CORPORATE MERGERS & ACQUISITIONS IN INDIA: A COMPETITION LAW OVERVIEW

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ABSTRACT

There was a dramatic shift and reorganization of the Indian economy as a result of the economic reforms of 1991. Companies have started restructuring operations to get rid of additional companies and boost their positions in their main economic interests. The long-term business plans of Indian firms now heavily rely on mergers and acquisitions. The threat of acquisition is a tool used to discipline managers who stray from profit maximisation. In order to diversify a firm's business risks, takeovers and mergers have been studied as techniques. The Competition Commission must review mergers and acquisitions and issue an order to control combination regulations.

Keywords: Competition, Mergers, acquisitions, Business, Company.

INTRODUCTION

After the Indian government's economic reforms were implemented in 1991[1], the Indian economy underwent a significant transformation and structural change. Every commercial firm in India has turned its attention to size and competence in the liberalized economic and business climate as corporations realize the necessity to develop and expand in industries they are familiar with to keep up with the escalating competition. Indian corporations have engaged in restructuring initiatives to divest themselves of non-core businesses and to strengthen their positions in their primary fields of commercial interest. As one of the most efficient means of such corporate restructuring, mergers and acquisitions[2] have become a crucial component of Indian corporations' long-term business strategies.

Acquisitions and mergers have been crucial in the development of industrial structures around the globe. Companies are using mergers and acquisitions more often to expand into

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[1] Manish Agarwal and Aditya Bhattacharjea, Mergers in India: A response to regulatory stocks, Emerging Markets finance & Trade,https://www.jstor.org/stable/27750498

[2]Pramod Mantravadi and A.Vidyadhar Reddy, Type of merger and impact on operating performance: The Indian Experience, Economic and Political weekly, https://www.jstor.org/stable/40278002

new markets, acquire assets, increase market share, enhance production capacity, and acquire complementary strengths and skills in order to compete more effectively in the marketplace. According to Marris (1964) and Manne (1965),[3]acquisition threat is a mechanism to punish managers who depart from profit maximisation. According to Grossman and Hart (1981), a takeover is the outcome of a company being undervalued on the stock market. Takeovers and mergers have been analysed by Liner (1971), Levy and Sarnia (1970), and Lewellen (1971) as strategies to diversify a firm's business risks by operating in many industries without going through the start-up process required for a new business.

One of the fundamental prerequisites for a market economy is the law of competition[4]. This law makes it possible to increase productivity, advance market effectiveness, and foster economic expansion. It guarantees that consumer interests are protected and that market commerce is conducted freely. As a result of the investigation and implementation of mergers and acquisitions control under competition law, the competition commission should examine the mergers and acquisitions and adopt an order to regulate the rules of combinations.

EVOLUTION OF COMPETITION ACT, 2002

In accordance with Article 38 of the 44th (Amendment) Act of the Indian Constitution, the state must work to advance the welfare of the people by safeguarding and preserving the social order as efficiently as possible, whereby social, economic, and political justice was to be taken into account by all institutions of national life. In the same vein, Article 39 mandated that the state adheres to a set of guiding principles. Both articles provide guidelines for effective state governance and are found in Part IV of the Indian Constitution, which contains the directive principles of state policy but is not enforceable in court. Although every clause in Article 39 is intended to help Indian citizens as a whole, clauses 2(b) and (c) provide guidance for how the government should implement its policy to ensure that ownership and control of the community's material resources are distributed in a way that best serves the interests of all members of the community and the operation of the economic system.

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[3] T.R.Bishnoi and Sofia Devi, Mergers and acquisitions of banks in post- reform India, Economic and political weekly,https://www.jstor.org/stable/24482373
[4] B.S.Chauhan, Indian competition law: Global context, journal of the Indian law institute,https://www.jstor.org/stable/44782475

The Mahalanobis Committee [5]is appointed by the Indian government to investigate monopolistic and restrictive business practises in relation to income distribution on the basis of constitutional law. To address the disparities in the distribution of income, the committee provides its findings. Under Article 39, the committee is required to incorporate competition law. In order to put more emphasis on the economic system and disregard monopolies and restrictive trade practises, the parliament passed the Monopolies and Restrictive Trade Practises Act [6](MRTP). The statute applied to the nomination of directors in mergers and amalgamations. The MRTP Act's provisions don't have enough protections against mergers, anti-competitive agreements, and production-impacting predatory pricing. They significantly reduce market earnings and open up significant loopholes for foreign businesses. The rules for freedom of commerce and practises were not regulated by the MRTP.

