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# Proliferation of Merger Control Laws

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## ABSTRACT

*The economic liberalization and technological change of the last 10 to 15 years have profoundly altered the global economy. With economic liberalization, nations have come to recognize the importance of competition "as a tool for spurring innovation, economic growth, and the economic well-being of countries around the world" and the importance of antitrust laws to safeguard competition in market economies. To sustain the needs of an expanding global market, companies must expand globally as well. Companies wanting to maximize the potential of an international market must take advantage of transnational synergies by merging with other companies in other areas of the world. The merger game hasn't changed, only the playing field has gotten larger. The article explains the concept of merger control and chalks out the benefits of merger regulations. At the same time it also explains the effects of proliferating merger control laws on the companies going under the merger process and troubles faced by them. In the end the probable solutions to the problem of proliferation are discussed.*

**Keywords:** *mergers, proliferation, laws.*

## I. INTRODUCTION

A merger is a transaction that brings about a change in control of different business entities enabling one business entity to effectively control a significant part of the assets or decision-making processes of another. Mergers occur between business entities engaged in activities at the same level of the manufacturing or distribution chain, known as horizontal mergers, as well as between business entities engaged in activities at different stages of the manufacturing or distribution chain, known as vertical mergers.

Mergers attract the attention of competition policy-makers because they generally have implications for the formation of concentrations and have the ability to use market power which in turn can impact upon competition negatively. Market power describes the ability of a business entity to act unconstrained by rivals and potential rivals in both price and non-price conduct. Mergers impact upon the concentration and use of market power because they lead to:

- a reduction in the number of business entities operating in a market; and

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- an increase in the market share controlled by the merged entity,

In the case of vertical mergers, they can lead to increased control by the merged entity over a vertical activity in the production and distribution chain.[2] As a result a merged entity may be able to exercise increased market power or the smaller number of business entities remaining post-merger may be able to coordinate their activities. This may lead to prices being raised above the level that would otherwise exist in a competitive market, restricted output, diminished innovation, increased barriers to entry and expansion, rival business entities being eliminated, rivals' costs being raised, and other behavior damaging to the competitive process. Accordingly, competition law seeks to prohibit mergers which are likely to bring about a concentration of market power or an enhanced ability to use market power.[3] This is done with the help of merger control laws.

Merger control laws are designed to prohibit mergers which are likely to be anti-competitive and to permit mergers which are likely to be beneficial. It is nothing but a balancing act. Getting the balance between prohibition and permission right is important as an overly restrictive approach to merger control can prevent beneficial mergers proceeding, entrench existing inefficient market structures, and limit incentives for new investment; whilst an overly permissive approach to merger control can entrench monopoly elements.[4]

Merger control is a part of competition policy that insures the protection of competition for the ultimate benefit of consumers. The regime based on the notification prior to the merger transaction is designed for the ex ante control of the level of the concentration on the relevant market preventing the elimination of competition that might follow the proposed concentration.[5] Unlike the ex post competition control, which involves prohibition and punishment of the abusive behavior and restrictive practices after they have already taken place.

Merger Control laws typically address two types of conduct:

- Restrictive agreements: express or implied agreements between two or more economic entities that adversely affect competition
- Abuse of dominance or monopolization: conduct by a single firm that harms

[2] Murphy, J. '*Unique Resources Enhance Harmonization and Convergence of Competition Laws'*, University of Durham, http://www.globalcompetitionforum.org/Durham%20lecture%20notes%202003%20(changes%20integrated).pdf
[3] *Id.*
[4] *Supra* Fn.1
[5] The substantive lessening of competition test has been traditionally used in US and now after the adoption of the new EC Merger Control Regulation 139/2004 is also employed by the European Commission in its assessment of the competitive effects of the notified concentrations.

competition.

Merger control is expensive. It imposes costs on both the business community, which has to comply with notification requirements, undergo lengthy investigations and suffer delays in consummating mergers and on the competition agency, which must expend scarce resources in reviewing mergers. It is not clear that it's worth it – that the improved efficiency in our markets resulting from merger control would offset these costs.

