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# Corporate Governance and Regulatory Framework for Mergers & Acquisitions under the Competition Law: A Critical Analysis

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## ABSTRACT

*This study basically looks at the part of corporate governance (CG) in merger and acquisition (M&A) activities, with a particular centre on the regulatory framework built up by the Competition Act (CA). The CA aims to advance reasonable competition, avoid anti-competitive practices, and ensure that M&A exchanges don't hurt market dynamics or customer welfare. It investigates the challenges faced by organizations in adjusting their governance practices with the objectives of the competition law, including the need to adjust corporate development with competitive fairness. The study also investigates how weak governance structures can lead to unethical practices, such as monopolistic behaviour or the exploitation of market power, which weaken the standards of the CA. By cultivating ethical decision-making, risk management and stakeholder trust, robust governance practices can contribute to the long-term victory of M&A activities while guaranteeing compliance with competition laws.*

***Keywords:*** *M&A, corporate governance, Competition Act, anti-competitive practices, AAEC*

## I. INTRODUCTION

Corporate or a corporation is a legal entity which is accomplished to enjoy the rights and liabilities of a natural person. Corporate governance (CG) refers to the internal set of controls, policy and procedure set up within the organization, a framework, to guide the operations of the organization and its dealings with its various stakeholders such as the customers, management, employees, government and other corporate bodies. The culmination of two words, that is 'CG' reflects that it deals with the governing of corporations.

CG regulations assist businesses to strengthen long-term value for shareholders or stakeholders, safeguard confidence in the marketplace, investors and customers strengthen the probability of achieving profitable Merger and Acquisition (M&A) transactions. Higher

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standards of CG advance an improved alignment of interests between manager and shareholders, which ought to direct all investment choices made by firms, including decisions with respect to M&As[3]. CG guarantees that choices related to M&As are made within the best interest of the company and its stakeholders, with adequate oversight, accountability, and transparency. On the other hand, competition law, as cherished in the Competition Act (CA) 2002 in India, directs M&A transactions to anticipate anti-competitive practices, such as the creation of monopolies or the abuse of dominant market positions, which may hurt customer welfare and market flow.

## II. Mergers and acquisitions

Mergers can be defined as unification of two players into a single entity, acquisitions are circumstances where one player buys out the other to combine the bought entity with itself. It may be in the shape of a purchase, where one business buys another or a management purchase out, where the management buys the business from its owners. A merger creates value if the combined value of bidder and target entities increases at the merger announcement and those reflected in stock prices show some potential net present value of the acquiring company[4]. The essential point of combining or combining businesses is to attain speedier corporate development, speedier development may come through item product advancements or expanded competitive position[5]. Careful and effective planning in governance will spell/bring success in M&As. M&A has not been defined anywhere; the terms of amalgamation and takeover have been used and defined instead of M&As. In terms of companies as amalgamation in respect of them section 2(1B) of the Income Tax Act defines the merger of one or more companies with another company here all properties and liabilities are transferred to the amalgamated company[6]. The Companies Act (CA), 2013 without entirely defining the term clarifies the concept. A 'merger' could be a combination of two or more entities into one; the desired effect being not just the accumulation of assets and liabilities of the particular entities, but organization of such entities into one business.

The shareholders holding the share value of 3/4 of the amalgamating company should become

[3] Tanveer Hussain, Lawrence Kryzanowski, Gilberto Loureiro & Muhammad Sufyan, Enhancing Corporate Governance Quality Through Mergers and Acquisitions, J. Int'l Fin. Mgmt. & Acct. 469 (2024), https://doi.org/10.1111/jifm.12203

[4] Vandana Gandhi, Prashant Chhajer & Vishal Mehta, Mergers and Acquisitions in India: A Strategic Impact Analysis for Corporate Restructuring, 8 Asian J. Res. Banking & Fin. 2 (Mar. 2018), https://www.researchgate.net/publication/324125959

[5] Lalith Kumar J & Dr. Ambika Kumari S, A Study on Mergers and Acquisitions in India, 8 J. Legal Stud. & Res. 36 (2022)

[6] Sheeba & Kanwal N. Kapil, Merger and Acquisitions: Valuation, Leveraged Buyouts, and Financing 7 (2d ed. 2018, Wiley)

the shareholders of the amalgamated company. Merger can be done in two ways - merger through consolidation and merger through absorption. Merger through consolidation means when two or more industries combine to form a new entity or company. The new company's combination will be a new legal entity. New firm combines all his assets and liabilities and takes a new name for the new company. Merger through absorption means when two or more companies combine into any of the existing participating companies. One company is absorbed by or converted into another. The dominant company fully absorbs the smaller company and retains its own identity.