The national economic strategy of economic liberalization was established by the central government in consideration of global economic development, and India's economy was made ready to compete both domestically and internationally. To ensure fair market competition in the global market, the central government established the high-level committee, which is led by Mr. S.V.S. Raghavan[7].

The competition act of 2002 in India went into effect on January 13th, 2003, with the main goals of preventing practises that harm competition, encouraging and upholding market competition to safeguard consumer interests, and ensuring freedom of trade practised by various market participants in India.

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IMPLEMENTATION OF MERGER AND ACQUISITION CONTROL UNDER THE COMPETITION ACT 2002

Although the 2002 Competition Act does not specifically forbid dominant positions, it does forbid abuse of dominance. In a competitive market, it also does not forbid the combination but instead seeks to mitigate any negative effects. In the beginning, business mergers and acquisitions encourage competition among firms to shield them from anti-competitive agreements and abuse of dominance.

[5]Altamas Kabir, Competition laws and the Indian economy, National law school of India review,https://www.jstor.org/stable/44283735
[6] Monopolies and Restrictive Trade Practise act 1969.
[7]Dr. S.C. Tripathi, Competition Law, Central Law Publications, page 8

According to Section 5 of the Competition Act, mergers and acquisitions are required to drive global economic growth. This clause acknowledges the relevant market and uses a legal framework to focus on monopolies' economic strength. When a person already has direct or indirect control over another enterprise engaged in production, distribution, or trading both inside and outside of India, the merger is specifically controlled by competition law.

The concept of "merger" is enforceable under the Securities and Exchange Board of India, the Companies Act 2013, the Companies Act 2014, and the Income Tax Act 1961. All of the assets and obligations of the transferor are combined with the assets and obligations of the transferee firm in a merger. In its simplest form, it involves the merging of the assets and liabilities of two or more firms to create a new company[8]. Examples are the acquisitions of Vijay Bank by Bank of Baroda, Corporation Bank by Union Bank of India, and Indian Bank by Canara Bank**.**

ACQUISITION

An acquisition[9] often refers to a big commercial company acquiring a smaller enterprise. Acquisition refers to obtaining all or a portion of the desired business's corporate assets. The growth of the acquired firm is what constitutes a corporate acquisition, which assembles the strengths and weaknesses of the acquiring company. A merger is similar to an acquisition, but it specifically refers to the combining of the interests of the two firms into one more powerful and separate company.

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In an acquisition, the acquiring firm often gives the target business's shareholders a price per share, or the acquiring firm's share is distributed to the target firm's shareholders in accordance with a stipulated conversion ratio. By buying the target firm outright for its shareholders, the purchasing corporation basically funds the transaction. For instance, Apple purchased Intel's smartphone modem, Kaleidoscope Innovation was bought by Infosys, Zomato acquired Uber Eats, Bandhan Bank acquired Gruh Finance, etc.

JOINT VENTURES

[8] Neeraj Tiwari, Merger under the regime of competition law: A Comparative study of Indian legal framework with EC and UK, Bond law review, file:///C:/Users/DELL/Downloads/5580-merger-under-the-regime-of-competition-law-a-comparative-study-of-indian-legal-framework-with-ec-and-uk%20(1).pdf

[9] Competition Act 2002 section 5 (a) any acquisition where the parties to the acquisition being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or being acquired jointly.

It is a commercial agreement in which two or more parties concur to combine their resources in order to carry out a certain activity[10]. The joint venture, which may be created, using any legal business entity, including partnerships, limited liability corporations, and other commercial organisations, is a partnership in the common meaning of the word. It is a cooperative technique in which businesses can form an alliance to pool their resources and skills. The joint venture may prove to be an efficient way for a smaller organisation with specialised management to acquire the resources required to enter a new market. Examples are Max Life Insurance, Exide Life Insurance Company Limited, Star Union Dai-ichi Life Insurance Co Ltd, and ICICI Prudential Life Insurance Company.

STRATEGIC ALLIANCE

It is a collaboration with a purpose between two or more separate businesses [11]that entails the sharing and co-development of resources or capabilities in order to produce mutually beneficial outcomes. An organisational architecture for a strategic alliance can vary depending on whether or not there is equity in the partnership and can cover one or more stages of the value chain. Any alliance's ability to succeed depends on important variables like the alliance's formation phase, proper governance, and value realisation. As a consequence, all parties engaged to benefit from forays into new markets, complement each other's primary competencies and create initiatives. As an illustration, consider the Japanese Suzuki Motor Corporation, Maruti Udyog Ltd., Tata Beverages, and Starbucks Corporation.