When merger control has so many disadvantages attached then why are all the countries enforcing laws to control mergers both at the national and international levels. The regulatory framework relating to mergers is explained in next chapter with reference to legislations of different nations.

There are now about 90 countries, large and small, that have some form of competition law, and the number continues to grow steadily. 6Estimates are that 15-20 countries without competition laws are actively considering adopting one.7

The administration of merger control is generally carried out by specialist statutory bodies, with responsibility for enforcement often being entrusted to quasi-judicial specialist tribunals in conjunction with courts of general jurisdiction. Some of the important aspects related to merger control laws are discussed below with reference to the laws prevailing in different countries:

A common test applied in merger control regimes is whether a merger is likely to result in a substantial lessening of competition in a given market. In Australia and New Zealand, mergers which would have the effect or likely effect of substantially lessening competition in a national market are prohibited.[8] In Canada, any merger which prevents or lessens or is likely to prevent or lessen, competition substantially in or among a trade, industry, or profession, is prohibited.[9] South Africa applies a similar prohibition to mergers which substantially prevent or lessen competition in a national market.[10] In the United Kingdom, mergers which meet certain turnover or share of supply thresholds are prohibited if they result or may be expected to result in a substantial lessening of competition within a national market for goods or services.[11]

Whilst market power issues are able to be taken into account as part of the tests outlined above, some merger control regimes make explicit reference to market power issues of monopoly and

[6] Bolivia, Dominican Republic, Ecuador, Guatemala, Honduras, Nicaragua, Paraguay, Trinidad and Tobago.
[7] *See* UNCTAD, Framework of Modern Competition Law and Policy, available at http://www.fias.net/Conferences/CompetitionPolicyTanzDocs/Hassan%20Qaqaya%202.prn.pdf.
[8] *See* S. 50 of the Trade Practices Act 1974 and S. 47 of the Commerce Act 1986.
[9] *See* S. 92 of the Competition Act RS, 1985
[10] *See* S.12A of the Competition Act 1998.
[11] *See* Ss. 22, 33, 35, and 36 of the Enterprise Act 2002.

dominance in addition to the level of impact the merger has or is likely to have on competition in their prohibition tests. In the United States of America, mergers are prohibited where the effect of such acquisition may be substantially to lessen competition or tend to create a monopoly.[12] In the European Union, mergers are effectively prohibited if they significantly impede effective competition in the Common Market, or in a substantial part of it, in particular as a result of the creation or strengthening of a dominant position.[13]

Many competition authorities place considerable emphasis upon market share and market concentration when applying the prohibition test, irrespective of whether the prohibition test is framed in terms of concentration of market power. Market share and market concentration are relatively simple to measure, and subject to available data easy to apply, making this an attractive measurement of a merger's likely impact on a market.

In Australia and South Africa, there is legislative provision for the level of concentration in a market to be taken into account by the competition authority in assessing whether the merger is likely to lead to a substantial lessening of competition.[14]

Further, competition authority guidelines in Australia refer to specific market share thresholds which, if exceeded, indicate that the merger is likely to result in a substantial lessening of competition. The guidelines specify that this occurs where, post-merger:

- the combined market share of the fewer largest firms in the relevant market will be 75 per cent or more and the merged firm will supply at least 15 per cent of the relevant market;
- the merged firm will supply 40 per cent or more of the relevant market.[15]

Similarly, in New Zealand,[16] the United States of America,[17] Canada,[18] the United Kingdom,[19] and the European Union,[20] guidelines issued by the relevant competition authorities establish thresholds based on market share and/or market concentration to indicate whether the