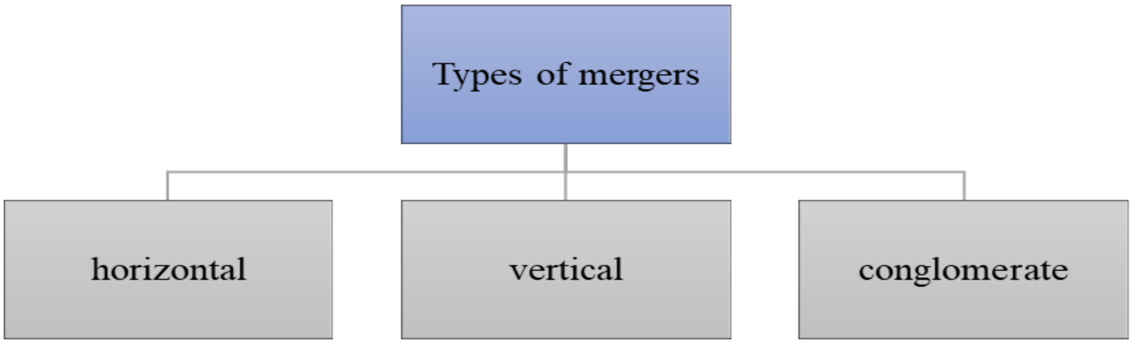


Figure 1: Types of mergers

As depicted in figure 1, mergers can be of three different categories, horizontal, vertical and conglomerate. The two firms involved in the same business line and compete against each other in the same industry are known as a horizontal merger. Vertical merger takes place when two companies are in different stages of production or distribution, or value chain will merge. It does not change the market shares in a relevant market nor eliminate a source of direct competition. A conglomerate merger is the merger involving diverse business activities. Mergers between companies having no common link and they are totally disparate.

Domestic and cross-border M&A are key commerce exercises that include the consolidation of companies or assets. Domestic M&A refers to transactions happening inside the same country, where companies merge or acquire (M/A) others to strengthen market position, achieve economies of scale, or eliminate competition. In contrast, cross-border M&A includes companies from diverse countries, empowering market development, access to modern innovations, or diversification of assets. Both sorts of M&A play significant parts in corporate development, with domestic deals cultivating local market dominance and cross-border transactions driving globalization and international competitiveness.

## III. Corporate governance in mergers and acquisitions

M&As are getting progressively common, whereas these transactions can bring numerous benefits, they can moreover be complex and challenging to manage. CG plays a progressively vital part in M&As to guarantee that any modern entity created due to the M&A complies with competencies, policies and procedures. The objective of CG is to assist in overseeing potential risks. It moreover focuses on shareholder value, regulatory compliance and operational viability to guarantee fruitful outcomes and keep up progression between the two combining companies. M&As are a significant part of commerce development and restructuring but can make interesting challenges in terms of governance. A fruitful M&A requires cautious and effective planning to select the right governance structure for the modern venture. Directors and officers of a commerce can guarantee that they are satisfying their fiduciary duty during M&As by making frameworks which provide all decisions taken are beneficial for the commerce[7]. Higher standards of corporate governance promote a better alignment of interests between manager and shareholders, which should guide all investment decisions made by firms, including decisions regarding M&As[8].

### A. Strategic planning and evaluation

M&A practices commenced to expand after globalization; companies laid the cornerstones for growing, diversifying, and developing their global market presence. M&A involves "The unification of two or more than two companies or entities with the consensus mindset of achieving successful endeavor in the merger process and obtaining maximum benefit from the merged entity." A merger involves a strategic decision between two or more entities combining or amalgamating their operation with the sole intention of incrementing the competitive valuation of strength along with expansion and effortless entry into novel markets[9].

Corporate strategy relates to arranging the business activities of the corporations as a whole, with a view to achieving certain predetermined objectives at the corporate level. These objectives include orderly redirection of firm's activities, deploying surplus cash from one business to finance profitable growth in another exploiting interdependence among present or prospective businesses within the corporate portfolio, and risk reduction. Business strategy is

[7] Jo Ellis, A Board Member’s Guide to Mergers and Acquisitions, Corp. Governance Inst., https://www.thecorporategovernanceinstitute.com/insights/guides/ultimate-guide-mergers-and-acquisitions/

[8] Tanveer Hussain, Lawrence Kryzanowski, Gilberto Loureiro & Muhammad Sufyan, Enhancing Corporate Governance Quality Through Mergers and Acquisitions, 35 J. Int'l Fin. Mgmt. & Acct. 469 (2024), https://doi.org/10.1111/jifm.12203

[9] Sahil J. Singh, Strategic Amalgamation of Due Diligence & Corporate Governance in the Field of Merger and Acquisition in India, 7 Int’l J.L. Mgmt. & Human. 4304 (2024)

concerned with improving the competitive position of an individual business, with a view to maximizing the contribution that the individual business makes to the corporate objectives. It also aims at exploiting the strategic assets that the business has accumulated[10].

### B. Due-diligence

Due diligence is a phase of verification that checks upon the viability of proceeding with the intended M&A, with investigation along the axis of preferred risks that should be handled, as well as investigation on the available alternatives that could guide toward making defensible decisions during negotiations. Due diligence is all about carefully analysing and inquiring about a company's overall operations. This process is carried out by a variety of groups, such as the inner group, exterior advisors, and the buyers who bring their own information and involvement related M&As within the industry. When it comes to M&A, due diligence assist the buyer verify critical data and disclosures from the dealer, such as contracts, monetary records, audit statements, and both tangible and intangible resources or assets. It's basic for investors to perform due diligence to minimize dangers in securing deals. This process permits buyers to reveal vital points of interest about the budgetary wellbeing of the company they're looking to acquire. Gathering and affirming this data is crucial for accurately valuing the acquiring company[11]. Due diligence and transparency encompass the foundation of CG pertaining to M&As. Due diligence relates to the process of comprehensive investigations of all relevant aspects of a target company in the areas of finance, legal standing, operations, and others. This rigorous investigative process can detect the real risks, liabilities, and opportunities that are presented by any given transaction.

