 DOI: *https://doij.org/10.10000/IJLMH.118907*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 1

2025

The Intersection of CCI and SEBI: An Overlapping of Legal Framework

MOHAN KUMAR N.[1] AND JYOTIRMOY BANERJEE[2]

ABSTRACT

Multiple laws and regulatory bodies have been established to oversee transactions between organisations and make sure the parties involved are adhering to the rules before approving them. Like much of the globe, India has established several institutions for the same. With a focus on the Securities Exchange Board of India (SEBI), this study aims to identify sectorial regulators and analyse how its authority overlaps with that of the Competition Commission of India (CCI), the market regulator. The Legislative Reforms Committee has conducted an in-depth study on the financial sector's sometimes overlapping SEBI and CCI competency areas. This has raised questions about the justification for the establishment of several sector regulators, including SEBI and an overbearing market regulator, in order to preserve integrity for both investors and businesspeople. In light of the criticism of India's too complicated regulatory frameworks, this study looks at the regulatory authority of SEBI and CCI over different market sectors, areas of overlap, and the legislative reforms implemented to bring the laws into harmony and establish a consistent regime. The goal of the article is to resolve the regulatory overcomplication that is impeding the attraction of both local and foreign investment.

***Keywords**: SEBI, CCI, Financial Regulators, Regulations, Investment, Jurisdiction.*

I. INTRODUCTION

After 1991, a number of sector-specific regulators entered the scene. In 1992, the Securities Exchange Board Of India[3] was the first and most significant of them. as well as additional authorities such as the Competition Commission Of India[4]. The 1991 implementation of the Liberalisation, Privatisation, Globalisation plan, sometimes referred to as the LPG plan, widened up economic opportunities to the globe in a way never seen before.

The open economy, which relied solely on supply and demand, operated under the presumption that resource allocation was being carried out effectively and did not require the involvement of significant supervisors or regulators. The 1992 Harshad Mehta Securities Scam brought to

[1] Author is a LLM Student at Amity Law School, Amity University, Bengaluru, India.
[2] Author is an Assistant Professor at Amity Law School, Amity University, Bengaluru, India.
[3] Hereinafter referred to as SEBI.
[4] Hereinafter referred to as CCI.

light the system's shortcomings and the numerous ways that participants may take advantage of them.

The intersection of these institutions' jurisdictions specifically, those of SEBI and CCI is the primary focus of this paper. It aims to dispel any misunderstanding over which of the two should take precedence over the other in the event of a dispute. It goes into further detail about how they exert control when it comes to creeping acquisitions. Understanding the many regulators in the financial sector and their areas of responsibility is essential before delving into this.

II. SECTOR SPECIFIC REGULATORS AND GENERAL ANTITRUST REGULATOR

(A) SEBI

By virtue of the Securities and Exchange Board of India Act of 1992[5], SEBI was created. Only the securities market is under its authority. "Promote and regulate the growth of the securities market while safeguarding the interests of securities investors"[6] is its stated objective. In order to handle the several frauds that were discovered, its abilities were periodically improved. The Harshad Mehta and Ketan Parikh scams[7], among others, exposed legal flaws, and as a result, SEBI was given broader authority to bring similar cases in the future. Moreover, Section 32 of the Act stipulates that it will apply in addition to any other laws that may be in effect at the time[8]. As a result, SEBI's authority coexists alongside that of other authorities and cannot supersede them in the market. Under the SEBI Act, a number of laws have been created to control various facets of the securities industry.

(B) CCI

According to the principles underlying modern competition laws, the Competition Act of 2002 [9], Anti-competitive agreements, the misuse of a dominant position by businesses, and mergers and acquisitions (M&A) that have a significant negative impact on competition in India are all prohibited by the Act.

The Commission's responsibility is to defend consumer interests, encourage and maintain competition, eradicate practices that negatively impact competition, and guarantee freedom of commerce in India's marketplaces.

The Commission must also advocate for competition, raise public awareness, and provide

[5] No 15 of 1992.
[6] Long title of the SEBI Act, 1992.
[7] R. B. Jain, *The Craft of Political Graft in India: An Analysis of Major Scams*, INDIAN JOURNAL OF POLITICAL SCIENCE, Vol. 55, No. 4, Oct 1994.
[8] Section 32 of SEBI Act, 1992.
[9] No 12 of 2003.

training on competition concerns, as well as provide an opinion on referrals from statutory authorities created under any legislation.

III. OVERLAP OF LEGISLATIONS

(A) General Rule:

There have been cases in the past when the applicability of two distinct laws overlapped in a specific circumstance where both laws had a "*non-obstante clause*." In such circumstances, Indian courts have adopted a number of concepts, such as the following: newer law takes prevails over older legislation[10], and specific legislation is superior to general legislation[11]. According to the Honourable Supreme Court, *lex specialis* is a better interpretation concept than general law because the former solely regulates a certain industry. The idea that newer laws take precedence over older ones is justified by the assumption that the legislature is aware of the laws' existence; therefore, a "*non-obstante clause*" in the latter enactment suggests that the legislature intends to apply the latter over the former[12].