[12] *See* S. 7 of the Clayton Act 15 U.S.C. § 18 (1988).
[13] Article 2(3) of the Council Regulation (EC) No. 139/04 of 20 January 2004 on the control of concentrations between undertakings.
[14] *See* S. 50(c) of the Trade Practices Act 1974 (Cth) and S. 12A (2)(c) of the Competition Act 1998.
[15] *See* Australian Competition and Consumer Commission, Merger Guidelines, June 1999, at para 5.95.
[16] *See* New Zealand Commerce Commission, Mergers and Acquisitions Guidelines, 1 January 2004, at para.5.3.
[17] *See* S. 1.5 of the United States Department of Justice and the Federal Trade Commission, 1992 Horizontal Merger Guidelines
[18] *See* Canadian Competition Bureau, Merger Enforcement Guidelines, September 2004, at para. 4.12.
[19] *See* United Kingdom Office of Fair Trading, Mergers: Substantive Assessment Guidance, May 2003, at para. 4.2& 4.4 and United Kingdom Competition Commission, Merger References: Competition Commission Guidelines, June 2003, at para. 3.4, 3.10, 3.22.
[20] European Commission, Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, 5 February 2004, at para. 14, 17-20, 22-57.

competition authority is likely to view the merger as having a substantial impact on competition.

There are obvious advantages in using market share and market concentration criteria as these offer a low-cost screening method which is easy to administer and offer predictability to merging parties. However, there is growing recognition that although market share and market concentration are useful in identifying potentially problematic mergers, analysis of factors indicative of market conduct and market dynamics enable a more accurate assessment of a merger's likely effect on competition and market power issues to be made.

## II. THE PROLIFERATION PROBLEM

Besides these general features of the merger control regime, merging parties also have to take into account the differences in the substantive and procedural regulations in multiple jurisdictions where the merger could be reviewed. Various jurisdictions have different triggering events for the notification of the merger transactions. Some require the merger to be notified even before the agreement has been signed, others ask merging companies to notify after the signing of the agreement but before the consummation of the transaction. Another difficulty is associated with early filing deadlines where substantive amount of information should be filed shortly after the signing of the merger agreement. The amount of information to be submitted is another problem that merging companies have to face.[21] All these difficulties are the result of proliferation of merger control laws. As hawk has stated:

*There is a proliferation of merger controls throughout the world. What is the problem? The problem is volume…the solution is volume control…the trick is minimizing all this volume of merger control and all these costs or somehow try to reduce the volume so that transaction that have little or no antitrust importance are screened out.*[22]

The proliferation of reporting regimes presents a serious challenge to the business community and counsel. The pace of change and the lack of reliable sources of information in some jurisdictions compound the problem. The problem of proliferation is now well recognized, particularly by the business people who experience the headache of multi-jurisdictional filings on every new transaction. While all suffer from inefficiencies in merger review, some suffer most than others. A good example is the high tech sector, where transaction timing can be critical.

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[21] Alexandr Svetlicinii, '*Competitiveness And Competition: International Merger Control From The Business Prospective'*, available at http://ssrn.com/paper=1311069

[22] Barry E.Hawk, in an Oral Hearing statement to the ICPAC Hearings, Washington DC, November 3, 1998. Transcripts of Committee Hearings are available from http://www.usdoj.gov/atr/icpac/transcrpits.htm.

Merging parties are also obligated to pay high filing fees, which are usually the same regardless of the actual investigation or size of the merger. Associated expenses production of documents, attorney's fees, and loss of employee hours should be added to the total cost of the deal.[23] This proliferation of merger control laws can be attributed to a number of factors. Some of the important factors are described below:

### (A) Benefits of merger control laws

Firms based in nations that provide a competitive environment domestically fared better in international trade those based in nations with lax competition laws. Competitive advantage is created and sustained through a highly localized process. Difference in national economic structures, values, cultures, institutions and histories contributed profoundly to competitive process. The role of home nation seems to be as strong as or stronger than ever. While globalization of competition might appear to make the nation less important, instead it seems to make it more so. With fewer impediments to trade to shelter uncompetitive domestic firms and industries, the home nation takes on growing significance because it is the source of the skills and technology that underpin competitive advantage.

While a merger normally leads to cost savings and other benefits for the merging parties, it also sometimes has the potential to harm consumer welfare where the merger leads to the creation of a dominant position. Merger control laws give competition authorities the ability to assess and remedy the potential anticompetitive effects of a merger, thereby preserving competitive market structure and benefiting consumers. Protection of consumers through merger control laws has been the major factor that prompted a number of jurisdictions to enact such laws in the last decade.