### C. Shareholders approval

The Board of Director (BOD) plays one of the foremost basic parts in CG, being the overseeing body for the company that manages administration, key choices, and the company's operations in tune with the law and morals. The BOD is fundamental for upgrading CG. Their primary obligations include characterizing the company's vital heading, overseeing the administration group, guaranteeing budgetary judgment, and securing shareholder interface. This requires them to effectively screen the company's execution, audit budgetary explanations, and approve noteworthy decisions. The board too should cultivate a solid moral culture and guarantee compliance with laws and directions. Moreover, they are entrusted with successful hazard administration, progression arranging, and deciding official compensation.

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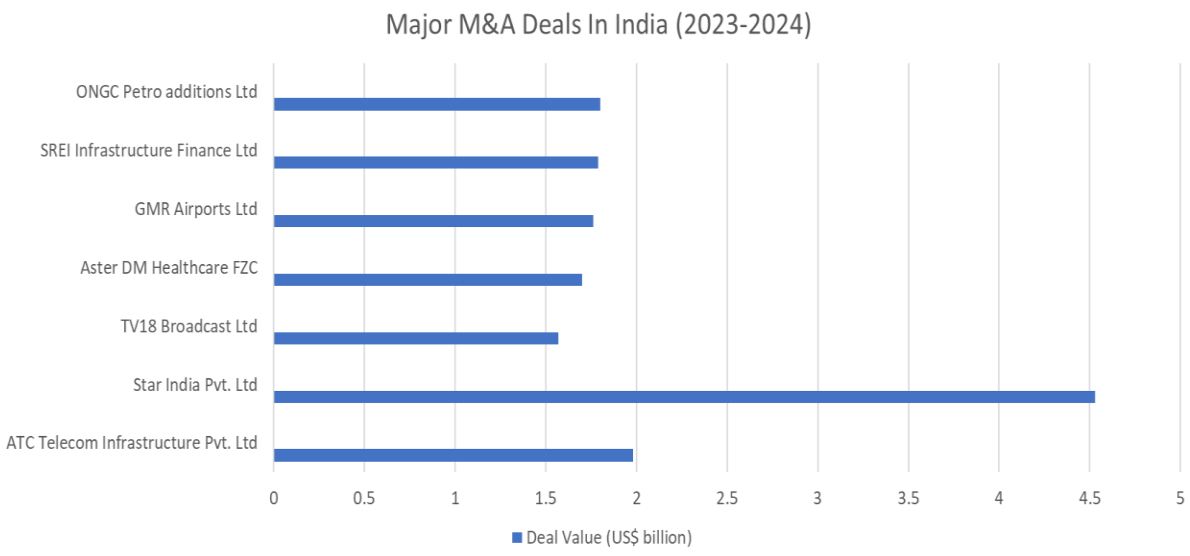
[10] Kamal Ghosh Ray, Mergers and Acquisitions: Strategy, Valuation and Integration 51 (2d ed. 2022, PHI Learning Pvt. Ltd.)

[11] ib.id. 4310

By carrying out these responsibilities, the board of executives plays an imperative part within the company's long-term maintainability and victory.

The BODs must guarantee that the company's budgetary statements comply with the corresponding financial information standards such as International Financial Reporting Standards (IFRS) or Generally Accepted Accounting Principle (GAAP). They must be aware of changes in accounting guidelines and their effect on the company's monetary statements. The BODs should guarantee that the company is obliged to uncover compliance. The company must disclose critical information at the proper time and within the right heading for investors and other partners. By completing these duties, the BODs help the Company give solid monetary statements, increase the confidence of investors and secure their entire benefits. The BODs administer management, guaranteeing that the company has respected all aspects of the ethical obligations and other regulations applied. The BODs shape the extreme decision-making authority in any organization and so shapes the core of the system. Transparency, accountability, and long-term viability are not guaranteed without proper CG[12]. The BODs are capable of planning a solid framework to oversee dangers that can recognize, assess and resolve dangers that can influence the working environment, the results of the company and the image of it. The council is straightforwardly responsible for the supervision and administration of business administration activities, as well as guaranteeing that these exercises are given and working to recognize and kill related dangers.

