



Merger Advocacy Programme



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• **McKinsey Global Institute (2018)**

- 51751 companies have > US \$ 1 billion annual revenue
 - Account for 2/3rd of global pre tax profits
- In 2014-16
 - Best performing 10% companies captured 80% of all economic profits
 - Up from 75% in the previous 3 years



Google



amazon

- Value of M&A deals involving Indian Companies
 - US\$ 129.4 billion in 2018 -104% increase from 2017

Major mergers in 2017-18

Bayer / Monsanto	Linde / Praxair	Walmart/Flipkart
Schneider / L&T	Tata Steel/Bhushan Power	IHH/Fortis Health
Reliance / Den/Hathway	Siemens/Alstom S.A	Adani Wilmar/ Ruchi Soya



Mergers & Acquisition

Pro – competitive rationale of M&A

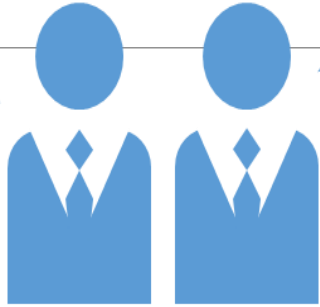
- Economies of Size & Scale
- Economies of Vertical Integration
- Complementary Resources
- Surplus Funds
- Industry Consolidation

But Anti-competitive effects

- Accumulation & exercise of Market power

Pre Merger

Buy my product for Rs 100 and take one year service free



Buy my product for Rs 98 and take six months service free

Wow! Competition between them is benefiting me



Post Merger

Buy my product for Rs 102. No free service!



Their merger has adversely affected me!





Journey of Competition law in India

- ❖ **Monopolies & Restrictive Trade Practices Act 1969 (MRTP Act)**
 - ❖ Focus on only curbing monopolies

- ❖ **Liberalized economy post 1991**
 - ❖ Focus shifted from controlling monopolies to promoting competition

- ❖ **Competition Act, 2002 (Raghavan Committee recommendations)**
 - ❖ Establishment of **Competition Commission of India (CCI)**
 - ❖ Anti trust provision enforced from 20 May, 2009
 - ❖ Mergers provision-July 2011



Features - Competition Act 2002

- Inquire into
 - Anti-competitive agreements (cartels, bid rigging etc.)
 - Abuse of dominant position including predatory prices
- Regulation of
 - Combinations (Mergers and Acquisitions)
- Advocacy
 - Advice on policy issues, create awareness, training etc.



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Combinations above threshold are notifiable



- Mergers, acquisitions and amalgamations
- Acquisitions of
 - Share
 - Any security
 - Indirect acquisition of shares of a downstream entity
- Voting Rights/Assets
- Control
 - including positive, negative, direct, indirect, joint or sole
- Demergers and Joint Ventures
- Mergers and Amalgamations
- Interconnected Transactions



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Thresholds as provided in MCA notification



		Assets		Turnover
Enterprise level	India	> INR 2000 crore	OR	> INR 6000 crore
	Worldwide (with India component)	> USD 1 bn with at least INR 1000 crore in India		> USD 3 bn with at least INR 3000 crore in India
OR				
Group Level	India	> INR 8000 crore	OR	> INR 24000 crore
	Worldwide (with India component)	> USD 4 bn with at least INR 1000 crore in India		> USD 12 bn with at least INR 3000 crore in India



Combination- Exemptions



- **Target Exemption/ De minimis**
 - Assets in India <INR 350 crores OR
 - Turnover in India < INR 1000 crores
- **PFI, Banks, venture capital funds & FII**
 - Pursuant to an investment agreement or a loan agreement [Section 6(4)]
 - Requires intimation
- **Government of India by Notification [Section 54]**
- **CCI (Combinations Regulations 2011 [Schedule-I]**



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Notification and Approval of Combination

■ Void Combinations

- Which causes or likely to cause
- An Appreciable Adverse Effect on Competition (AAEC)
- Within relevant market in India/Shall be **void** [Section 6 (1)]