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TYPES OF MERGERS

Mergers may be divided into many categories based on where the merging parties stood in the economic supply chain prior to the merger, acquisition, joint venture, strategic alliance, etc. Based on these parameters, mergers can be classified as horizontal, vertical, or conglomerate mergers.

1. Horizontal mergers are one of the main pillars of contemporary competition [12]and are increasing market sector concentration. In cases when the two merging companies,

[10] Derek F.Channon and Tanya Sammut Bonnici, Joint ventures, Research Gate, https://www.researchgate.net/publication/272352896_Joint_Ventures
[11] Vikram Shakti, strategic alliance, wall street mojo,https://www.wallstreetmojo.com/strategic-alliances/#:~:text=Example%3A%20Google%20and%20NASA%2C%20together,JV%20in%20the%20automobile%20sector
[12] Louis Kaplow, Horizontal mergers analysis, International journal of industrial organization, https://www.sciencedirect.com/science/article/abs/pii/S0167718721000072?via%3Dihub

the entities between which a merger, amalgamation, or acquisition occurs, or mergers between rival businesses, for instance when a Times bank is purchased by HDFC, a bank in Madura is acquired by ICICI Bank, Flipkart acquires myntra, Hotstar acquires Disney, etc.

2. Vertical mergers[13]are two or more businesses offering distinct supply chain functions for a shared item or service, growing their customer base, and enhancing their synergies. It aids companies in maintaining control over the first phases of their supply chain, such as the supplier of raw materials to the manufacturer. Although they offer different goods or services, the two companies merging vertically are at various stages of the production process. For instance, Tata Motors bought Tata Capital at the maximum market value; Tata Motors bought Tata Steel at a different price; and E-Bay bought PayPal to expand financial transactions and money transfers.
3. Conglomerate mergers [14]are unions of companies engaged in completely unrelated industries or industries that are part of a single corporate group; these mergers often involve a parent company and several subsidiaries. To boost their market share, diversify their company, cross-sell their products, and take advantage of synergies, the two firms embarked on a conglomerate merger. These could manifest themselves in marketing, budgeting, R&D, production, or any other area. For instance, the Walt Disney firm bought an American broadcasting firm, the soft drink company merged with a shoe manufacturer, and the sun pharma pharmaceutical company bought a power company.
4. Congeneric mergers are those in which the target firm and the acquiring company both operate in the same or a closely related industry but have distinct product or service lines. Congeneric corporations feature two businesses that may have comparable marketing strategies, technology, distribution networks, or production methods. It might aid the acquiring firm in rapidly growing its market share or diversifying its product offerings. For instance, Citibank buys a financial services firm. The agreement reaped the most advantages on the market. For the sake of market advancement and statistical advancement, Dell purchased EMC (online data storage).

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[13] Will Kenton, Vertical Merger: Definition, How it works, Purpose and examples, Investopedia, https://www.investopedia.com/terms/v/verticalmerger.asp#:~:text=What%20Is%20a%20Vertical%20Merger,process%2C%20and%20ramp%20up%20business

[14] Will Kenton, conglomerate Mergers: Definition, Purpose and Examples, investopedia, https://www.investopedia.com/terms/c/conlgomeratemerger.asp#:~:text=A%20conglomerate%20merger%20is%20a,located%20in%20different%20geographical%20locationsb

5. A reverse merger [15]occurs when a private firm becomes a public corporation by acquiring the public company's management. In comparison to private companies, the valuations of public companies are higher. Greater liquidity, increased transparency, increased public awareness, and most likely faster growth rates when compared to private companies, for instance, are some of the causes of this. In order to develop and survive, companies like Facebook and ICICI Bank have acquired Watsup and Armand Hammer successfully acquired Western Petroleum.
6. Demerger[16] describes a firm that separates one or more divisions so they can run alone or be sold off. Additionally, it enables big businesses like conglomerates to separate their various brands or business units in order to invite or prevent an acquisition or to establish distinct legal entities to handle various operations. For instance, Vedanta Limited, Primal Enterprises Limited, Dhampur Bio Organics Limited, which was formed as a consequence of the demerger of Dhampur Sugar Mills Limited, Welspun Corp Limited, which was formed as a result of the demerger of Welspun Steel Limited, etc.