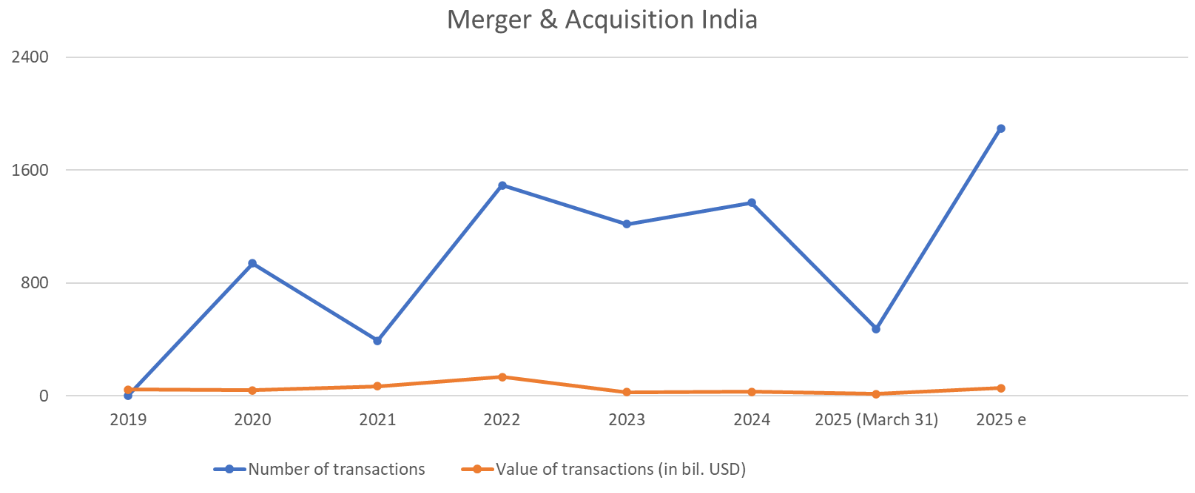



Source: ibef.org, https://www.ibef.org/blogs/an-overview-of-recent-mergers-and-acquisitions-trend-in-india

Figure 2, represents the most significant M&A in India during 2023 and 2024, highlighting

[12] Akshita Negi & Dr. Deepti Monga, Role of Board of Directors in Enhancing Corporate Governance: An Analysis, 11 JETIR 466 (2014)

the involved companies, the nature of each deal, and their financial value. In 2023, notable deals included $1.80 billion JV buyout of ONGC Petro additions Ltd by ONGC Ltd from GAIL Another major transaction was the insolvency-driven acquisition of SREI Infrastructure Finance Ltd, valued at $1.79 billion, undertaken by the NARCL and the India Debt Resolution Company Ltd, reflecting increased restructuring activity in India’s financial sector. In the aviation space, GMR Airports Ltd was acquired through a JV buyout by GMR Airports Infrastructure Ltd for $1.76 billion, following a stake sale by Aeroports de Paris SA. The healthcare sector also witnessed a large deal, with Aster DM Healthcare FZC being bought for $1.70 billion by Fajr Capital and the Moopen family through a private equity buyout. In media, TV18 Broadcast Ltd merged with Network18 Media & Investments Ltd in a stock deal worth $1.57 billion, reflecting consolidation in India’s broadcast sector. In 2024, the most significant deal was the joint venture between Viacom18 and Walt Disney Co. for Star India Pvt. Ltd, valued at $4.53 billion. This was the largest transaction on the list and highlights the growing competitiveness and value in India’s entertainment and media landscape. Another notable deal in 2024 was the strategic investment of $1.98 billion in ATC Telecom Infrastructure Pvt. Ltd by Data Infrastructure Trust, following its acquisition from American Tower Corp, indicating robust interest in India's digital and telecom infrastructure.




Source: The Institute for Mergers, Acquisitions and Alliances (IMAA) M&A statistics by countries.

Figure 3 illustrates the trend of M&A activity in India from 2019 to an estimated projection until 2025, capturing both the number (No.) of transactions and their total value in billion USD. From 2019 to 2020, India experienced a sharp increase in the No. of M&A transactions, although the total value remained relatively low, indicating a higher volume of smaller deals. In 2021, the No. of deals declined, but the overall value increased, suggesting a shift toward fewer but larger transactions. The year 2022 marked a peak in both transaction volume and value, likely driven by post-pandemic recovery and strategic consolidation efforts across various sectors. However, in 2023, there was a notable decline in both metrics, potentially due to market uncertainties, regulatory constraints, and global economic headwinds. A moderate recovery in transaction volume occurred in 2024, but deal values remained subdued, indicating a prevalence of smaller strategic acquisitions. Till March 2025, a sharp dip is seen, likely due to the limited data from the first quarter. Nevertheless, the estimate for the full year 2025 suggests a strong rebound, with projections indicating a new high in the No. of deals and a significant increase in total deal value. This points to a renewed wave of investor confidence and aggressive deal-making across industries in India's M&A landscape.

## IV. Regulatory framework for mergers & acquisitions under the Competition Act

The CA, 2002 regulates M&A in India through its combination control regime, which aims to prevent anti-competitive market structures while facilitating business growth. The beginning of Indian competition law dates back to 1969 when the Monopolistic and Restrictive Trade Practices (MRTP) Act, 1969 was enacted with the purpose of the first attempt of the country to control all anticompetitive practices. The said Act sued and intended to control economic superiority and being monopoly, unfortunately ended in declaring MRTP unfit for present time to combat new age economic practices, apart from some other parallel predicates. The above lacks included that once the Indian economy became liberalized in the beginning months of the 1990s, the ineffectiveness of the MRTP Acts began with exposure, and therein was a hunt for more comprehensive regulation that would mint some competition and regulation of behaviours in markets. It is because of these inefficiencies that the MRTP Act was repealed through the enactment of the CA, 2002, which by 2009 provided for the formation of Competition Commission of India (CCI) and was fully operational. CA 2002 is a distinctly new shift in the methodology of regulating competitiveness in India compared to earlier legislation which only addressed monopolies.