■ Mandatory to file notice - form prescribed & fees

- Get approval from CCI [Section 6(2)]

■ Shall come into effect

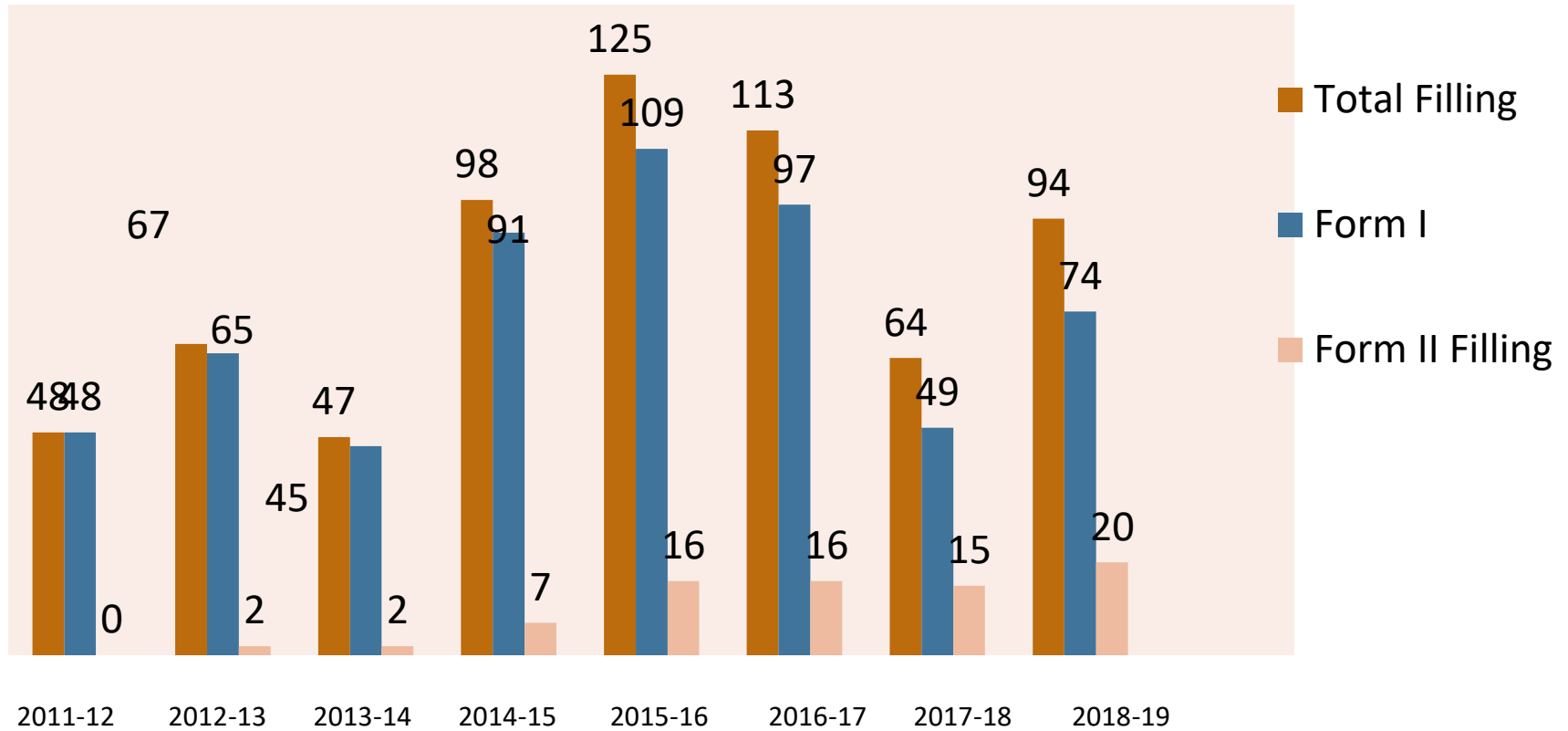
- Within two hundred and ten days from day of filing notice or orders passed under Section 31, whichever is earlier [Section 6(2A)]
- Penalty up to 1% of turnover / asset (S 43 A)



