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An Analysis of Combinations under the Indian Competition Act, 2002: Regulatory Framework and Legal Implications

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ABSTRACT

Competition has changed a lot over the years. There are now more consumers and more companies in the market. To prevent unfair practices and agreements, the Competition Commission of India has taken steps. The Competition Act 2002 has rules for managing competition, especially when businesses or people work together. According to the Competition Act 2002, the concept of "combination" refers to the acquisition of control, shares, voting rights, assets, mergers, or amalgamations between enterprises. The regulation of combinations is a critical aspect of ensuring fair market practices and preventing anti-competitive behaviour. This paper provides a comprehensive analysis of the regulatory framework and legal case studies surrounding combinations in a national and an international perspective.

I. INTRODUCTION

Competition in the market refers to a situation where sellers independently strive to attract buyers in order to achieve their business goals. The introduction of competition and liberalization encourages entrepreneurial activities within the economy. Competition provides consumers with a wide range of choices at reasonable prices, stimulates innovation and productivity, and ensures the efficient allocation of resources.²

With the onset of globalization, Indian businesses faced competition from both domestic rivals and global giants. This necessitated a level playing field and a more investor-friendly environment. Therefore, there was a growing need to shift the focus of competition laws from merely curbing monopolies to encouraging companies to invest and grow, thereby promoting healthy competition while preventing any abuse of market power.³

In an open-market economy, some enterprises may engage in anti-competitive practices for

¹ Author is an Advocate at District Court, Thiruvananthapuram, Kerala, India.

² Rajkumar Dubey, Indian Competition Act: An Overview, 27 July 2005. <http://www.mondaq.com/india/x/33971/Antitrust+Competition/Indian+Competition+Act+An+Overview>

³ Shreeya Prabhakar Tambe, Procedure for Investigation of Combination by the Competition Commission of India under the Scheme of the Act, [Vol. 4 ISSN 2; 2581-5369], International Journal of Law Management & Humanities, 2021

short-term gains, which can undermine the benefits of competition. That's why, as countries worldwide increasingly embrace market economies, they also reinforce their economic systems by implementing competition laws and establishing competition regulatory authorities. In line with this international trend and to adapt to changing realities, India enacted the Competition Act in 2002, which established the Competition Commission of India (CCI) as the regulatory authority for competition matters.⁴

In the case of **Competition Commission of India v. SAIL**,⁵ the Supreme Court of India emphasized that the primary objective of competition law is to promote economic efficiency by using competition as a means to create a market that responds to consumer preferences. Perfect competition offers three key advantages: allocative efficiency (ensuring resources are allocated effectively), productive efficiency (minimizing production costs), and dynamic efficiency (promoting innovation). These principles are widely accepted worldwide as the foundation for effective implementation of competition law. The preamble of the Competition Act, 2002, emphasizes not only the protection of free trade but also the protection of consumer interests.⁶

The Competition Act, 2002, was enacted to achieve the following objectives:⁷

1. To prevent anti-competitive practices.
2. To prohibit the abuse of market dominance.
3. To regulate combinations (mergers and acquisitions).
4. To establish the Competition Commission of India (CCI) as a quasi-judicial body with the following duties:
 - a. Preventing practices that harm competition.
 - b. Promoting and sustaining competition in the market.
 - c. Protecting consumer interests on a broad scale.
 - d. Ensuring freedom of trade among participants in the market.
 - e. Addressing related or incidental matters.

Combinations, as defined in the context of Indian Competition Law, encompass mergers, amalgamations, acquisitions of control, shares, voting rights, or assets. These combinations

⁴ Id.

⁵ (2010) 10 SCC 744

⁶ Supra at 2, Shreeya Prabhakar Tambe

⁷ Supra at 1, Rajkumar Dubey

are categorized into three types:⁸

1. **Horizontal Combinations:** These involve mergers or acquisitions between firms that operate in the same industry or produce similar products or services. Horizontal combinations refer to mergers or agreements between rival companies, which are more likely to result in significant negative impacts on competition.
2. **Vertical Combinations:** These refer to mergers or acquisitions between firms that are part of different stages of the supply chain, such as suppliers and distributors. It involves businesses that operate at different points along the production chain and are generally less likely to have a significant adverse impact on competition.
3. **Conglomerate Combinations:** These involve mergers or acquisitions between firms that are unrelated and operate in entirely different industries. Conglomerate combinations involve businesses that are not operating in the same line of business or within the same relevant market, and these are the least likely to result in a significant adverse impact on competition.