The CA, 2002 was ordered with an objective for promoting competition and ensuring the interest of the customer. The CA 2002 basically deals with three sorts of agreements like anti-competitive agreement, abuse of dominance and regulation of combination.[13] The control of mergers in India has been aimed at advancing fair competition, avoiding monopolistic

[13] Sneha Suman, Merger and the Role of Competition Commission of India, Legal Servs. India, https://www.legalservicesindia.com/article/2244/Merger-And-The-Role-of-Competition-Commission-of-India.html

practices, and guaranteeing customer welfare, to a great extent through the CA, 2002. The objective of the CCI is to forbid mergers that lead to an extreme erosion of competition. However, the anti-competitive effects of a merger cannot be evaluated objectively[14]. It is widely recognized that most mergers actually benefit competition and consumers by allowing firms to operate more efficiently. However, some are likely to lessen competition which can lead to higher prices, reduced availability of goods or services, lower quality of products, and less innovation[15].

The CA plays a significant part in directing mergers to avoid anti-competitive practices by guaranteeing that market dynamics stay reasonable and competitive. It scrutinizes M&As to evaluate whether they might lead to a considerable reduction of competition, creation of monopolies, or abuse of dominant market positions. By assessing the potential effect on market structure, customer choice, and pricing, the Act aims to avoid mergers that could hurt competition and, subsequently, customers. This regulatory framework promotes a sound competitive environment, encourages development, and safeguards customer interests by avoiding the concentration of market power within the hands of a number of entities. In this way, the Competition Act serves as an imperative tool in keeping up market balance and fostering economic efficiency. The primary legislation under which M&A is dealt from the side of competition laws is the CA, 2002. The main driving concern is where there are structures and procedures permitting a few companies to take over a large part of the market, which may harm competition, the parties concerned would wish to protect consumer rights against excessive monopolizations.

CA, 2002 forbids agreements among ventures or persons, including cartels, that have an Appreciable Adverse Effect on Competition (AAEC) inside India. It targets agreements that directly or indirectly decide purchase or sale costs, limit or control production, supply, markets, technical improvement, investment, or provision of services, and those that share markets or sources of production or supply by allotment of territory or domain, or control of production, supply, or sale. In essence, it aims to avoid collaborations that misshape market dynamics and harm consumer welfare. The effects it can have under different markets take it to judge the capacity of their M&A deals AAEC upon the market structure, concentration, and the likely entrants. So, under scrutiny, the CCI either gives its consent or modifies or

[14] Dhiraj Choudhary, Merger Regulation Under the Competition Act, 2002: A Comparative Legal Perspective, 6 Int'l J. Legal Sci. & Innovation, 330 (2023), https://doij.org/10.10000/IJLSI.112232

[15] Rishi Chib, Mergers and Their Regulation Under the Competition Law in India: A Multi-Jurisdictional Study, 5 Int'l J.L. 129 (2019)

withholds the tripartite arrangements[16]. As compared to its precedent this wider spectrum of anticompetitive agreements, abuse of dominant position and combinations encompasses a vast majority of these the conceptual framework was created when the CCI was established as the legal body entrusted with the duty of enforcing the Act and managing anticompetitive conduct in the economy. The CCI's legal rules have changed by amendment acts and various court decisions that define its regulatory mandate including within the M&A context. The combination regulations are significant for keeping up a competitive market, there is a need for persistent evaluation and adaptation. Striking a balance between rigorous scrutiny and fostering a conducive trade environment is essential[17].

### A. Section 5 of Competition Act

Section 5 of the CA, 2002, characterizes a combination as an acquisition, amalgamation or merger that meets specific monetary thresholds. A transaction qualifies as a combination if acquirer and the target venture, jointly have: Assets surpassing INR 1,000 crore(cr.) or turnover over INR 3,000 cr. in India. Universally, assets over US$ 500 million (with at least INR 500 cr. in India) or turnover over US$ 1,500 million (including at least INR 1,500 cr. in India). In the event that the post-acquisition has assets surpassing INR 4,000 cr. or turnover over INR 12,000 cr. in India, or universally US$ 2 billion in assets (with at least INR 500 cr. in India) or US$ 6 billion in turnover (including INR 1,500 cr. in India).

In the event that an individual acquires control over an undertaking and already controls another engaged in a similar commerce, the combination applies if: Joint assets surpass INR 1,000 cr. or turnover over INR 3,000 cr. in India. Universally, assets surpass US$ 500 million (with at least INR 500 cr. in India) or turnover over US$ 1,500 million (including INR 1,500 cr. in India).

In case the merged or recently made enterprise has; Assets surpassing INR 1,000 cr. or turnover over INR 3,000 cr. in India. Universally, assets of US$ 500 million (with INR 500 cr. in India) or turnover over US$ 1,500 million (including INR 1,500 cr. in India).

In case the group post-merger has assets surpassing INR 4,000 cr. or turnover over INR 12,000 cr. in India, or universally US$ 2 billion in assets (including INR 500 cr. in India) or US$ 6 billion in turnover (including INR 1,500 cr. in India).