Year Wise Notices Received



Number of Total Notices filed including Form II (2011-12 to 2018-19)





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Types of Mergers



Types of Mergers

- **Horizontal Mergers**
 - Mergers b/w producers of substitutes, i.e. products / services within the *same relevant market*
- **Vertical Mergers**
 - Mergers b/w producers of complements, i.e. products / services are “inputs” to one another
- **Conglomerate Mergers**
 - Mergers b/w producers of competitively unrelated products



Theories of harm



- Merger does not create, protect, or enhance **market power** /should be cleared
- **Market power** “the ability profitably to sustain prices above competitive levels” where “competitive constraints” are not effective
- **Unilateral effects** Permit the merged firm to raise the price of some or all of its products, without any change in the nature of competition
- **Coordinated effects** The creation of market circumstances that change the nature of competition such that the merged firm & its rivals are able to tacitly coordinate their actions in order to compete less intensively
- Factors of Section 20(4) of the Competition Act, 2002 including Unilateral effect and Coordinated effects



Merger Review



COMB. REG. No. 2018/07/586

A case study

LV Switchgear market

Schneider & MacRitchie's

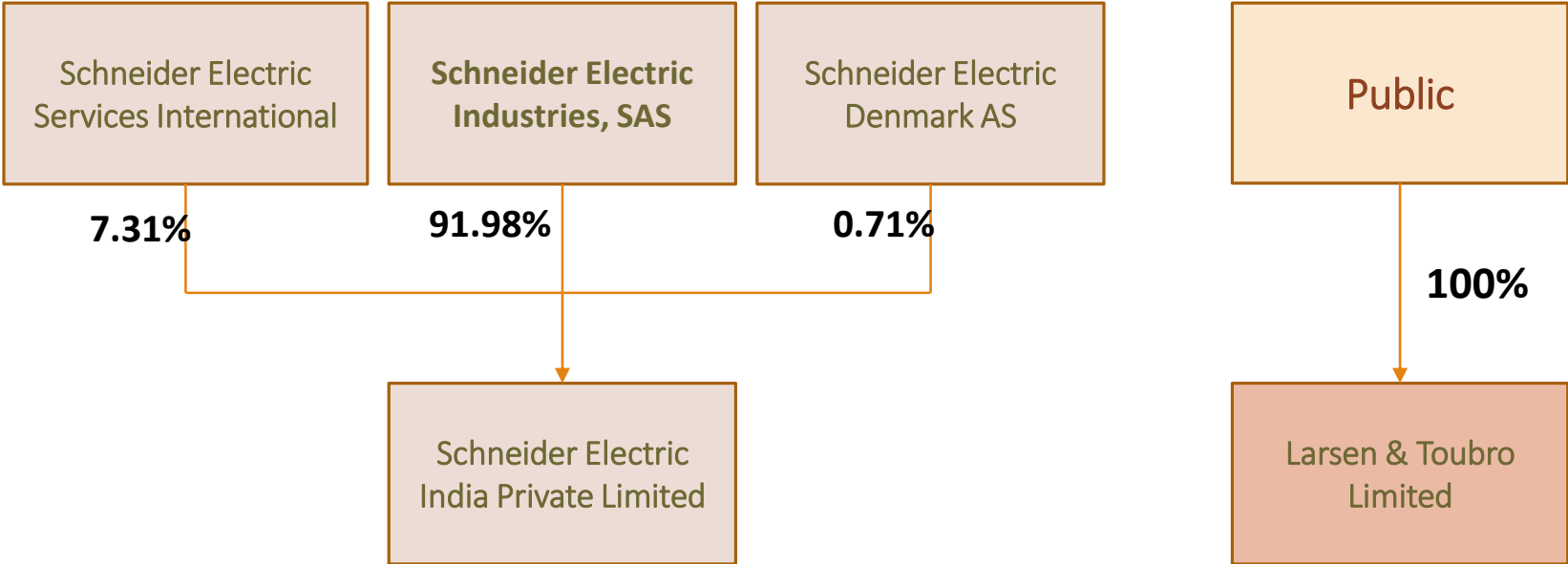
acquisition of

Electrical and Automation business of L&T



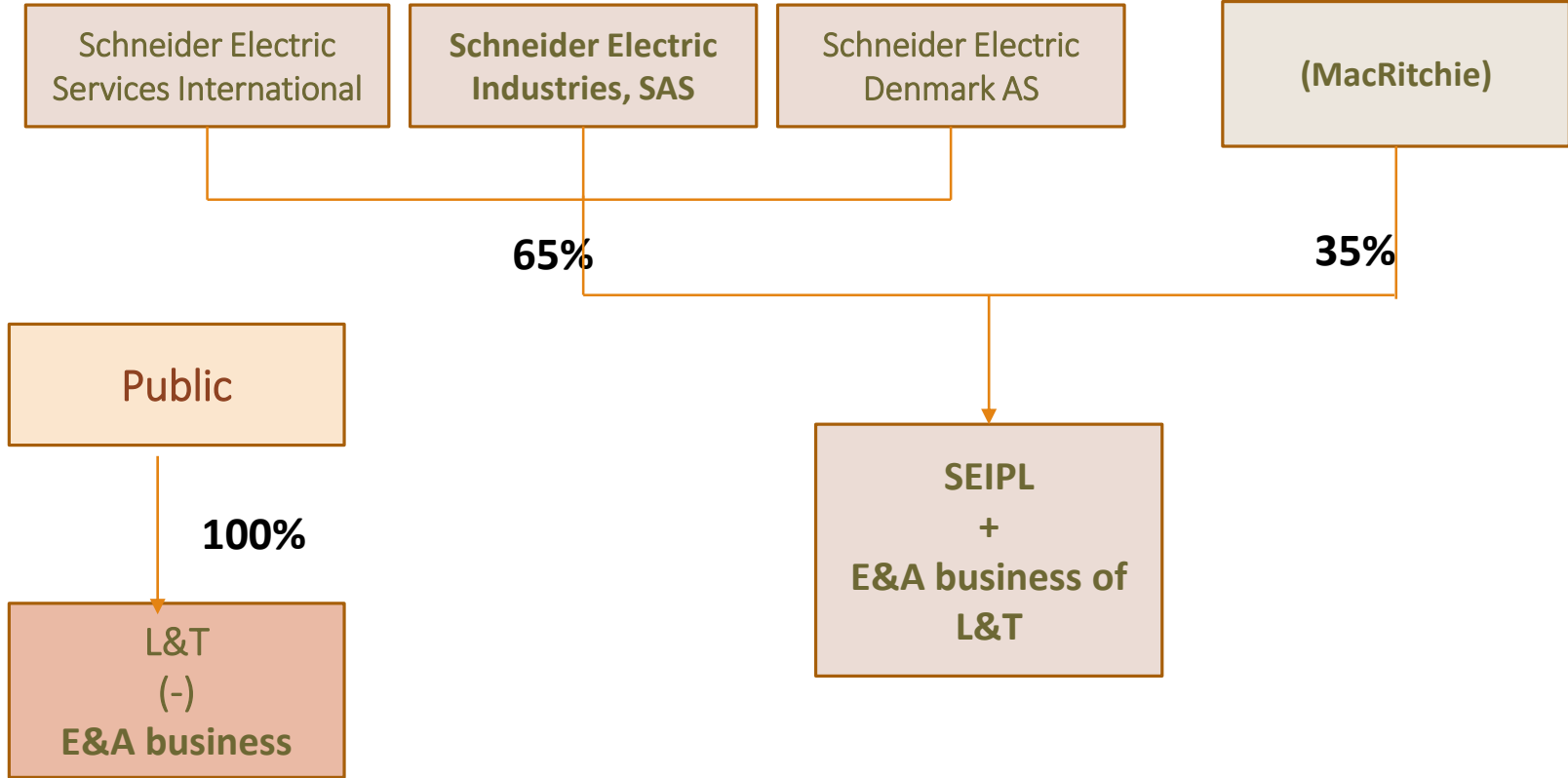
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Pre Combination