COMPETITION COMMISSION ON REGULATION OF COMBINATION

In India, the competition commission is crucial in preventing negative effects on competition. The competition commission serves as a market regulator for all industries, with a primary focus on reducing practises that are harmful to competition. The Competition Commission [17]has been given certain authority and Section 6 of the law deals with provisions relating to combination regulation. The competition commission develops the initial impression that the merger is either likely to have a materially negative impact on Indian market competition or has already done so. The commission has the authority [18]to undertake research and analysis to ensure that a merger won't harm competition. If, after conducting its investigation, the commission determines that the proposed combination is likely to have a materially

[15] Chris Seabury, A Guide to spotting a Reverse Merger, investopedia, https://www.investopedia.com/articles/stocks/08/reverse-merger.asp#:~:text=Key%20Takeaways-,A%20reverse%20merger%20is%20when%20a%20private%20company%20becomes%20a,as%20little%20as%2030%20days

[16] Will Kenton, demerger: Definition, How it works, Reasons and Types, Investopedia,https://www.investopedia.com/terms/d/demerger.asp#:~:text=A%20de%2Dmerger%20is%20when,to%20discourage%20a%20hostile%20takeover.

[17] Sameera Saurabh, The economics of antitrust competition, World affairs : The journal of International issues, https://www.jstor.org/stable/10.2307/48531465

[18] Snehasuman, Merger and the role of competition commission of India, legal services India, https://www.legalservicesindia.com/article/2244/Merger-And-The-Role-of-Competition-Commission-of-India.html#:~:text=The%20main%20duty%20of%20the,adverse%20effect%20on%20the%20competition.

unfavourable impact on the competition, it may issue an order prohibiting the proposed combination.

According to the court decision on the planned merger, the competition commission usually accepts it and there is little chance that it would significantly harm competition in India. In accordance with section 31(1) of the act, the commission is approving the transaction at hand and is basing its judgment of the underlying level of competition on the data given by the parties. This permission should not be interpreted in any way as immunity from future proceedings before the commission for breaches of other Act requirements. If at any moment the parties' information is shown to be inaccurate, this order will be rescinded.

Tata Steel and Corus Group case [19]

Tata Steel paid $ 13.70 billion to acquire the Anglo-Dutch steel producer Corus Group on January 31, 2007, in one of the largest cross-border merger agreements ever. 84000 employees are employed by the combined Tata-Corus Corporation in 45 different countries. It ranks as the fifth largest producer of steel in the world with a capacity to manufacture 27 million tonnes of steel annually. Additionally, Tata Steel now has access to Corus' extensive European distribution network thanks to the merger. The transaction was completed in accordance with the High Court of Justice in England and Wales' declaration of Tata Steel plan's plan of arrangement as being effective in bringing together Tata Steel, a globally successful, vertically integrated steel manufacturer with a significant and expanding presence in India. With a combined presence in 45 countries, Corus, the second-largest steel manufacturer in Europe, will establish the second-largest steel producer in the world. Corus has a high-value-added product portfolio and strong positions in the automotive, construction, and packaging industries.

Etihad Airways PJSC & Jet Airways (India) Limited [20] According to a joint investment agreement, Jet Airways and Etihad Airways are in the business of offering international air transportation services. In order to grow Jet Airways' operations through collaborative efforts, Etihad has shown interest in purchasing a 24% share in the airline. the acquisition of a 24% investment by Etihad and the authority to propose two candidates for each of the six shareholder positions, including the Jet board of directors. The commission is of the opinion

[19] Case No COMP/M.4408-TATA/CORUS
[20] CCI: Combination Registration No. C-2013/05/122`

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that the proposed combination is not likely to have a significant adverse effect on competition in India and hereby approves it under sub-section (1) of section 31 of the Act based on the facts in the file, the information provided in the notice given under sub-section (2) of section 6 of the Act, and the relevant factors mentioned in sub-section (4) of section 20 of the Act. Section 31(1) of the Competition Act of 2002 and Regulation 14 of the Competition Commission of India's (Procedure with Regard to the Transaction of Business pertaining to Combinations) Regulations of 2011 govern the transaction of business pertaining to combinations.

CONCLUSION

The Companies Act of 2013 (1956), which contains the merging of corporate restructuring acquisitions in the domestic market, was amended to incorporate mergers and acquisitions rules. The global economic sector has increased value and resource leveraging. With regard to economic development and restrictive practises, the MRTP has flaws. The economic market's worst failure was the MRTP. The Indian Constitution's preamble was inspired by the competition legislation to ban abusive dominating practises and anti-competitive agreements. Under the statute, the Indian Competition Commission has a great deal of authority. The commission's primary responsibility is to stop unfair practises that harm consumers' interests. It has the authority to look at combinations that might have a noticeable negative impact on the competition. After taking into account a number of variables, it may also approve numerous orders for various mergers.

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