This section guarantees that huge transactions are reviewed to anticipate anti-competitive practices and keep up reasonable market competition. thresholds refer to the predefined

[16] G. K. Kapoor and Sanjay Dhamija, Company Law and Practice 1170 (Taxman, New Delhi, 27th edn., 2024)
[17] Gurpreet Kaur, Regulation of Combinations Under the Competition Act, 2002: An Analysis, 9(4) Int'l J. Novel Rsch. & Dev. 319 (2024)

monetary limits related to assets and turnover that decide whether a combination requires administrative scrutiny by the CCI. These thresholds are planned to recognize combinations that might possibly harm competition in the market due to their size, scale, or financial impact. If a combination surpasses these limits, the parties included must inform the CCI and seek its approval before proceeding. The reason for these thresholds is to guarantee that only combinations with a critical impact on the market are surveyed, while smaller transactions that are unlikely to influence competition are excluded from regulatory scrutiny. This balance helps in keeping up a competitive market environment while lessening unnecessary regulatory burdens on businesses. The CA orders that parties to a combination must inform the CCI about the proposed combination in case certain asset or turnover thresholds are met. The CCI evaluates the potential impact on competition and may endorse the combination, endorse it with alterations, or disallow it if it is found to be anti-competitive[18].

**B. Section 6 of Competition Act**

The Act oversees the regulation of combinations, which incorporate mergers, acquisitions, and amalgamations. It's just like the referee in a game, making sure that this “combination” doesn't break any rules that seem to hurt customers or other businesses. The law doesn't want companies to have too much control, which may lead to unfair pricing or diminished choices[19]. The essential objective of this section is to guarantee that such combinations do not result in an AAEC inside the relevant market in India. The Act orders that parties to a combination that exceeds certain financial edges must inform the CCI and get its approval before continuing with the combination. The CCI assesses the potential effect of the combination on competition, considering factors such as market share, barriers to entry, and the probability of anti-competitive practices. In case, the CCI states that the combination is likely to cause an AAEC, it may either oppose the combination or approve it subject to modifications or conditions. However, in case the CCI finds no adverse effect, it approves the combination, permitting the parties to continue. This regulatory framework aims to promote fair competition, prevent monopolistic practices, and secure consumer interests while fostering economic growth and efficiency. In case a combination causes or is likely to cause an AAEC within the relevant market in India it can be modified/prohibited by the commission[20].

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[18] Ibid. at 315

[19] Tripti Malu, Demystifying Section 5 & 6 of Indian Competition Act 2002: Understanding “Combination” and Its Regulations, Taxguru.in (Nov. 8, 2023), https://taxguru.in/corporate-law/section-5-6-indian-competition-act-2002-combination-regulations.html.

[20] Competition Commission of India, Regulation of Combinations (Section 5 & 6), CCI,

The case SCM Soilfert Limited vs CCI [21] revolves around the imposition of a penalty of ₹2 crores on SCM Soilfert for failing to notify the CCI of a proposed combination under Section 6(2) of the CA, 2002. The appellants had acquired 24.46% of the shares of Mangalore Chemicals and Fertilisers Limited (MCFL) in 2013, followed by a second acquisition of 0.8% in 2014, without prior notification to CCI. The appellants argued that the first acquisition was solely for investment purposes and thus exempt under Schedule I of the Competition Regulations, while the second acquisition was notified within 30 days as required. They also claimed that the shares from the second acquisition were placed in an escrow account, preventing them from exercising voting rights until CCI approval. However, the CCI and the Competition Appellate Tribunal (COMPAT) held that the acquisitions were part of a strategic plan to take over MCFL, not merely investments, and that the notification under Section 6(2) must be made before the combination is entered into, not after. The CCI imposed a nominal penalty of ₹2 crores, considering the total turnover of the combination was ₹3,322 crores. The SC upheld the penalty, emphasizing that mens rea (intent) is not required for imposing penalties under civil obligations, and the breach of statutory provisions warranted the penalty. The appeal was dismissed, affirming the CCI's decision.

CCI v. Sun Pharmaceuticals Industries Ltd.[22] the CCI addressed allegations of anti-competitive practices in the pharmaceutical sector. The case involved Sun Pharmaceuticals Industries Ltd., which had acquired Ranchero Labs Pvt. Ltd., a company engaged in the production of oncology drugs. The CCI investigated whether the acquisition led to a substantial lessening of competition in the market for specific cancer drugs, particularly those where Ranchero Labs was a significant player. The CCI found that the acquisition did not result in any adverse impact on competition, as there were other competitors in the market offering similar products, and the combined market share of Sun Pharmaceuticals and Ranchero Labs was not significant enough to create a dominant position. The CCI emphasized the importance of evaluating market dynamics, including the presence of competitors, market shares, and barriers to entry, while assessing M&As under the CA, 2002. This case highlighted the CCI's role in ensuring that M&As do not harm competition or consumer interests, while also recognizing the need for a balanced approach that promotes innovation and growth in critical sectors like pharmaceuticals.

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https://www.cci.gov.in/regulation-of-combination

[21] SCM Soilfert Ltd. v. CCI, AIR Online 2018 SC 48

[22] CCI v. Sun Pharm. Indus. Ltd., SCC OnLine CCI 45 (2015)

### C. Role of the Competition Commission of India in regulating mergers

The CCI, a statutory body set up beneath the CA, 2002 with the essential purpose of directing competition within the market, it plays a critical part in ensuring interests of consumers[23]. CCI became functional in 2009, seven years after the CA was passed in 2002 with the goal of advancing healthy competition. The body, which is commonly called the anti-trust guard dog, is required to secure the Indian markets against exercises among players which may have appreciable adverse effects on competition.