When a proposed combination is likely to have a significant adverse effect on competition, it cannot be allowed to proceed. The scrutiny of such combinations under the Competition Act, 2002, typically occurs before they are finalized, with the aim of preventing potential anti-competitive behaviour that could harm consumers. If a combination is found to have anti-competitive effects, it may be permitted after necessary modifications are made to mitigate these effects.⁹

It's important to note that the global term used for regulating combinations is "merger review" or "merger control." This process is carried out by competition regulators to prevent mergers and acquisitions that could reduce competition in the market, leading to higher prices, lower product or service quality, or reduced innovation. Some countries have voluntary merger review systems, while most have mandatory regimes, where enterprises meeting certain defined thresholds must notify the competition regulator for clearance before proceeding with the merger.¹⁰

II. 'COMBINATION' IN INTERNATIONAL PERSPECTIVE

In the United States, antitrust laws, including the Clayton Act and the Sherman Act, govern

⁸ Supra at 2, Shreeya Prabhakar Tambe

⁹ Competition Commission of India, Regulation of Combinations, http://www.cci.gov.in/index.php?option=com_content&task=view&id=34

¹⁰ Sec 5, *EXPLANATIONS*, (a) "control", THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

mergers and acquisitions to prevent anti-competitive behaviour. These laws apply to both immediate anticompetitive effects and those with the potential to substantially reduce competition.¹¹ In the **Northern Securities Co. v. United States**¹² case, the amalgamation of the Great Northern Railway Company and the Northern Pacific Railway Company led to the formation of the Northern Securities Co., establishing a monopoly in the railway sector. President Roosevelt responded by instructing the Department of Justice to file a lawsuit under the Sherman Antitrust Act of 1890. The Supreme Court, in a 5-4 verdict, found the Northern Securities Co. in violation of the Sherman Antitrust Act, asserting that the merger restricted interstate commerce unlawfully. The majority's interpretation of the Commerce Clause paved the way for heightened federal oversight, while dissenting justices argued for selective regulation, allowing for industry development. The ruling in **U.S. v. General Dynamics**¹³ dismissed those antitrust regulator assessment of market share exclusivity as a determinant of anti-competitive impact. The court stated the importance of considering a merger's background, structure, and likely impact to determine its potential anti-competitive effects.

In the European Union, competition law is primarily governed by Articles 85 and 86 of the Treaty Establishing the European Community. These articles aim to achieve similar goals as the U.S. laws, by prohibiting agreements and practices that restrict competition and addressing abuse of dominant market positions. The European Commission handles mergers and acquisitions through the Merger Regulation and Implementation Regulation.¹⁴

In the United Kingdom, the Competition Act of 1998 and the Enterprise Act of 2002 are the main statutes governing competition matters at the national level. These laws align with European jurisprudence, with a focus on preventing cartels, curbing abuse of dominant positions, and overseeing mergers and acquisitions of large corporations, including joint ventures.¹⁵

III. 'COMBINATION' IN INDIAN PERSPECTIVE

In India, the term "combination" is broadly defined to encompass various forms of acquisitions and mergers. On January 13, 2003, the Indian Parliament enacted the Competition Act, 2002, replacing the Monopolies and Restrictive Trade Practices Act, 1969.

¹¹ Goel, Shivam, Regulation of Combinations Under the Competition Law in India (March 22, 2014). Available at SSRN: <https://ssrn.com/abstract=2485557> or <http://dx.doi.org/10.2139/ssrn.2485557>

¹² 193 U.S. Supreme Court 197 (1904), U.S.

¹³ 415 U.S. Supreme Court 486 (1974), U.S.

¹⁴ Supra at 10, Goel, Shivam

¹⁵ Id.