However, merger laws enforced with the objective of extracting fees from the merging parties or other non competition concerns prove burdensome for the parties and have negative effect on consumer welfare.

### (B) Deregulation paved way for competition

The majority of countries have now engaged a transition from command and control economies to free market economies. The deregulation of industries and opening up of markets to competition necessitated that competition laws to be put in place that would preserve competitive structure in the market.

### (C) External Pressure for reform

[23] *Id.*

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A number of sources such as the IMF, The World Bank, the EU and the US are encouraging countries without competition law to adopt such laws. Most central European countries that are aspiring to become members of the EU are already being required by EU to approximate the laws of the EC, particularly competition law, within their national legal systems. Such a requirement is designed to ensure a level playing field or common conditions of competition within the common market.

In 1999, Indonesia adopted a new completion law, which it was required to do by the IMF as part of the economic reforms tied to the rescue funds. Many countries in Latin America and Eastern Europe have adopted a competition law system on the encouragement of the US and European Commission. Even the developing countries of Southeast Asia and the People's Republic of China are preparing laws for the protection of competition.

Reducing the number of jurisdictions reviewing a proposed transaction to a level where fewer notifications are required in an obvious and particularly effective means of reducing the burden upon merging firms.

## III. NEGATIVE ASPECTS OF MULTIPLE MERGER LAWS

As merger control regimes proliferate they also increase the costs for the parties to transnational mergers. The wide divergence in rules, procedures and standards produces a multiplicity of traps for the wary and unwary alike, while increasing transactions costs and deal risk sufficiently to deter pro-competitive alliances and consolidations.[24]

When MCI merged with Worldcom, the parties had to notify over 30 competition authorities. This overlap of merger review by multiple competition authorities is due to the fact that many of these agencies now deploy the "effect test" to assume jurisdiction over the transactions which are proposed even by two foreign companies. The proliferation and overlapping reach of merger control laws, in absence of any mechanisms for coordination has inherent inefficiencies from the perspective of global consumer welfare. Furthermore it unnecessarily burdens a majority of transactions that pose no anticompetitive threats and it presents a serious challenge to the nation's sovereign control over firms conducting business within their borders. Each of these problems is addressed below:

### (A) Inappropriate Merger Notification Threshold Tests

Although no two jurisdictions have precisely the same merger notification threshold test, most

[24] *See* Daniel Cooperman, Antitrust Modernization Commission available at <http://www.amc.gov/commission_hearings/pdf/Statement_Cooperman.pdf>

base their thresholds on some measure of assets or revenues or both. The turnover threshold model, which typically involves assessing the parties' worldwide and local revenues, such as that employed in the EC Merger Regulation and many major EU member states, has been adopted in many countries, but revised to suit local needs.[25] But even with the popularity of the European approach, there remain a remarkable variety of threshold tests based on local or worldwide assets revenues and market shares.[26]

Over twenty countries including Brazil, Israel, Latvia, Portugal, Russia, Slovenia, Spain, Taiwan and Turkey still employ mandatory reporting regimes based at least in part on market share tests. Share thresholds can be triggered and merger notification required regardless of whether there is any competitive overlap between the parties. In other words, although the merger could have no effect on competition, the fact that one party has a high share (even if the other party's share is 0%) could trigger a notification obligation.[27] Although initially it is up to the parties to determine whether a market share threshold test has been crossed, it remains open to the regulatory agency to second guess.

