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# Procedure for Investigation of Combination by the Competition Commission of India under the Scheme of the Act

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SHREEYA PRABHAKAR TAMBE<sup>1</sup>

## ABSTRACT

*The Competition Act of 2002 is an Indian law that regulates commercial competition. It took the place of the 1969 Monopolies and Restrictive Trade Practices Act. The Competition Act of India aims to prevent practises that damage competition in India. This article will include additional information about the Competition Act, 2002, in the light of the Competition Commission of India's Procedure for Investigation of Combination under the Act's scheme. When competition and liberalisation are combined, the creative forces in the economy are unleashed. Customers have a wider variety of options at lower prices as a result of competition, which promotes innovation and competitiveness and results in the most effective allocation of capital. With the dawn of the globalisation period, Indian companies found themselves up against stiff competition from both domestic and international players, necessitating a level playing field and an investor-friendly climate. In a free market economy, some firms can destabilise the market by engaging in anticompetitive practises for short-term benefit. These techniques have the ability to completely eliminate the benefits of competition.*

## I. INTRODUCTION

In one case<sup>2</sup>, the primary aim of competition law, according to the Supreme Court of India, is to promote economic efficiency. Perfect competition has three benefits which promotes innovative practises. These considerations have largely been recognised as guiding principles for the successful application of competition law around the world. According to the Preamble of the Competition Act, it is essential to protect not only free trade but also consumer interests. The Competition Act of 2002 was passed with the following goals in mind:<sup>3</sup>

1) To keep an eye on anti-competitive conduct.

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<sup>1</sup> Author is a student at Symbiosis Law School, Noida, India.

<sup>2</sup> (2010) 10 SCC 744.

<sup>3</sup> Rajkumar Dubey, Indian Competition Act: An Overview, 27 July 2005. <http://www.mondaq.com/india/x/33971/Antitrust+Competition/Indian+Competition+Act+An+Overview>

- 2) To make it illegal to misuse power.
- 3) Combinations are controlled.
- 4) To offer for the formation of a quasi-judicial figure, the CCI, to perform the duties mentioned below:
  - a) Avoid activities that have a negative effect on competition.
  - b) Encourage and maintain market competition.
  - c) Defend the rights of all consumers.
  - d) Ensure trade freedom.
  - e) Investigate matters related to or incidental to it.

**Combinations are categorised as follows:**

1. Horizontal Combinations.
2. Non-Horizontal Combinations.<sup>4</sup>

Combination is described in **Section 5** as "the acquisition of one or more enterprises by one or more persons, or the merger or amalgamation of enterprises by one or more persons."

In India, a combination is normally scrutinised under the Competition Act, 2002 before it goes into effect, with the aim of avoiding anti-competitive behaviour that could damage customers. Combinations that are likely to have an anticompetitive effect will be allowed after the anticompetitive effects have been eliminated by modifications.

As a result, in the event of a merger, the Competition Commission of India can issue certain orders:<sup>5</sup>

- 1) The combination is permitted if no major adverse effect is observed.
- 2) Disapproval of the mixture if a significant anticompetitive effect is discovered.
- 3) It can make appropriate modifications if the parties agree.
- 4) Provide immediate relief in the form of temporary injunctions while the investigation is ongoing.
- 5) Compensation for the award.

The Act of 2002 requires the filing of proposed mergers and acquisitions based on thresholds

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<sup>4</sup> Regulation of Combinations under the Competition Law” by Anubhav Pandey.

<sup>5</sup> Shivam Goel, *Regulation of Combinations Under the Competition Law in India*, <http://ssrn.com/abstract=2485557>

that the Indian government increased by 50% through notification. The Regulations define the types of transactions that are unlikely to have a significant adverse impact on competition and, as a result, do not require any paperwork to be submitted in order to keep regulatory enforcement costs to a minimum for the industry.

Under Section 29 of the Competition Act, 2002, Merger control can be divided into two stages, i.e., the process for investigating a combination. The Anti-Competitive Practices Act, requires the creation of a policy that prohibits the accumulation of wealth and means of production at the expense of the common good. One of the most common types of anti-competitive behaviour prohibited by the Act is combinations that have a major adverse impact on competition in the relevant market in India.

In this article, we'll look at what the word "combination" means in the context of the Competition Act of 2002. We'll also look at how combinations are governed in India, as well as the process for investigating combinations under the Act.

#### **(A) Review of literature:**

Past research has found out how Competition Law has evolved through years. Some studies have emphasised on the instrumentalities of Competition Law.

It's incredibly difficult to forecast and measure post-merger efficiencies. Consumer protection is a consideration in deciding the competitive consequences of mergers, and antitrust law allows for this. Though price rises play a role in assessing the competitive impact of mergers, productivity and innovation effects are also important.<sup>6</sup>

#### **(B) Statement of the Problem**

This research work aims to add to the prevailing data in the direction of Competition Law dealing with procedure of investigation of Combinations. This study claims to make a thorough analysis of the procedure of investigation of Combinations in India. It talks about all the present legislations, rules and regulations which deals with procedure of investigation of Combinations in India. This research paper concentrates on this question in particular and tries to answer it in a humble manner.

