modifications to the combination. The modifications to the

³¹ The Competition Act, 2002 (Act 12 of 2003), s. 2(r).

³² The Competition Act, 2002 (Act 12 of 2003), s. 2(t).

³³ The Competition Act, 2002 (Act 12 of 2003), s. 2(s).

Combinations are made on the basis of how the anti-competitive effects could be minimised or eliminated.

The *Competition Act*, 2002 provides a time period of 210 days to CCI to take a decision on a Combinations filing. Since time is a crucial element in Combination cases, a provision to reduce the time period to one hundred and eighty days on best endeavour basis has been included in the Combinations Regulations. The Commission has to form a prima facie opinion within thirty days as to whether the Combination is likely to cause an appreciable adverse effect on competition. In pursuance of this provision, most filings are likely to be approved in this shorter time frame. Only few filings with serious competition concerns are likely to go beyond this period to the second stage of investigation. These will be automatically cleared at the end of 210 days, if no order is passed.

5. Regulation of Combinations: Order of Commission on Certain Combinations,

Remedies under the Act & Appeals

1. Order of Commission on Certain Combinations³⁴

Section 31(1) of the Act, provides that where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under *Section 6(2)*.

Section 31(2) provides that where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition it shall direct that the combination shall not take effect.

Section 31(3) provides that where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, or to the parties to such combination.

Section 31(4) provides that the parties, who accept the modification proposed by the commission under *Section 31(3)*, shall carry out such modification within the period specified by the Commission.

³⁴ Avtar Singh, *The Competition Law*, 209 (Eastern Book Company, New Delhi, 2012).

Section 31(5) provides that if the parties to the combination, who have accepted the modification under *Section 31(4)*, fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of the Act (the *Competition Act, 2002*).

Section 31(6) provides that if the parties to the combination do not accept the modification proposed by the Commission under *Section 31(3)*, such parties may, within 30 working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under the sub-*Section*.

Section 31(7) provides that if the Commission agrees with the amendment by the parties under *Section 31(6)*, it shall, by order, approve the combination.

Section 31(8) provides that if the Commission does not accept the amendment submitted under *Section 31(6)*, then, the parties shall be allowed a further period of 30 working days within which such parties shall accept the modification proposed by the Commission under *Section 31(3)*.

Section 31(9) provides that if the parties fail to accept the modification proposed by the Commission within 30 working days referred to in *Section 31(6)* or within a further period of 30 working days referred to in *Section 31(8)*, the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act.

Section 31(10) provides that where the Commission has directed under *Section 31(2)* that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under *Section 31(9)*, then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act (The *Competition Act, 2002*), the Commission may order that the following shall not be given effect to:

- (i) The acquisition referred to in *Section 5(a)*; or
- (ii) The acquiring of control referred to in *Section 5(b)*; or
- (iii) The merger or amalgamation referred to in *Section 5(c)*

The Commission may, however, if it considers appropriate, frame a scheme to implement its order under this sub-*Section*.

Section 31(11) provides that if the Commission does not, on the expiry of a period of 210 days from the date of notice given to the Commission under *Section 6(2)*, pass an order or issue direction in accordance with the provisions of *Section 31(1)* or *Section 31(2)* or *Section 31(7)*, the combination shall be deemed to have been approved by the Commission.

Explanation- For the purposes of determining the period of 210 working days the period of 30 working days specified in *Section 31(6)* and a further period of 30 working days specified in *Section 31(8)* shall be excluded.

Section 31(12) provides that where any extension of time is sought by the parties to the combination, the period of 90 working days shall be reckoned after deducting the extended time granted at the request of the parties.

Section 31(13) provides that where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in *Section 5*, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.

Section 31(14) provides that nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.

Remedies

Most of the possible or anticipated anti-competitive effects of Combination can be remedied without holding back the Combination itself. The CCI has specific power to propose and accept modifications to combinations in order to avert an appreciable adverse effect on competition in the relevant market. Furthermore, the CCI may appoint 'agencies' to oversee the implementation of such modifications or remedies where it considers that they required supervision.

Combination analysis consists of assessment of the likely anti-competitive effect of the merger under analysis and how such effect could be minimised or eliminated. Prohibition is considered only when remedies are either not available or not feasible. Remedies can be either structural or behavioural. Although behavioural remedy is preferable, its implementation and monitoring is difficult. On the other hand, structural remedy would entail requiring the combining

enterprises to make structural adjustment which could be in the form of sale of assets, divestment of a division or a unit or creation or strengthening competitors through, for example, licensing of an Intellectual Property Right.

Appeals

The Central Government has notified the National Company Law Appellate Tribunal to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under respective *Sections* of the Act, such as orders relating to notification of combination, inquiry by the Commission and penalties.³⁵ An appeal has to be filed within 60 days of receipt of the order/direction/decision of the Commission.

VII. Conclusion

This research paper concluded that after the liberalisation the previous *Act* was not equipped adequately to deal with the competition in the relevant market and the big business houses merge the small business enterprises with them to expand their business which creates hardship for the new entrants to compete with the big business houses. Subsequently, this chapter came up with the result that after enactment of the *Competition Act* the merger and amalgamation process has to be according to the law to maintain the Competition in the relevant market. The exploration of competition dynamics and the examination of combination regulation in India provide valuable insights into the complex interplay of economic forces and regulatory frameworks. Through this research, a comprehensive understanding has been achieved regarding the evolving landscape of competition in the Indian market and the regulatory measures in place to ensure fair and efficient market practices. The study underscores the significance of adapting regulatory frameworks to the dynamic nature of industries, fostering healthy competition, and ultimately promoting consumer welfare. As India continues to witness economic growth and industrial expansion, the findings of this research contribute to the ongoing discourse on effective competition policy, offering recommendations for policymakers and stakeholders to enhance regulatory mechanisms and maintain a competitive and vibrant marketplace.

³⁵ The Competition Act, 2002 (Act 12 of 2003), s. 53A.