### (B) Jurisdictions with Notification Thresholds Based on Market Share or Dominance

It is no surprise that thresholds generate considerable uncertainty because market definition is such a subjective, fact-intensive and economics-intensive process – the absolute opposite of what business needs to ascertain legal obligations in time-constrained situations. Helpfully, the International Competition Network has developed recommended practices that discourage market share tests and a handful of regimes have switched away from them in the last few years, such as Greece, France and Belgium, and others are known to be at least considering a switch away, such as Brazil.[28]

At the extreme, even lawyers in jurisdictions with well-developed merger notification regimes such as the United States and Canada encounter tricky issues that may make it difficult to determine easily whether merger parties have pre or post closing notification obligations. All

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[25] *See* O K Wakil and W T Miller, International Mergers: The Antitrust Process, 3rd edn. J W Rowley QC, D I Baker,
London: Sweet & Maxwell, 2000-2006.

[26] This is in contradistinction to some truly well structured European notification schemes. The test employed by Belgium for instance, is clear and objective and has a strong local nexus requirement: combined local turnover at a high level plus separate local turnover requirements. Others will hopefully use this sort of test, and similar ones used by France and the Netherlands, as a model.

[27] Similarly, Austria, Brazil, Germany, Ireland, Italy, Latvia, Slovak Republic and other jurisdictions have thresholds based on combined turnovers that can be crossed where only the acquirer has local activity. Under such regimes, notification could be required even if the acquired business has no local operations.

[28] A number of regimes, the major ones being the UK, Australia and New Zealand, use market share test as part voluntary notification schemes. Concerns about market share tests are less pronounced in these cases, given that the consequences of getting it wrong are usually less significant.

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of these uncertainties can add time and expense to the merger process. For instance, the Canadian *Competition Act* does not require pre-merger notification in connection with the acquisition of non-voting shares. However, where shares are acquired that can convert to voting shares or have limited voting rights triggered on the occurrence of certain circumstances, those shares may later be considered voting shares the acquisition of which may require pre-merger notification. In such circumstances, the pre-merger notification obligation would only arise when the right to vote arises *e.g.*, upon conversion to voting shares and not on the initial acquisition of the shares. This can create considerable uncertainty, as there may be a notification obligation at some point in the future, perhaps well after the initial acquisition of shares, and perhaps well after transaction and antitrust lawyers have completed their work on the acquisition.

### (C) Opaque Triggering Events

In some jurisdictions, the filing timeframe, or triggering event, is also far from clear. To illustrate, Brazilian legislation stipulates that notification is required within 15 business days from the date that the transaction was realized. Initially, most practitioners took the view that the realization date was the transaction closing date. However, the antitrust authorities later established that the term should be interpreted to mean the execution of the first binding document between the parties, but what that is uncertain. As a consequence, Brazilian lawyers usually identify the triggering event on a case-by-case basis, because in some cases preliminary arrangements between the parties could trigger the notification requirement. Fines for failing to file or filing late range from approximately US$27,000 to US$2.7 million; although the average fine for late filing does not usually exceed US$400,000, that is still high by any measure. The authorities have historically been aggressive in enforcing violations of these uncertain laws.

### (D) Early Filing Deadlines

Many countries require that filings be submitted very quickly after a transaction emerges. For example, in Argentina notification of a public tender bid must be made within seven days of announcement. All other transactions are to be notified following closing. For example although the European Commission has relaxed its rules, the national rules of many member states of the European Union still theoretically require filings to be made within 7-30 days of signing or announcing a merger agreement.

Although deadlines are in practice sometimes flexible, the statutory requirements may be difficult to meet for transactions that emerge quickly unless early work is done on relevant filings. Such timeframes compound the other uncertainties, complications and costs of doing

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global deals. In both hostile and confidential situations, the problem is exacerbated. Confidentiality requirements of public market transactions often hinder the ability to get the information needed to complete worldwide filings.

### (E) Burdensome Filing Requirements

America's straightforward HSR filing has not been the model followed in most of the world's jurisdictions. Many regimes call for notifications that require detailed substantive analysis to be made at an early stage of the transaction. Part of the distinction reflects a theoretical divide between jurisdictions with "clearance" statutes and those with "notification" laws. The US and Canadian filing requirements reflect the fact that notification is designed merely to put agencies on alert and to give them an opportunity to seek additional information or challenge a merger; most cases do not result in a formal decision.