The CCI serves a few basic functions to guarantee a competitive marketplace such as Anticipating Anti-Competitive Practices, Merger Control, Market Regulation, Consumer Protection. The CCI effectively monitors and explores practices that will ruin competition, such as cartel behaviour and abuse of dominant positions. Cartels, which include agreements between competitors to fix prices or limit production, are one of the essential targets of CCI's enforcement activities. The CCI audits M&As to anticipate the creation of monopolies. Under Section 6 of CA, companies must inform CCI of their merger in the event that it meets certain thresholds. The commission assesses these transactions to guarantee they don't adversely affect market competition. The CCI has the authority to regulate different sectors to promote sound competition. By issuing guidelines and recommendations, it seeks to guarantee that businesses work fairly and don't engage in practices that harm customer welfare. By cultivating fair competition, the CCI by implication secures buyer interests. It points to guarantee that buyers have access to a wide range of goods and services at competitive prices. The commission addresses complaints from consumers with respect to anti-competitive practices.

In case any individual or enterprise fails to file notice of the combination to the Commission, the Commission should impose on such individual or enterprise a penalty which may extend to one percent, of the whole turnover or the assets, whichever is higher, of such a combination[24].

### D. Competition (Amendment) Act, 2023

The CA of 2002 was laid to control abuse of dominance which the MRTP Act, 1969 failed to do, in order to preserve sound competition within the Indian market. The prime point of the Act was to restrain any individual or undertaking from entering such combinations which

[23] Shruti Mahajan, What Is the Role of Competition Commission of India, Moneycontrol (Sept. 12, 2022), https://www.moneycontrol.com/news/trends/legal-trends/explained-what-is-the-role-of-competition-commission-of-india-9163841.html

[24] Competition Act, § 43A, 2002

have an AAEC or abuse their prevailing position inside the relevant market. With the commencement of this Act, the Indian market has developed exponentially. There has been an upthrust within the operation of businesses and companies based on the internet and technological progression have been set up. Observing such progressions, the Ministry of Corporate Affairs (MCA) within the year 2018, constituted the Competition Law Review Committee (CLRC) to check the execution of the Act in coherence with India's ever-growing financial basics. In 2019, certain drawbacks were found within the existing framework and thus a number of changes were prescribed for structured dealing of the market competition. Further within the year of 2022, MCA came up with certain revisions to be made to the CA and the same was referred to the Joint Parliamentary Standing Committee (Standing Committee) for a point by point audit and meeting with distinctive stakeholders. MCA, on the recommendations made by the Standing Committee, brought certain additional revisions and the draft was put forward to Parliament on 8-2-2023. Besides, after taking the report under consideration, Lok Sabha passed the Competition (Amendment) Bill, 2023 on 29-3-2023, and the Rajya Sabha without discussion, passed it on 3-4-2023, to amend the two-decade long CA of 2002.

The 2023 amendment has witnessed some changes in the CA 2002. These amendments are the Deal value threshold for combination; this prohibits transactions above a Rs. 2,000 cr. thresholds of assets and turnover. The amendment modifies the definition of control as the aptitude to workout fabric influence over another enterprises or group by one or more ventures or groups. The Act has reduced the period to 150 days for the approval of the combination. The Act provides that those enterprises not into similar trade shall be ventured into anti-competitive agreements. However, these amendments according to the experts have their own drawbacks like the companies would be required to reassess their deals following the compliance under the law, the revised threshold makes more M&A deals to fall under the purview of CCI, there will be a burden over the smaller deals now if they increase their deal value. Although not all the amendments are in work, these significant changes are showing a positive outlook for the ministry as they are improving but how much these amendments will help the businesses is still unexplored.

### E. Other regulatory authorities

The regulatory landscape for M&As in India expands beyond the CCI to include different authorities that collectively shape CG and guarantee compliance. The Securities and Exchange Board of India (SEBI) plays a significant part by implementing the Takeover Code (SEBI SAST Regulations, 2011), which orders disclosures, open offers, and reasonable treatment of minority shareholders in acquisitions. The National Company Law Tribunal (NCLT) directs mergers and schemes of arrangement beneath the CA, 2013, guaranteeing procedural reasonableness and creditor protections. Moreover, the Reserve Bank of India (RBI) controls cross-border M&A under Foreign Exchange Management Act (FEMA) 1999, while sector-specific regulators like IRDAI (for insurance) and TRAI (for telecom) impose extra compliance layers. In spite of this multi-regulatory system, gaps persist such as overlapping jurisdictions, delays in approvals, and inconsistent enforcement which can prevent seamless M&A execution. A critical examination reveals the need for more prominent inter-regulatory coordination, streamlined approval processes, and harmonized compliance standards to strengthen CG while balancing market effectiveness with investor protection. Improving regulatory clarity and decreasing bureaucratic hurdles will cultivate a more robust, transparent, and competitive M&A ecosystem in India.

## V. Challenges and gaps in the regulatory framework

M&As include combining distinctive organizational cultures, which can posture critical challenges. Cultural differences can lead to clashes among employees, management, and stakeholders. For illustration, the management style and decision-making processes of the obtaining/acquiring company may vary from those of the acquired company, leading to resistance to alter, lack of trust, and communication breakdowns. Joining two or more companies after a M/A can be an overwhelming task, especially when dealing with large organizations. M&As include taking on legal risks related with the obtained company's liabilities and obligations. The obtaining company must conduct careful due diligence to identify potential legitimate risks, such as pending litigation, tax disputes, environmental concerns, and contractual commitments. Failing to recognize such dangers can expose the obtaining company to significant monetary and reputational losses[25]. However, in spite of a robust framework, a few challenges and gaps continue in the implementation and enforcement of the Act during M&A transactions. These challenges can create uncertainties for businesses, delay approvals, and in some cases even lead to outcomes that will not completely align with the Act's objectives. Here are some of the key challenges and gaps faced during M&A under the CA.

