The Competition Act, 2002 : Treatment of combinations

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Combination

- Combination covers
  - Acquisition
  - Merger
  - Amalgamation
- Any combination which causes or is likely to cause appreciable adverse effect on competition is void

Threshold

- High threshold limits : Combining parties
- Assets in India > Rs 1000 cr or turnover > Rs 3000 cr
- If combining parties are a group, assets in India > Rs 4000 cr or turnover > Rs 12000 cr
- Assets in India and outside India > US$ 500 m including Rs 500 crore in India or turnover > US$ 1500 m including Rs 1500 crore in India
- If any of the combining parties belong to a group, assets in India and outside India > US$ 2 b including Rs 500 crore in India or turnover > US$ 6 b including Rs 1500 crore in India

Notification

- Mandatory notification regime- notice to be given within 30 days
- Combination cannot take effect upto 210 days or order of the Commission, whichever is earlier

Procedure

- Prima facie determination of the Commission
- Issues of show cause notice
- May call for report from DG
- Prima facie opinion that the combination causes or is likely to cause AAEC $\Rightarrow$ direct parties to publish details calling for written objections
- May call for additional information from parties

Relevant factors-1

For determining AAEC in the relevant market, the following factors have to be considered:

- Actual and potential competition through imports-imports/trade agreements
- Entry barriers- sunk cost/technological lead
- Concentration level - CR, HHI
- Countervailing power

Relevant factors-2

- Likelihood of increase in prices or profit margins
- Effective competition after combination
- Substitutes – actual or potential
- Market share
- Removal of maverick competitor
- Extent of vertical integration

Relevant factors-3

- Failing business
- Nature and extent of innovation
- Contribution to economic development
- Whether benefits outweigh the adverse impact

Market definition

- Relevant market determination depends upon determination of the relevant product market and the relevant geographic market.

Relevant product market-1

- Relevant product market is the smallest set of close substitutes
- Determine substitutability of products –
- Two aspects:
  - Demand side substitutability- shift of demand to competing product on price rise
  - Supply side substitutability- shift of production to meet demand

Relevant product market-2

- Factors to be considered while determining relevant product market:
  - Physical characteristic of product
  - End-use of product
  - Price
  - Consumer preference – empirical evidence
  - Classification of industrial products - NIC

Relevant geographic market-1

- Relevant geographic market can be defined as the area in which products are available at approximately the same price given transport costs and any increase in demand can be met from neighbouring areas profitably.

Relevant geographic market-2

- Factors to be considered:
  - Shipment cost – very important
  - Regulatory trade barriers – octroi/sales tax
  - Local specification requirements – language display
  - National procurement policy – only local (state-level or national) suppliers permitted
  - Adequate distribution facilities – perishable products

Joint ventures

- Agreements of certain types such as for sharing markets, restricting output, etc are presumed to have AAEC and void
- Joint ventures which enhance efficiency are not presumed to cause AAEC
- What happens when a joint venture is effectively a combination?

Order of the Commission

CCI can

- Approve
- Approve with modifications
- Not approve

If no order within 210 days, the combination is deemed to have been approved.

Concerns raised by business

- Combination regulation should be deferred
- Threshold is low
- Local nexus provision is inadequate
- Suspensary regime of 210 days is too long.
- Transaction size is not provided

Some examples

- Staples-Office Depot case
- Boeing-McDonnel Douglas
- Some recent combinations in India
- Competition assessment begins with analysing conduct which distorts competition and then turns to law to determine whether distortion harms those whose protection is required under law.
- Check for potential of unilateral action or collusive behavior

THANK YOU

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