Competition Commission of India
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SYMPOSIUM ON

COMPETITION POLICY & COMPETITIVENESS

“ REGULATION OF COMBINATIONS ”

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Competition benign but unique features:

- Competition is benign for consumers, business (small, medium or big) & economy as a whole.

- Key driver to competitiveness, leads to better corporate governance, reduces corruption

- Infusing/maintaining/sustaining competition – a challenge in view of its unique characteristics, namely:-
  - *intense competition is inconsistent with human nature*
  - *competition kills competition*
  - *competition is unstable*

Dimensions of the Competition Act, 02

- **Prohibit Anti-Competitive Agreements**
- **Prohibit Abuse of Dominant Position.**
- **Regulate Combinations**
- **Render opinion on competition issues to statutory authority / Government**
- **Undertake Competition Advocacy**

Factors which motivate merger

- To diversify activities,
- To achieve optimum size of business,
- To remove bottlenecks of input supplies,
- To improve profitability,
- To serve the customers better,
- To achieve economies of scale and size,
- To acquire assets at lower than the market price,
- To bring separate enterprises under single control,
- To grow without any gestation period, and
- To nurse a sick unit and get tax advantages .

Mergers generally beneficial

- Most mergers are pro-competitive;
- Enhance rivalry;
- Leads to efficiency
- Economies of scale/scope;
- Encourages innovation;
- Reduce cost/price;
- Improves quality of product.

Some mergers enhance market power

- Reduces number of business entities operating in the market;
- Increase in market share controlled by merged entity;
- Enhances ability of the merged entity to act unconstrained by rivals.

Other laws governing mergers

- Companies Act, 1956;
- Foreign Exchange Management Act, 1999;
- Income Tax Act, 1961;
- Indian Stamp Act, 1899;
- SEBI Act (Takeover Code).

Types of Mergers

- Horizontal – combining parties engaged in same or similar trade;
- Vertical – combining parties are in the distribution chain;
- Conglomerate – combining parties are in different trade.

Raw Material Producer/Supplier	Raw Material Producer/Supplier	Raw Material Producer/Supplier
Manufacturer	Manufacturer	Manufacturer
Wholesaler	Wholesaler	Wholesaler
Retailer	Retailer	Retailer
Consumer	Consumer	Consumer

Scope of combination

- Acquisition of shares;
- Acquisition of voting rights;
- Acquisition of assets;
- Acquisition of control;
- Merger
- Amalgamation

What can CCI do

- Draft Regulations soften the rigor of law;
- Approve/approve with modification/reject the proposed combination
- In case competition concerns are eliminated by the parties, the combination may be approved.
- Declare merger void.
- Ensures certainty in business.

Components of Regulation

- Filing of valid Notice in a specified form;
- Examination of notice and other details from the competition perspective;
- Ensuring compliance of the order passed;
- Appeal lies in Competition Appellate Tribunal/Supreme Court

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Regulation of Combinations

- Acquisition of share by PFI, FII, Banks, VCF do not fall within Section 5 & 6, filing of notification is mandatory within 7 days of acquisition
- High threshold limits – only big ticket combinations subject to regulation
- Mandatory notification regime, notice to be filed within 30 days, non filing of notice attract deterrent penalty – 1% of turnover or assets whichever is higher
- Commission to decide in 210 days from the day of filing valid notice, else combination is *deemed approved Compulsory waiting*
- Commission can take, upon its own knowledge or information, action within 1 yr from the date the combination is effected

Threshold limits- assets or turnover

Operations	No Group	Group
In India	Total value of assets > Rs.1000/- crores or turnover of Rs.3000/- crores.	Total value of assets of more than Rs.4000/- crores or turnover more than Rs.12000/- crores.
In India or Outside India	Aggregate value of assets >$500 mn (incdg. at least in India Rs.500 cr. Or turnover >$1500mn (incldg. at least turnover of Rs.1500 cr.in India.)	Aggregate value of assets of more than $2 bn (incldg. at least assets of Rs.500 cr. In India) or turnover of $6 bn (incldg. Rs.1500 cf.turnover in India).

Contents of Notice

- Details of main competitors;
- Level of concentration;
- Import/export, entry/exit in the industry;
- Acquisition price,
- Market share of each product;
- Regulatory provisions;
- IPRs developed;
- Benefits of combination

Factors which CCI has to take into account

- Level of imports; barriers to entry; Level of combination; Market share individually and post merger; Countervailing power; innovation; Vertical integration; likelihood of increase in price; availability of substitutes; failing business; contribution to economic development; and whether benefits overweigh the disadvanges.

Case laws

Hindustan Lever & Tata Oil Mils (i*llustrative*);

FTC, US successfully opposed (1997) merger between Staples and Office Depot – two office supplies super stores;

IBM/SBCS (2004)- Irish CA blocked the deal as barriers to entry were high, parties were providing high quality service and switching cost was found to be high.

Volvo/ Scania (2000-EC) : Acquisition of truck producer Scania by Volvo- EC found high market share post merger; closest competitors; will lead to increase in price of heavy trucks.

Merger & its Remedies

- Comparable with valid marriage
- CCI performs the role of a priest;
- Structural Remedies;
- Behavioral Remedies

THANK YOU