However, the fact remains that completing merger review process is frequently unnecessarily burdensome. For instance, Argentina requires that sales be broken down by local customs code categorization and Mexico "requires exhaustive certifications of the certificates of incorporation of all subsidiaries and affiliates, whether or not they have any relevance to the competition analysis, and otherwise imposes highly formalistic burdens that are not needed for the competition authority to make its judgments".[29]

### (F) Unsolicited Bids

Unsolicited takeover-bid transactions give rise to a unique set of issues. The law of many jurisdictions does not contemplate transactions other than negotiated, consensual deals. This is reflected in their antitrust notification rules that require the submission of a single filing with detailed information about both parties before the notification will be considered [30]complete. In a hostile bid situation, the target may be unwilling to provide the detailed information required by antitrust authorities and thus make it difficult for the bidder to make the filings and obtain the clearances it requires or before closing the bid, potential giving the target a strategic advantage. And, the antitrust agency may have no effective way to compel the target to provide the required information[31].

### (G) Cost to Merging Parties

[29] *See*, Report on Multijurisdictional Merger Review Issues (May 1999) at pg. 8, available at <http://www.abanet.org/antitrust/comments/1999/icpacmr.html

[30] For example, Argentina, Czech Republic, Poland and South Africa.

[31] In Canada, the target has a statutory obligation to provide the information required to complete its portion of a notification filing within 10 days (or 20 days, if the bidder files a long form filing) of being notified by the Commissioner of Competition: Competition Act, S. 114(3). Similar rules exist in the US.

The growing numbers of merger control regimes create increased costs for the merging parties. Some of the challenges are heightened uncertainty regarding the ultimate legality of the proposed transaction: the necessity for interacting and negotiating with multiple reviewing authorities, the possibility of inconsistent and perhaps conflicting rulings, and the potential for overly burdensome remedies. These challenges increase transaction costs for merging parties and in the worst case scenario may result in the abandonment of pro competitive transactions.[32]

Merging parties face an ever increasing array of merger regimes and are required to:

- have knowledge of and compliance with complex filing rules
- Have knowledge of and compliance with review schedules and waiting periods.
- Complete an array of forms in accordance with various national requirements and
- Pay substantial fees to the reviewing authorities (often designed to subsidize the operation of government agencies.[33]

The merging parties have to first ascertain that whether merger control laws exists in all potentially affected jurisdictions, and then determine whether the disparate notification thresholds are met or not.

Most of the jurisdictions require an extensive amount of information concerning markets, competitors, customers and suppliers and market entry conditions in each of the markets in which the merging parties operate. The foregoing information is required once the thresholds are met irrespective of whether the transaction poses any anticompetitive threats.

Regulatory compliances pose direct and indirect costs to the merging parties. Direct costs include attorney's fees, filing fees and document productions costs. Indirect costs which are difficult to quantify and may exceed the direct costs include top management's time and loss of productivity. The loss of executives and other managers time gets compounded each time a request for further information is made by competition authorities.

Furthermore the time devoted by the merging parties becomes dead weight loss if a merger is blocked by one competition authority and cleared by the others.[34]

Other indirect costs arise from the delays caused by the merger review by a number of jurisdictions. Such delays arise from lack of strict deadlines for the completion of the review

[32] ICPAC, Final Report, at pg 14.
[33] ICPAC, Final Report, at pg 90 -94
[34] See Statement by General Electric Regarding European Commission Decision, when GE Honey well case was blocked by the EC Commission, GE Chairman and CEO Jack Welch expressed profound regret at the loss f eight months of thousands of GE and Honeywell employees' time, who worked hard to make the deal happen. available at www.ge.com/news.htm.

and asynchronous triggering events for notification. In case of a merger in a high technology industry such as electronics, computers, or software, delay may prove fatal for the transaction as product life cycle are very short. Delays breed uncertainty in product, labor and capital markets enabling competitors to raid customers and staff.[35] Delays also cause lost opportunity cost. Delays also hamper the merging parties' ability to accept business that would have been attracted and accepted by the merged entity.