The case, **Hindustan Lever Employees' Union V Hindustan Lever Limited**¹⁶ focused on the amalgamation of Hindustan Unilever Limited (HUL) and Tata Oil Mills Company Ltd. (TOMCO), with allegations of undervaluation and violations under the Monopolies & Restrictive Trade Practices Act, 1969. The High Court examined the share exchange ratio and found no fraud, violence, or prejudice. The Supreme Court dismissed all appeals, emphasizing the fair valuation and compliance with regulations, ensuring no harm to employees or public interest. The Competition Act, 2002, sets specific monetary thresholds in terms of assets or turnover, and combinations exceeding these thresholds require approval. Combining parties entering into a combination that significantly harms competition in the relevant Indian market is prohibited, and such combinations are void. The provisions related to the regulation of combinations in the Act came into force on June 1, 2011, and include various enforcement provisions and procedures.¹⁷ **Vodafone Idea**, formed by the merger of Vodafone India and Idea Cellular, operates under India's Competition Act of 2002, preventing anti-competitive practices and adverse market effects. The Competition Commission of India (CCI) critically assesses mergers, analysing their impact on competition, market share, and consumer welfare. CCI's evaluation of Vodafone Idea considered telecommunications sector dynamics, market concentration, and consumer benefits. Scrutiny ensured the merger didn't harm market fairness or consumer interests. This case exemplifies how Indian competition law oversees major mergers, aiming for a competitive market that benefits businesses and consumers.¹⁸

The process of reviewing combinations under the Indian Competition Act involves the mandatory pre-merger notification to the Competition Commission of India (CCI) when the combinations exceed the specified thresholds. If a merger that should have been notified is not, the Commission has the authority to investigate it within one year of its implementation. If this investigation reveals a significant adverse impact on competition, the CCI may order a demerger, which can have social and economic costs. Additionally, the Commission is empowered to impose fines, which can amount to one percent of the total turnover or assets of the combination.¹⁹

¹⁶ Special Leave Petition (civil) 11006 of 1994

¹⁷ Supra at 8, Competition Commission of India

¹⁸ Garima Rai, Merger and Acquisition Transactions Under Competition Law Regime, 2018 IJCRT | Volume 6, Issue 1 January 2018 | ISSN: 2320-2882

¹⁹ Regulation of Combination, http://arthapedia.in/index.php?title=Regulation_of_Combinations,

| THRESHOLDS FOR FILING NOTICE | | | | |
|------------------------------|--------------------------|---|----|--|
| | | Assets | OR | Turnover |
| Enterprise Level | India | > 2000 INR crore | | >6000 INR crore |
| | Worldwide with India leg | >USD 1 bn with at least >1000 INR crore in India | | |
| OR | | | | |
| Group Level | India | >8000 INR crore | OR | >24000 INR crore |
| | Worldwide with India leg | > USD 4 bn with at least >1000 INR crore in India | | > USD 12 bn with at least >3000 INR crore in India |

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In the nutshell of case of combinations, the CCI taken the following actions:²¹

1. Approve the combination if no significant adverse effect on competition is identified.
2. Disapprove the combination if it is found to have a substantial adverse impact on competition.
3. Propose suitable modifications to the combination that are acceptable to the involved parties.
4. During the investigation, provide interim relief in the form of temporary injunctions.
5. Award compensation as deemed necessary.

In the case of **Competition Commission of India v. Thomas Cook (India) Ltd.**²², the Supreme Court emphasized that in the presence of multiple interconnected transactions, they collectively constitute a composite transaction. As a result, all such interrelated transactions must be notified simultaneously with the principal combination. The Supreme Court's ruling in this case highlighted certain purchases that were linked to the primary combination. Consequently, the parties involved were found to have violated the provisions of the Competition Act, 2002, by completing these purchases before notifying the Commission.

In **SCM Solitifert Ltd. v. Competition Commission of India**²³ case, the Supreme Court clarified the need for prior notification of combinations, highlighting that delayed approval undermines the Act's purpose. It ruled that subsequent approval from the CCI absolves parties of penalties for gun-jumping²⁴ under Section 43A. The decision emphasized adherence to the CCI's suspensory regime, prohibiting transaction progression without prior notification. Mens rea was deemed irrelevant, emphasizing its inapplicability in civil matters, despite its significance in criminal cases. This ruling underscored the crucial necessity of timely and

²⁰ Thresholds for Combinations: Competition Commission of India, <https://www.cci.gov.in/combination/com-bination/filing-of-combination-notice/introduction>.