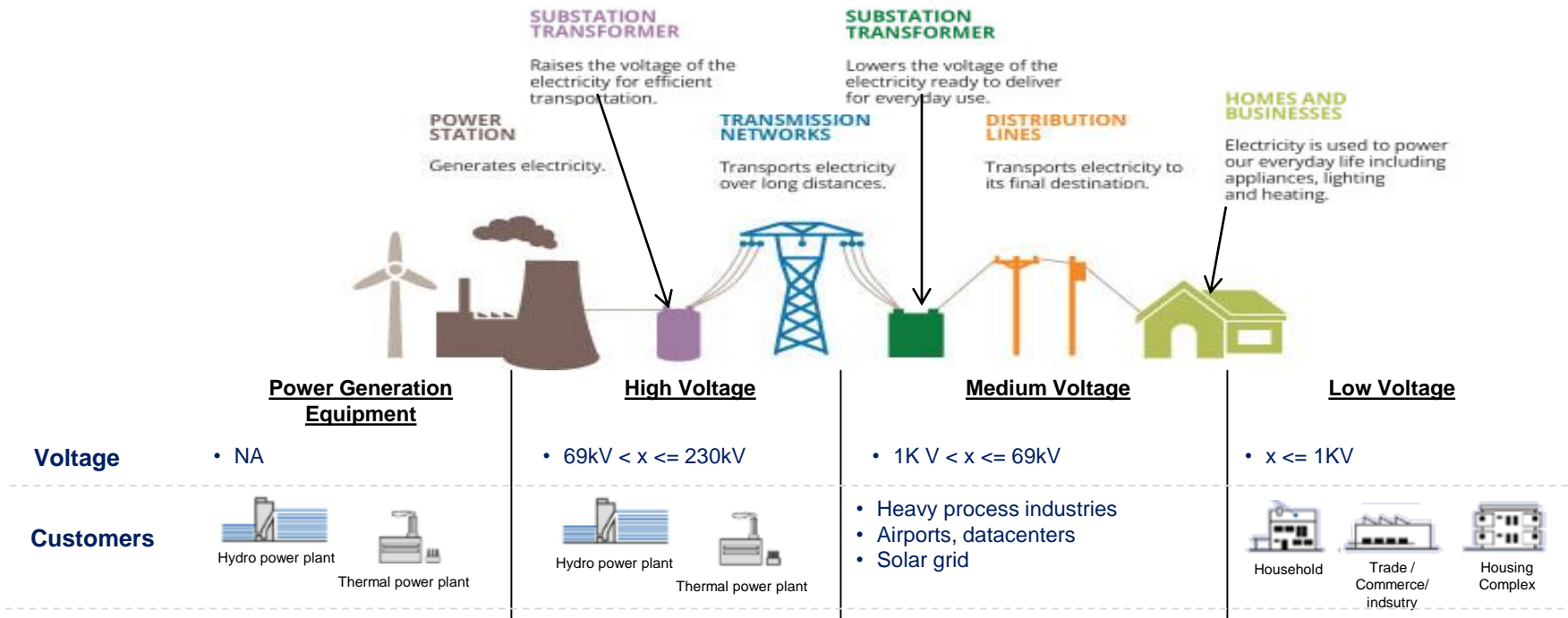




Post Combination



MARKET OF GENERATION, TRANSMISSION & DISTRIBUTION OF ELECTRICAL POWER



Product Market

Low Voltage Panel : Main LT Panel (PCC)



ACB



MCCB



SDF



MCB



Contactor



Digital Panel Meter



Power Factor Correction



Panel Accessories

Low Voltage Panel : Sub Main Panel Feeder Panels, Floor Panel, Utility Panel (MCC/PDB)