(B) SEBI vs CCI

As previously said, there is a chance that the developing region of overlap will turn into a contentious issue. Let's examine the conflict between CCI and SEBI on their respective areas of authority in merger deals and the ensuing fallout.

In India, the clearance of SEBI and CCI are the two regulatory bodies required for any merger, acquisition, or amalgamation to proceed. The CCI has broader jurisdiction since it can investigate any combination [13]that occurred outside of India but significantly hurts competition in the relevant Indian market[14]. Any amalgamation, merger, or acquisition is referred to as a combination[15]. The Competition Act of 2002's Section 2(r) defines a relevant market as including both a relevant product market and a relevant geography market. The term "relevant geographic market" describes a region where the competitive environment is uniform and different from that of a nearby location. The term "relevant product market" describes the market that includes all goods and services that are thought to be alternatives to the product in question[16].

---

[10] KSL and Industries Ltd. v Arihant Threads Ltd., (2008) 9 SCC 763; Bank of India v Ketan Parekh, AIR 2008 SC 2361.
[11] Allahabad Bank v. Canara Bank, [2000] 2 SCR 110.
[12] Bank of India v Ketan Parekh, AIR 2008 SC 2361.
[13] Section 5 of the Competition Act, 2002.
[14] Section 32 of Competition Act, 2002; Dhanraj Pillay v M/s. Hockey India, 2013 CompLR 0543 (CCI).
[15] Section 5 of the Competition Act, 2002.
[16] Section 2(s) of the Competition Act, 2002.

IV. SEEKING OF AN APPROVAL

(A) CCI's Approval:

Section 5 of the Competition Act specifies a number of standards that must be met before an application may be submitted to the CCI. In the event that it is, the application must be submitted within 30 days of the Board of Directors approving the proposal for any combination or signing an agreement. Before the 2007 change, the firm chose to voluntarily reveal the combination to the CCI[17]. These days, it is required under the Competition (Amendment) Act of 2007.

Form I or Form II must be submitted to the CCI in accordance with Regulation 5 of the Competition Commission of India (Procedure in relation to the transaction of business relevant to combinations) Regulations, 2011. Only when the parties to a vertical combination have a combined market share of 25% or more in the relevant market, or 15 percent or more in the relevant market, does Form II need to be submitted. [18]In Phase I research, CCI has approved the majority of combination ideas. The controversial Sun Pharma-Ranbaxy merger is the lone exception to far. The CCI authorised a Phase II examination into the deal because it was initially believed to have a significant negative impact on competitiveness in the relevant Indian market[19].

As long as the acquisition was made purely for the purpose of investment and did not result in the acquisition of "control"[20], any acquisition of shares or voting rights that directly or indirectly results in the acquisition of less than 25% of the shares or voting rights in the acquired enterprise is exempt from filing a merger notification with the CCI under the Combination Regulations[21].

(B) SEBI's Approval:

According to the SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011[22], approval must be requested from SEBI. In this case, the trigger point is when an acquirer, acting alone or in concert with others, purchases 25% or more of the target company's shares or voting rights[23]. In the event that the threshold is met, the acquirer must publicly notify the acquired company's shareholders of an open offer[24]. On the day when shares, voting rights, or control of

[17] Section 6(2) of the Competition Act, 2002. In the case of Thomas Cook (India) Ltd acquiring stake in Sterling Hotel Resorts India) Ltd, Combination Registration No. C-2014/02/153.
[18] Hereinafter referred to as Combination Regulations, 2011.
[19] Vidya Krishnan, *Sun Pharma-Ranbaxy deal in CCI crosshairs*, LIVEMINT, July 29, 2014. Available at: http://www.livemint.com/Companies/PwftvxqaZ0vojwb8GzWEdK/Sun-PharmaRanbaxy-deal-in-CCI-crosshairs.html?utm_source=copy
[20] As defined in Explanation to Section 5 of the Competition Act, 2002
[21] Regulation 4 of the Combination Regulations.
[22]Hereinafter referred to as SAST Regulations.
[23]Section 3 of the SAST Regulations.
[24] Section 3,4, 5(1) of the SAST Regulations.

 [ISSN 2581-5369]

the purchased firm are acquired, a public notification of this kind must be issued[25]. The stock exchanges where the purchased company's shares are listed must be informed of this announcement, and they will then distribute the information[26].

Additionally, in accordance with Regulation 16 of the SAST Regulations, the acquisition company must submit a draft of the offer letter to SEBI. To calculate the offer price, this is necessary. Within 26 weeks of the offer period ending, the acquirer must finalise the purchase in accordance with the agreements negotiated in support of the same[27]. Under Section 2(p) of the SAST Regulation, the term "offer period" refers to the time frame between the date of the agreement to purchase shares of the target company and the completion of the transaction as planned by the agreement, which includes paying consideration to the shareholders who took advantage of the open offer[28]. While the public notification schedule varies depending on the kind of purchase, all must adhere to the previously specified 26-month term requirement.