²¹ Supra at 4, (2010) 10 SCC 744

²² The Supreme Court of India, Civil Appeal No.13578 OF 2015

²³ The Supreme Court of India, Civil Appeal No(S). 10678 OF 2016

²⁴ **Gun Jumping** occurs when parties finalize a combination without seeking prior approval from the CCI.

complete compliance with the Act's provisions.

IV. ANALYSIS OF SEC 5 AND 6 OF THE COMPETITION ACT, 2002

Section 5 of the Indian Competition Act, 2002, deals with the concept of "Combination" in the context of competition law.²⁵ This section outlines the conditions under which the acquisition of enterprises, mergers, or amalgamations will be considered a "combination" and subject to regulation by the Competition Commission of India (CCI).²⁶ The purpose of this regulation is to ensure fair competition in the market and prevent anti-competitive practices.²⁷

Definition of Combination: Section 5 defines a "combination" as the acquisition of one or more enterprises by one or more persons or the merger or amalgamation of enterprises. In other words, when there is a change in ownership or structure involving enterprises, it can be considered a combination.²⁸

Criteria for Regulation: Subsection (a) outlines the criteria for an acquisition to be considered a combination. It states that if an acquisition involves enterprises where either:²⁹

1. The value of assets in India is more than rupees one thousand crores or turnover is more than rupees three thousand crores, or³⁰
2. The value of assets, either in India or globally, is more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover is more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India, then it qualifies as a combination.³¹

Subsection (b) deals with situations where a person acquires control over an enterprise when they already have direct or indirect control over another enterprise engaged in similar or identical goods or services. The criteria for this scenario are similar to those in subsection (a).³² Subsection (c) pertains to mergers or amalgamations. If the enterprise remaining after a merger or the enterprise created as a result of an amalgamation meets the asset or turnover criteria mentioned in subsection (a), it qualifies as a combination.³³ This section also provides

²⁵ Regulation of combinations: Combination; Sec 5, THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

²⁶ Regulation of combinations: Sec 5 and Sec 6, THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

²⁷ Id.

²⁸ Supra at 24, Regulation of combinations: Combination; Sec 5

²⁹ Sec 5(a), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

³⁰ Id.

³¹ Subs. by Competition (Amendment) Act, 2007 for: in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or"

³² Sec 5(b), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

³³ Sec 5(c), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

explanations for terms like "control" and "group." Control can be exercised by one or more enterprises or groups over another enterprise or group, either jointly or singly. A "group" refers to two or more enterprises that have a significant level of influence over another enterprise. This influence can be demonstrated through voting rights, board appointments, or control over management.³⁴ The value of assets for the purpose of determining whether a combination exists is based on the book value of assets shown in the audited books of account of the enterprise in the financial year immediately preceding the financial year in which the proposed merger or acquisition takes place. This value includes various intangible assets like brand value, goodwill, copyrights, patents, trademarks, and more.³⁵

Section 6 of the Indian Competition Act, 2002, pertains to the regulation of combinations, specifically mergers, amalgamations, and acquisitions, to ensure that they do not result in an appreciable adverse effect on competition within the relevant market in India.³⁶

Prohibition on Anti-Competitive Combinations: Subsection (1) states that no person or enterprise is allowed to enter into a combination that causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India. Such a combination is considered void.³⁷

Obligation to Notify the Competition Commission:³⁸ Subsection (2) outlines the obligation of any person or enterprise intending to enter into a combination. It requires the notifying party to give notice to the Competition Commission of India (CCI) within thirty days of specific events:

- (a) Approval of the proposal relating to merger or amalgamation by the board of directors of the enterprises concerned.
- (b) Execution of any agreement or other document for acquisition or acquiring control.

Waiting Period Before Implementation: Subsection (2A) specifies that no combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the CCI under subsection (2) or until the CCI has passed orders under Section 31, whichever is earlier. This waiting period allows the CCI to review and assess the combination's potential impact on competition.³⁹

³⁴ Supra at 24, Regulation of combinations: Combination; Sec 5

³⁵ Id.