### (H) Cost to Competition Agencies

The review of transnational merger of merger with international impact also impact significant cost on the competition agencies. In such transactions, the merging parties' assets and production facilities more often than not are located in more than one jurisdiction and so are documents and witnesses. As a result competition authorities may impose remedies with extra territorial effects or remedies that may prevent other jurisdiction from obtaining the relief they seek. Where such divergent outcomes are reached by the completion authorities they would wither attempt to reconcile their differences or create international friction which may lead to trade wars – a dilemma which is not faced by the competition authorities in case of a purely domestic merger.

### (I) Diverse Approaches :Diverse Outcomes

Countries with different merger control regimes use different substantive standards to review mergers. The basic thrust of these regimes varies among three approaches:

- Prohibiting or controlling anti competitive mergers
- Prohibiting or creating mergers that create or enhance dominant positions
- Prohibiting or controlling merger which either creates anti competitive mergers or those that create or enhance dominance unless the economic advantages of the merger to the country – including preservation of the jobs and promotions of exports – outweigh the disadvantages. In addition to the basic difference in the orientations of the regimes, these regimes also differ on definitions and meaning of anticompetitive and dominance

### (J) Friction among Jurisdictions

The difference in opinion to merger review often results in friction among jurisdictions. There are atlest three circumstances in which review of a transnational merger causes friction among jurisdictions. The first arises where a domestic competition authority considers only the

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[35] ICPAC, final Report at pg 93.

competitive effect of merger within its own borders and fails to take into consideration competitive benefits or harms in foreign markets. For instance a competition authority may clear a merger that would result into increase in prices in other jurisdictions. Conversely a competition authority may block a merger that would have produced benefits to consumers in other jurisdictions. Secondly, friction among jurisdiction may arise when remedies imposed by competition authorities have extra territorial effects. Finally, friction could also occur when a merger is reviewed by several competition authorities which reach a conflicting decision.

**(K) Limits on Sovereign control**

The proliferation of merger control laws is also challenging the sovereign power of nations to regulate domestic firms that are conducting business internationally. The fact is that in multijurisdictional merger review, where there is absence of a formal dispute resolution mechanism, the nation which imposes the most restrictive remedies prevails.

These are some of the negative impacts of proliferation. These negative impacts have given rise to a need for the international merger regulation and forced the nation states to convergence and co-operation.

## IV. Conclusion

Globalization and the desire to protect competition have resulted in the proliferation of merger control laws. There is no doubt that merger control regimes are needed for the protection of competition and benefit of the consumers, but in the present diverging stage of numerous merger control jurisdictions it restricts in certain degree the competitiveness of individual businesses making mergers and amalgamation a costly and troublesome business strategy. These divergent procedural and substantive standards may prove to be too high a hurdle for prospective merger parties. Uncertainty, delay, and transaction costs contained will thus require the convergence of the differing merger control systems.

If the countries co – operate and there is common merger law, it would promote greater efficiency and confidence in the international merger review process without jeopardizing the legitimate enforcement interests of any jurisdiction concerned. It would also promote more efficient utilization of enforcement resources and greater efficiency in cooperative enforcement efforts in the increasingly prevalent international context. Further it will help in eliminating unnecessary transaction costs by imposing appropriate limitations on the scope of initial notification requirements so as to minimize the burden associated with the notification and review of transactions that lack anticompetitive potential in the jurisdiction concerned.

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Achieving the objective of common merger laws will inevitably require some compromises by the international enforcement community not because any given set of practices is qualitatively inferior, but to achieve efficiency, enhancing transparency and commonality in the multijurisdictional review process. This proposal envisions the convergence or synchronization of merger review policy and its application on a global continuum enabling business and consumers to realize its gains. It enhances competition by protecting pro-competitive mergers from jurisdictions' application of industrial policies, making multijurisdictional review more transparent, and taking steps to reduce transaction costs and delay. Unless different practices are dictated by genuine differences in underlying policy objectives or fundamental statutory constraints, it is submitted that the objective of achieving international harmonization under "best practices" principles should prevail.

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