#### **(C) Objectives of the Study:**

- a) Study the meaning of Combination.
- b) Critically analyse the existing Competition Regulation in India.

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<sup>6</sup> 'Competition Law in India: Perspectives', Viswanath Pingali, The Journal for Decision Makers.

- c) Learn about what is covered under Indian Competition Act, 2002.

#### **(D) Scope and Limitations:**

The over-all motive of this research is to present a summary of the universal thoughtfulness of investigation of Combinations and also to comprehend numerous boundaries to the said right which has been discussed in a variety of cases till now.

As I commenced with the research, I was caught in a dilemma as to what to study in the first place – there is an unlimited supply of situations that describe these principles.

This portion of research will give an outline of the conceptual crucial notions, matters and studies related to the procedure of investigation of Combinations, and it will explain the practical and factual foundations of the study.

#### **(E) Research Questions**

This research aims to study the. Based on this the following questions have arisen:

- a) What is the meaning of Combinations?
- b) How are they regulated under the Competition Act of 2002?
- c) How has the concept of procedure of investigation of Combinations under the Act evolved?

The author through this research paper intends to analyse and answer the various questions that are posed related to procedure of investigation of Combinations in India.

#### **(F) Hypothesis**

Here, the hypotheses proposed are as follows:

- a) The primary goal of combination regulation is to eliminate potential anti-competitive consequences by implementing effective remedies.
- b) Merger control can be divided into two stages, according to certain sections of the Act set out the process for investigating a combination.

## **II. REGULATION OF COMBINATIONS**

The majority of mergers do not result in significant market power; however, some do, and this can be detrimental to competition. The primary goal of combination regulation is to avoid anti-competitive effects by enacting effective solutions, such as prohibition if possible.

The Act of 2002 requires the filing of proposed mergers and acquisitions based on thresholds that the Indian government increased by 50% through notification. After careful consultation

with stakeholders, the applicable provisions. The Regulations define the types of transactions that are unlikely to have a significant adverse impact on competition and, as a result, do not require any paperwork to be submitted in order to keep regulatory enforcement costs to a minimum for the industry.

### **III. PROCEDURE FOR INVESTIGATION OF COMBINATIONS:**

#### **Section 29 of the Competition Act, 2002:**

Merger control can be divided into two stages, the process for investigating a combination:

**Stage 1:** Within 30 working days of receiving the notification, the Commission shall form a prima facie opinion on whether a combination has caused, or is likely to cause, an appreciable adverse impact on competition within the applicable market in India. If the parties agree to amend the terms of the combination, the time period may be extended by 15 working days. Within this time frame, the CCI will determine whether or not to authorise the combination, or whether or not to examine it further. If the CCI believes that a merger would or has already had a major adverse effect on competition, it conducts a thorough investigation.

**Stage 2:** The CCI may either perform the investigation itself or delegate it to its Director General. Within another 180 days, it must make a final decision or the following actions may be taken:

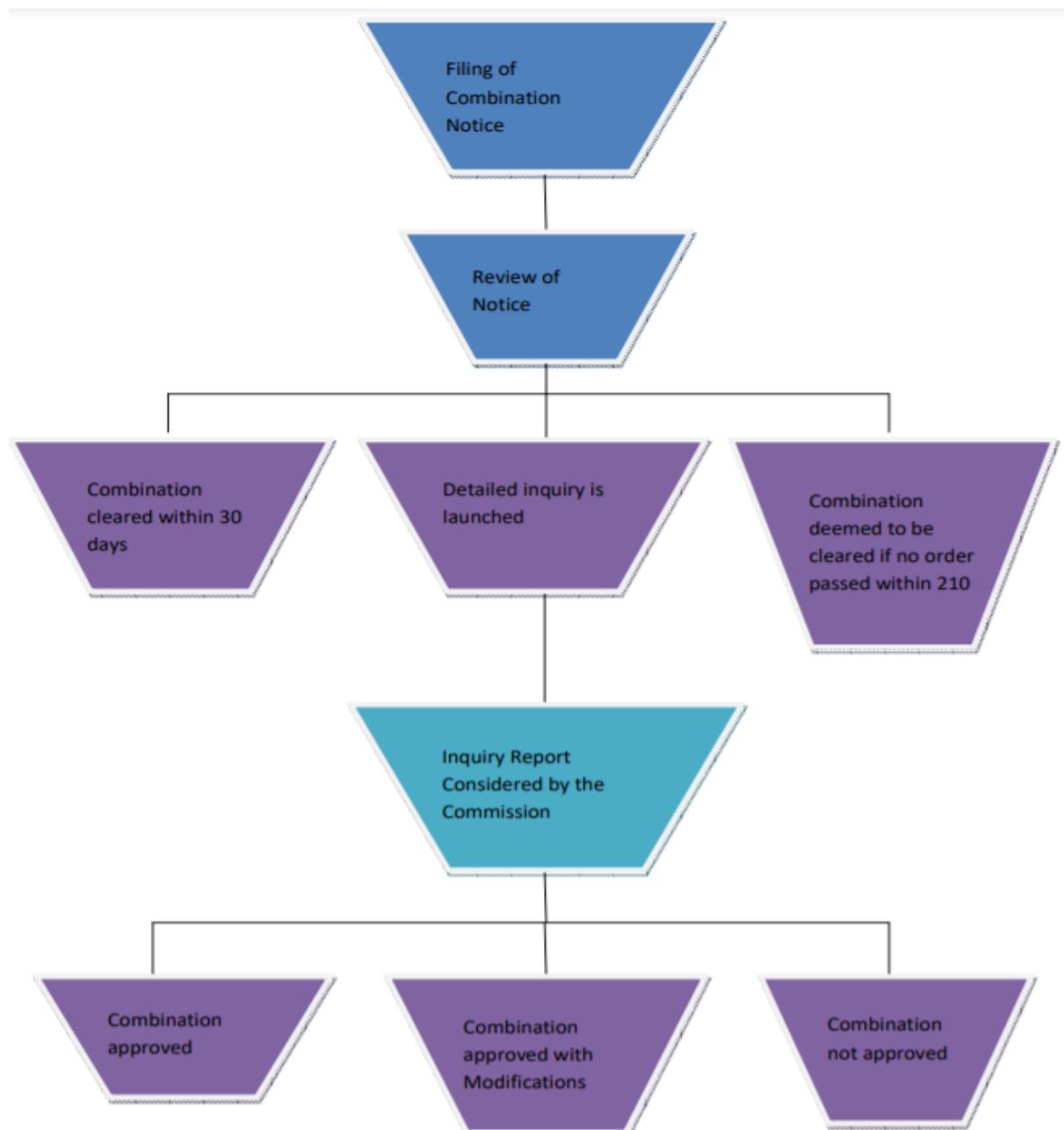
- a. Request additional details from the parties to the combination in order to form a prima facie opinion.
- b. Accept the parties' suggested changes.
- c. Request details from some other company in relation to a possible merger.

#### **In a nutshell, the investigation of a Combination consists of 3 stages:**

1. According to the Act's definition, a relevant market is one that involves deciding both the relevant product market and the relevant regional market.
2. The combination is examined to see if it has a significant negative impact on competition in the particular sector. Section 20(4) establishes the conditions for such a study.
3. The Combinations are changed depending on how anti-competitive effects can be minimised or eliminated. Schedules: CCI has 210 days to make a decision on a Combinations application under the Competition Act of 2002. Due to the importance of time in Combination cases, the Combinations Regulations have a clause that restricts the time period. Within thirty days, the Commission must give an opinion. If no order is placed within 210 days, it will be immediately

cleared.

The Anti-Competitive Practices Act, requires the creation of a policy that prohibits the accumulation of wealth and means of production at the expense of the common good. One of the most common types of anti-competitive behaviour prohibited by the Act is combinations that have a major adverse impact on competition in the relevant market in India.



#### IV. CONCLUSION

"Competition law" refers to the laws that govern private anti-competitive conduct. Many people believe that antitrust laws only apply to private businesses, but many states, including India, have antitrust laws that apply to government-owned businesses as well. This isn't,

however, standard procedure. In addition, since competition law is seldom passed into law, its substance is susceptible to government intervention.<sup>7</sup>

The Anti-Competitive Practices Act, like the Constitution, requires the creation of a policy that prohibits the accumulation of wealth and means of production at the expense of the common good. One of the most common types of anti-competitive behaviour prohibited by the Act is combinations that have a major adverse impact on competition in the relevant market in India. In India, mergers and acquisitions will be governed by Sections 5 and 6 of the Competition Regulations 2011.<sup>8</sup>

If the Commission has fair grounds to conclude that a merger has or would have a negative effect on competition in Indian markets, it will give the parties a notice to show cause why an investigation into the merger should not be conducted. After receiving the answer, if it seems that the mixture has or is likely to have an appreciable adverse impact, the Commission shall deal with it.<sup>9</sup>

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<sup>7</sup> Vijay K. Singh, “Competition Law and Policy in India: The journey in a decade,” NUJS Law Review, October-December 2011, 4 NUJS L. REV. 523(2011), p.523- 566.

<sup>8</sup> Article 38 of the Constitution of India, 1950.

<sup>9</sup> “Regulation of Combinations under the Competition Law” by Anubhav Pandey. Available at <<https://blog.ipleaders.in/comboination-under-the-competition-law/>>