³⁶ Regulation of combinations: Regulation of combinations; Sec 6, THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

³⁷ Sec 6(1), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

³⁸ Sec 6(2), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

³⁹ Sec 6(2A), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

CCI's Role in Review: Subsection (3) empowers the CCI to deal with the notice received under subsection (2) in accordance with the provisions contained in sections 29, 30, and 31 of the Competition Act. These sections detail the CCI's powers to review and approve, modify, or prohibit combinations based on their impact on competition.⁴⁰

Exemptions:⁴¹ Subsection (4) provides exceptions to the provisions of Section 6. It states that the regulation of combinations does not apply to certain types of transactions, including share subscriptions, financing facilities, or acquisitions made by public financial institutions, foreign institutional investors, banks, or venture capital funds as part of loan agreements or investment agreements.

Obligation of Exempted Entities: Subsection (5) outlines the obligation of public financial institutions, foreign institutional investors, banks, or venture capital funds that are exempted from the regulation of combinations under subsection (4). They are required to file details of the acquisition, including details of control, the circumstances for the exercise of such control, and the consequences of default arising from the loan agreement or investment agreement, with the CCI within seven days of the acquisition.⁴²

V. OTHER SECTIONS RELATED TO COMBINATIONS UNDER THE COMPETITION ACT, 2002

Section 20: Inquiry into Combination by Commission:

1. **Commission's Authority to Initiate Inquiries:** The Competition Commission of India (CCI) has the authority to initiate inquiries into certain combinations. These combinations can include acquisitions (referred to in clause (a) of section 5), acquiring control (clause (b) of section 5), or mergers or amalgamations (clause (c) of section 5). The purpose of such inquiries is to determine whether these combinations have caused or are likely to cause a significant adverse effect on competition in India.

Time Limit for Inquiry Initiation: The CCI must initiate these inquiries within one year from the date when the combination has taken effect.⁴³

2. **Inquiry Based on Notices:** When the CCI receives a notice under subsection (2) of section 6, it is required to inquire into whether the combination referred to in that notice

⁴⁰ Sec 6(3), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁴¹ Sec 6(4), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁴² Sec 6(5), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁴³ Sec 20(1), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

has resulted in or is likely to result in a substantial adverse impact on competition in India.⁴⁴

3. **Periodic Review of Thresholds:** The Central Government, in consultation with the CCI, is authorized to periodically review and, if necessary, adjust the value of assets or the value of turnover specified in section 5. This adjustment is made based on factors like the wholesale price index or fluctuations in exchange rates.⁴⁵
4. **Factors Considered in Assessing Competitive Impact:** In the assessment of a combination's potential impact on competition in the relevant market, the Competition Commission of India (CCI) takes into consideration a range of factors. Those are imports, entry barriers, market concentration, countervailing power, pricing effects, competition sustainability, substitutes, market share, competitor impact, vertical integration, failing businesses, innovation, economic development, and a balance of benefits and adverse effects. These factors play a crucial role in determining whether a combination could result in a significant adverse effect on competition within the market.⁴⁶

Section 29: Procedure for Investigation of Combination

1. **Initiation of Inquiry:** When the Competition Commission of India (CCI) has a prima facie opinion that a combination (such as a merger or acquisition) is likely to have, or has already had, a significant adverse effect on competition in the relevant market in India, it will issue a notice to show cause to the parties involved in the combination. These parties are called upon to respond within thirty days from the receipt of the notice, explaining why an investigation regarding the combination should not be conducted.⁴⁷

Response from Parties: Once the parties respond to the notice, the CCI may request a report from the Director General. This report, if called for, must be submitted by the Director General within the timeframe directed by the CCI.⁴⁸

In **Jet- Etihad combination case**⁴⁹, the CCI approved the merger between Jet Airways (India) Limited and Etihad Airways PJSC, marking the first FDI by a foreign airline in an Indian carrier. The CCI's evaluation, considering market dynamics, trans-boundary competition, and network effects, led to the approval, with emphasis on competition

⁴⁴ Sec 20(2), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁴⁵ Sec 20(3), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁴⁶ Sec 20(4), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁴⁷ Sec 29(1), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁴⁸ Sec 29(1A), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁴⁹ Combination Registration No. C-2013/05/122

preservation. The majority ruling's comprehensive approach outlined steps for assessing AAEC under section 31(1) of the Act, with provision for future scrutiny. Despite a minority call for investigation, the judgment signalled the CCI's commitment to fostering a competitive business environment in India's aviation sector, akin to international precedents.