1. **Thresholds for Notification**-The Act mandates that combinations exceeding certain asset or turnover thresholds must be notified to the CCI for approval. However, these thresholds are sometimes perceived as too low, especially for smaller transactions that

[25] Kunal Singh, Issues and Challenges Faced by Businesses in Mergers and Acquisitions in India, 2 J. Legal Res. & Juridical Sci. 702 (2023), https://jlrjs.com/wp-content/uploads/2023/03/80.-Kunal-Singh.pdf.

may not significantly impact competition. This results in unnecessary regulatory burden and delays for transactions that pose no real threat to market competition.

2. **Lengthy and complex approval process-**The CCI is required to approve or reject a combination within 150 days, the multi-step endorsement process can be time-consuming due to the complexity of transactions, the require for detailed analysis, and the submission of additional information. Delays in approval can hinder the timely completion of M&A deals, affecting business plans and creating uncertainty for stakeholders.

3. **Limited expertise in emerging sectors**-The CCI may lack sufficient expertise in evaluating the competitive impact of M&A transactions in emerging sectors such as digital markets, fintech, and biotechnology, where traditional metrics may not apply and creates challenges for regulators in assessing competition risks.. This can result in inadequate or inconsistent assessments, potentially stifling innovation and growth in these sectors.

4. **Overlap with other regulatory framework**-M&A transactions frequently require endorsement from multiple regulatory authorities, such as SEBI, RBI, and sector-specific regulators (e.g., IRDA for insurance, TRAI for telecom). The lack of coordination between these regulators can lead to conflicting requirements and delays. It may cause delays, increase compliance costs, and sometimes create complexities in navigating multiple regulatory frameworks.

5. **Impact on cross-border mergers**-Multinational corporations often face different competition laws across jurisdictions. Lack of coordination between CCI and foreign regulators creates uncertainty in cross-border transactions, affecting India's attractiveness for global investments.

6. **Inadequate penalties for non-compliance**-While the CA provides for penalties for non-compliance, such as failure to notify a combination, the penalties are often perceived as inadequate to deter anti-competitive behavior. Some companies bypass regulatory scrutiny or delay compliance due to weak enforcement mechanisms.

Companies engaged in cross-border M&A deals often face conflicting regulatory requirements, leading to delays, increased compliance costs, and legal uncertainties. This inconsistency can undermine the global competitiveness of firms and create inefficiencies in the administrative process. Additionally, the CA may not adequately address the rise of digital platforms and data-driven markets, where competition concerns often revolve around access to data, network effects, and ecosystem dominance rather than traditional market shares. Competition authorities may lack the resources, expertise, or tools to effectively monitor and enforce compliance with merger control provisions. Furthermore, the lengthy and bureaucratic approval processes can prevent companies from seeking after beneficial mergers, stifling innovation and economic growth. The lack of clear guidelines and predictable outcomes in merger reviews can create uncertainty for businesses. Moreover, limited involvement of third parties, such as competitors, consumers, and other stakeholders, in the review process can result in decisions that do not fully consider the broader impact on the market. Addressing these challenges requires a more proactive and adaptive approach, including updating regulatory frameworks, enhancing international cooperation, and investing in the capacity of competition authorities to effectively oversee the CA serves as a crucial regulatory framework for M&A to prevent anti-competitive practices and promote fair market competition.

However, despite its significance, several challenges and gaps persist in its implementation, impacting the efficiency and predictability of M&A transactions. The CCI is responsible for reviewing M&A transactions to assess their impact on market competition. However, the regulatory scrutiny can be time-consuming, delaying deal closures and increasing compliance costs for businesses. The process often lacks flexibility, making it challenging for companies to execute time-sensitive transactions. This creates uncertainty for businesses, as they cannot predict how the CCI will assess their transactions. Tending to these challenges requires administrative reforms, including streamlined approval processes, clearer guidelines on AAEC, better coordination with global regulators, and a more robust framework to assess digital and distressed mergers. Strengthening competition laws will enhance market efficiency while fostering a fair and competitive business environment.

## VI. Conclusion and suggestions

Effective CG mechanisms help in aligning the interest of stakeholders, mitigate conflicts of interest and ensure that M&A activities contribute to market efficiency and consumer welfare. The CA 2002 serves as a regulatory safeguard, preventing anti- competitive practices and promoting healthy market competition. However, challenges such as inadequate disclosure, lack of stakeholder engagement, and potential misuse of power by dominant firms persist. To address these issues, it is essential to strengthen CG frameworks by enhancing board oversight, ensuring robust due diligence and fostering greater transparency in M&A transactions.

Regulatory authorities should adopt a proactive approach to monitor and enforce compliance with competition laws, ensuring that M&A activities do not undermine market dynamics. By integrating strong CG practices with the regulatory framework of the CA 2002, M&A transactions can be conducted in a manner that balances corporate growth with the broader interests of the economy and society.

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