MCCB



Contactor



OLR



MMR



MPCB



Variable Speed Drive



Digital Panel Meter



Panel Accessories

Final Distribution Board



MCB



RCD

Wiring Devices/Accessories



Switch



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Fair Competition
For Greater Good

Relevant Geographic Market

Manufacturing
UNITS

L&T – 5

Ahmednagar

Vadodara

Navi Mumbai

Coimbatore

Mysuru

Schneider – 3

Chennai

Bengaluru

Hyderabad



Distributers
L&T > 600
Schneider > 500



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Competition Assessment

- Market share is starting point for analysing 'market power

L&T & Schneider [ACB, MCCB, SDF, Contactors, Overload Relays and MPCB] > 50%

- Existing Competitors
 - Siemens > 3 times smaller with 10-15% market share
 - ABB (10-15%)
 - C&S (10-15%).
- Size & resources of enterprise/Size & importance of competitors
- Economic power
 - Commercial advantage over competitors/ Dependence of consumers



Entry & Expansion Conditions



Market Survey with Stakeholders –

- competitors, panel builders, electricity consultants & distributors-
- Top 4 brands – L&T, Schneider, ABB & Siemens
- Lack of competition from unorganised sector
- Lack of competition from imports
- Market shares remained consistent over the last 3 years
- No new entrant in the market



Brand & Distribution Network



- High gestation period for other brands to establish
- Large distribution network
 - Schneider – 500 & L&T – 600 + 1500 retailers + 500 service centres
- De facto exclusivity of distributors
- Industry feature / practice
 - Volume discounts
 - Rebates



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Final Observations



Fair Competition
For Greater Good

■ Proposed Combination –

- consolidation of two prominent competitors – LV switchgear industry in India
- Ability to increase price [Section 20(4)(e)].
- Incentives to discontinue present offerings of L&T [Section 20(4)(i)]
- Extent of vertical integration in the market – locks large distribution network
- Establishing brand & distribution network - time consuming
 - create a significant barrier to entry [Section 20(4)(j) and (b)]



Modifications / Remedies [Sec 31]



Objective

- allow for establishment of independent competitor(s)
- or strengthen the existing competitor(s)
- have close nexus & proportional
 - to theory of harm

Types of remedies

- Structural – Divestment of plants
- Behavioural – Others – conditions / arrangements



Modifications / Remedies [Sec 31]



- Alternate Remedy Package - strengthening of existing LV manufacturers
 - Reserve capacity- white labelling arrangement on long-term basis
 - eventual transfer of technology on a non-exclusive basis
 - removing exclusivity of their distribution network
- Other behavioural remedies - supplement objectives of modifications
 - price mechanism
 - export commitments
 - non-rationalisation of their product range
 - maintenance of R&D expenditure



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Jet - Etihad



- 1st May 2013, Etihad Airways PJSC and Jet filed notice
 - Proposed acquisition of 24% equity stake & other rights in Jet
- On 12th November 2013
 - Commission approved Jet-Etihad deal unconditionally at the prima facie stage.
- Potential efficiencies
 - Lower fares –
 - network efficiencies, cost saving economics of density
 - interlining passengers due to elimination of double marginalisation
 - Global network - access to new destinations &
 - intensify competition on existing O & D pairs available to Indian Passengers
 - Incentive to integrate operations & provide greater array of services
 - Qualitatively improve the standard of air travel for passengers



THANK YOU



Discussion on case laws (Case studies)



- Bayer/ Mansanto (Pharma Sector)
- Idea/Vodafone (Telecom Sector)
- Jet/Eithad (Airlines Sector)