2. **Publication of Combination Details:** If the CCI is still of the prima facie opinion that the combination would have an appreciable adverse effect on competition, it must, within seven working days from the receipt of the parties' response or the receipt of the Director General's report (whichever is later), direct the parties involved in the combination to publish details of the combination. This publication is to be made within ten working days of such direction, and it should be done in a manner deemed appropriate by the CCI. This is to inform the public and individuals affected or likely to be affected by the combination.⁵⁰
3. **Inviting Objections:** The CCI may invite individuals, members of the public, or any party affected or likely to be affected by the combination to submit their written objections within fifteen working days from the date on which the details of the combination were published as per sub-section (2).⁵¹
4. **Additional Information:** The CCI may, within fifteen working days from the expiry of the period specified in sub-section (3), request additional or other information from the parties involved in the combination.⁵²
5. **Submission of Additional Information:** Parties referred to in sub-section (4) must furnish the additional or other information requested by the CCI within fifteen days from the expiry of the period specified in sub-section (4).⁵³
6. **Proceeding with the Case:** After receiving all the necessary information and within a period of forty-five working days from the expiry of the period specified in sub-section (5), the CCI will proceed to deal with the case in accordance with the provisions outlined in section 31.⁵⁴

Section 31: Orders of Commission on Certain Combinations

This section outlines the actions that the Competition Commission of India can take in

⁵⁰ Sec 29(2), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁵¹ Sec 29(3), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁵² Sec 29(4), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁵³ Sec 29(5), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁵⁴ Sec 29(6), THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

response to combinations of enterprises or individuals that may impact competition. Commission can approve, reject, or propose modifications to combinations based on their impact on competition. If parties accept modifications, they must implement them; otherwise, the combination is deemed harmful. Failure to comply leads to Commission action. If no decision is made within a specific time, the combination is considered approved. The Commission can also order a combination to be void, subject to other laws. This does not affect proceedings under other existing laws.⁵⁵

Section 32: Acts Outside India with an Effect on Competition in India

This section grants the Competition Commission of India the power to investigate agreements, dominant positions, or combinations that have been conducted outside of India but have an appreciable adverse effect on competition within relevant Indian markets. The Commission can utilize Sections 19, 20, 26, 29, and 30 of the Act to inquire into these matters and pass orders as it deems fit, in line with the provisions of the Act.⁵⁶

Section 43A and Section 44: Penalties

If an Enterprise failure to notify Commission about combinations results in penalties up to 1% of total turnover or assets, whichever is higher. For making false statements or omitting crucial information in a combination leads to penalties between INR 50 lakhs and INR 1 crore, determined by the Commission.

In the case of **Google v. CCI**⁵⁷ the Competition Commission of India (CCI) fined Google for engaging in anti-competitive practices related to Android mobile devices, where Google abused its dominant market position. Google, as the owner of the Android operating system, imposed agreements like Mobile Application Distribution Agreement (MADA), Anti-fragmentation Agreement (AFA), Android Compatibility Commitment Agreement (ACC), and Revenue Sharing Agreement (RSA) on mobile manufacturers and required pre-installation of its apps on smartphones. These practices were viewed as an abuse of Google's dominant market position, hindering competition. The CCI fined Google Rs. 1337.76 crores and issued a cease-and-desist order for anti-competitive behaviour. This case highlights CCI's power to combat anti-competitive practices.

VI. RECENT AMENDMENTS REGARDING COMBINATION⁵⁸

In **Section 6** of the principal Act, several amendments have been introduced. Notably, in sub-

⁵⁵ Sec 31, THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁵⁶ Sec 32, THE COMPETITION ACT, 2002, No.12, Acts of Parliament, 2002(India)

⁵⁷ LPA No. 733/2014 and W.P. (C) No. 7084/2014

⁵⁸ According to THE COMPETITION (AMENDMENT) ACT, 2023, NO. 9 OF 2023, [11th April, 2023]

section (2), the time period for filing a notice for combination has been modified, with the addition of an explanation of the term "other document." Sub-section (2A) has been revised to reduce the time limit for certain cases. Additionally, in sub-section (4), conditions for exemptions from notifying the Commission have been specified, with a provision for the Commission to assess the combination's compliance. Furthermore, certain categories of combinations have been exempted from specific requirements according to sub-section (7). Lastly, sub-section (9) excludes certain financial activities from the Act's purview, including those conducted by public financial institutions, foreign portfolio investors, banks, or Category I alternative investment funds.⁵⁹

In the proposed amendments, a new **section, 29A**, is introduced, outlining the actions to be taken by the Competition Commission of India (CCI) when it identifies an appreciable adverse effect on competition following a combination. The section details the process through which the parties can offer modifications to the combination to address the adverse effects. If the proposed modifications are not accepted, the CCI can propose suitable changes, thereby involving the parties in the decision-making process.⁶⁰

Additionally, changes have been made to **Section 31**. The section now empowers the CCI to approve a combination subject to modifications if it deems that the adverse effects on competition can be eliminated. The parties are obligated to implement these modifications within a specified timeframe. If the combination is not approved or if the modifications are not implemented, the CCI can order the combination to be void or frame a scheme to address the adverse effects on competition. If no decision is made by the CCI within 150 days of the notice given, the combination will be deemed approved.⁶¹

The newly substituted **section 43A** emphasizes penalties for failures related to providing notice to the Competition Commission of India (CCI) specifically in relation to combinations. It outlines that if any person or enterprise fails to give notice under sub-section (2) or sub-section (4) of section 6, or violates sub-section (2A) of section 6, pertaining to combinations, the CCI may impose a penalty of up to one percent of the total turnover, assets, or the value of the transaction as specified in clause (d) of section 5, whichever is higher. Additionally, the section provides a grace period for parties to rectify void notices within thirty days, ensuring

⁵⁹ Sec 6, The Competition (Amendment) Act, 2023, No. 9 Of 2023, Ministry of Law and Justice [11th April, 2023]

⁶⁰ Sec 29A, The Competition (Amendment) Act, 2023, No. 9 Of 2023, Ministry of Law and Justice [11th April, 2023]

⁶¹ Sec 31, The Competition (Amendment) Act, 2023, No. 9 Of 2023, Ministry of Law and Justice [11th April, 2023]

that no action is taken during that period under this section.⁶²

VII. CONCLUSION

The Competition Act of 2002 serves as a crucial legislative framework in India, ensuring fair market practices and preventing anti-competitive behaviour. It has played a significant role in fostering a competitive environment, encouraging innovation, and promoting consumer welfare. With the evolving landscape of globalization and increasing competition, the Act remains essential in maintaining a level playing field for businesses, both domestic and international. Its provisions, along with the robust oversight of the Competition Commission of India, have helped create a conducive atmosphere for investment and economic growth. The Act's emphasis on scrutinizing mergers and acquisitions ensures that any combinations that may harm competition are thoroughly investigated, fostering a healthy and vibrant business ecosystem in India.⁶³ As India continues to strive for economic progress, the effective implementation and enforcement of the Competition Act will remain pivotal in achieving sustainable and inclusive growth.

In conclusion, it's clear that the Competition Commission of India (CCI) plays a crucial role in making sure that companies follow fair competition rules. As more and more companies join together through mergers and acquisitions, the CCI needs to keep a close eye on how these combinations might affect competition. To do this even better, the CCI should have more powers to investigate and understand how these mergers could change the market in the future, not just now.⁶⁴ It's also important for the CCI to think about how these combinations might affect things like jobs and society, even if they don't break the competition rules directly. Learning from other countries and getting advice from industry experts can help the CCI make better decisions. By looking ahead and considering all the impacts, the CCI can make sure that consumers are protected and that the market stays fair for everyone. If the CCI gets more authority, it can do an even better job of keeping the Indian market competitive, which is really important right now.

⁶² Sec 43A, The Competition (Amendment) Act, 2023, No. 9 Of 2023, Ministry of Law and Justice [11th April, 2023]

⁶³ Article 38 of the Constitution of India, 1950.

⁶⁴ Supra at 17, Garima Rai, Merger and Acquisition Transactions Under Competition Law