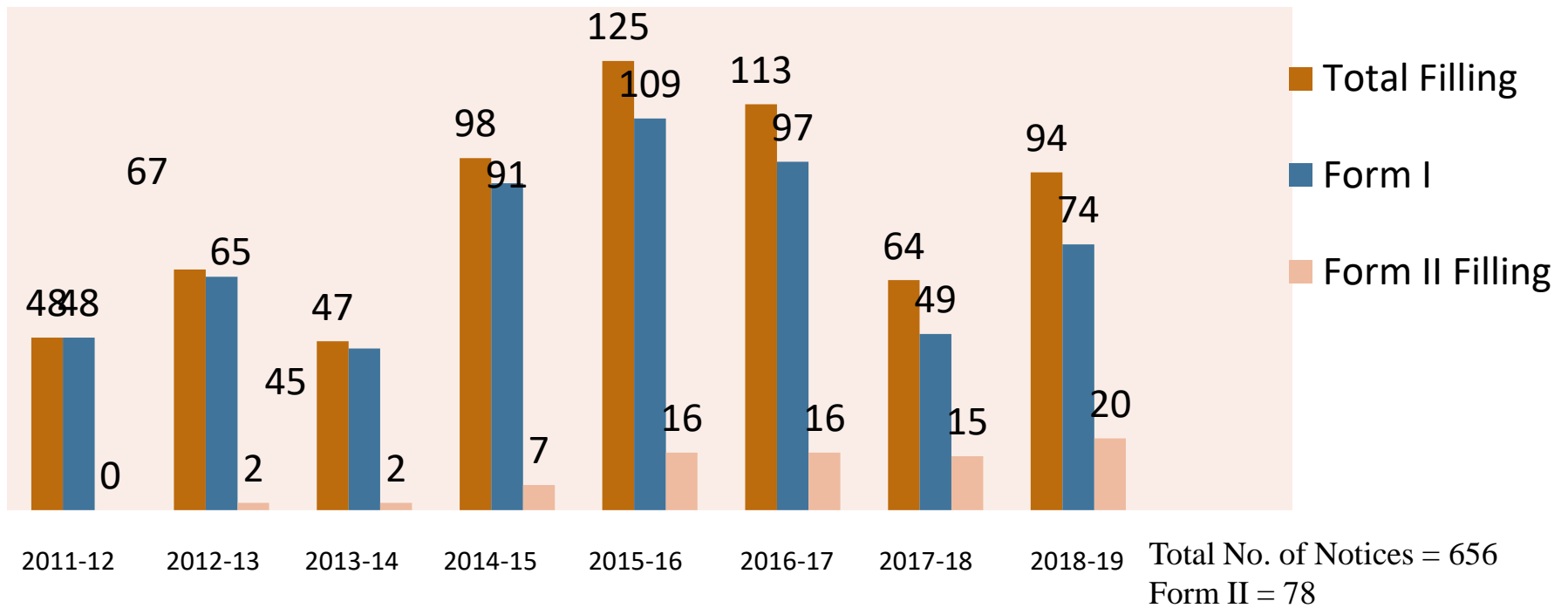


Facilities for filing notices

- Pre filing Consultation
 - identify information - filing complete & correct Form.
 - identifying additional information required
 - Identify key issues - to seek consultation
- Do-It-Yourself Software
 - Online software - facilitates in identifying the notifiability of any proposed transaction

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Is it an Acquisition, Merger or Amalgamation?

YES

Is it Excluded or Exempted?

NO

Are the Notification Thresholds exceeded?

YES

TRANSACTION IS NOTIFIABLE



Relevant Product Market



- Defined in terms of substitutability or smallest set of products which are substitutable among themselves
 - *Eg : Car Market may consist of small cars, mid size cars, luxury cars etc.*
- **Relevant factors**
 - (a) Physical characteristics or end-use/Prices/Consumer preferences
 - (b) Exclusion of in-house production/Existence of specialised producers
 - (c) Classification of industrial products



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Ex Ante or Ex Post

Agreements & Abuse of Dominance: Ex-post

- **Combinations: Ex-ante- Implications?**
- Merger to monopoly or near monopoly
 - likely to be prohibited based on probable AAEC
- **Why? Ex-Ante**
 - Cost of remedies/Uncertainty
 - Preventing future abuses
 - Maintaining competitive markets
 - Outcomes for consumers
 - Exclusive reliance on ex post control - *ineffective*