V. PENALTIES

Understanding the penalties that can be enforced by the separate regulators in the event of a violation of the regulations is crucial to understanding which regulator must be given precedence over the other. Under the Competition Act, fines are often assessed as a percentage of the company's revenue. The value of sales of products and services has been incorporated into the definition of "turnover". [29]Because the definition is vague about whether the firm must be fined for the relevant turnover or the overall turnover, this has created ambiguity.

According to the ruling in *Musique Diffusion Francaise SA v. Commission*, the European Court of Justice, the foundation for imposing a penalty is turnover and its percentage[30]. Not the overall turnover, but the turnover of the business in relation to the relevant product is what is meant by the phrase "turnover"[31]. *Belaire Owner's Association v. DLF Ltd.* determined that the company was abusing its dominance in the relevant product market, and as a result, a penalty of 7% was applied to the group's overall turnover[32]. NSE was fined 5% of the average turnover in *MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd.* for misusing its dominant

[25] Section 13(1) of the SAST Regulations.
[26] Section 14(1) of the SAST Regulations; Umakanth Varottil, *Investment Agreements In India: Is There An "Option"?*, NUJS LAW REVIEW, Vol. 4, 2011.
[27] Section 22(3) of the SAST Regulations; Jithesh Tilak, *Regulating M&As An Insight Into Competition Laws in India*, INTERNATIONAL BUSINESS LAWYER, 2004.
[28] Section 2(p) of the SAST Regulations.
[29] Section 2(y) of the Competition Act, 2002.
[30] 1983 ECR 1825.
[31] 1983 ECR 1825.
[32] [2011] 104 CLA 398.

position[33]. Furthermore, the Court ruled that the Act of India's Sections 2(y) and 27(b) do not allow for the interpretation of "*turnover*" to refer to the turnover of the pertinent commodity.

A significant fee might be imposed for failure to comply. Thomas Cook (India) Ltd. was fined INR 1 crore for making a number of purchases prior to receiving CCI permission. In this instance, the planned combination was later accepted by the CCI, but it was punished for doing the actions prior to receiving consent[34].

Additionally, if the Commission believes that the proposed combination would have or is likely to have a significant negative impact on competition in the relevant Indian market, it may order that the combination not go into effect. The business will be punished by the relevant regulatory body in line with the law that it violated, and it will be treated as though the merger never happened[35].

If the SEBI recommendations are not followed, there might be a number of negative effects. It could involve selling off shares that were obtained in violation of the rules, transferring shares or any proceeds from a directed share sale to the Investor Protection and Education Fund, deeming any transfer of shares obtained in violation of the rules void, or prohibiting an accused person from accessing capital markets or engaging in securities market activity[36].

Since both SEBI and CCI have the authority to levy hefty fines for non-compliance, the regulatory overlap between them presents difficulties for acquirers in India. A transaction must be completed within 26 months of the agreement, according to SEBI, whereas CCI requires 210 days for clearance, with the possibility of an extension if further information is requested. Penalties for "gun jumping," as seen in cases such as Thomas Cook-Sterling Holiday [37]and Jet-Etihad Airways Merger[38], may be imposed even if the transactions are ultimately approved by the CCI. On the other hand, waiting for CCI clearance might result in a violation of SEBI timeframes and the agreement's voidability. Both regulators' penalties, but particularly CCI's, may negatively impact listed businesses by influencing stock prices[39]. The Competition (Amendment) Bill 2012 featured a proposal to shorten the CCI's schedule to 180 days in order

---

[33] 2011 Comp LR 0129 (CCI).
[34] PTI, CCI imposes fine on Thomas Cook, Sterling Holidays, THE HINDU, June 29, 2014. Retrived from: http://www.thehindu.com/business/Industry/cci-imposes-fine-on-thomas-cook-sterling-holidays/article6158129.ece
[35] Section 31 of the Competition Act, 2002.
[36] Section 32(1)(a),(b),(c) of SAST Regulations, 2011
[37] Combination Registration No. C-2014/02/153. Available at: http://www.cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2014-02-153R.pdf
[38] Combination Registration No. C-2013/05/122. Available at: http://www.cci.gov.in/May2011/OrderOfCommission/CombinationOrders/Order%20191213.pdf
[39] Shweta Shroff Chopra, Sangeetha Mugunthan, *Merger control in India: overview*, PRACTICAL LAW, June 2014.

to resolve these disagreements; however, the bill expired when Parliament was dissolved[40].

VI. Overlapping of Jurisdictions and Way Forward

Transactions that negatively affect the market or the protection of investors are frequently regulated by SEBI and CCI. One key distinction between SEBI's and CCI's perspectives, nevertheless, is the rationale behind the regulation of these staggered transactions. Whereas CCI is more focused on how such purchases affect market dynamics, SEBI is more focused on protecting investors.

(A) SEBI's Threshold Limits and Sphere of Jurisdiction:

In accordance with SEBI's SAST Regulations, if an acquirer gains an extra 5% or more voting rights in a fiscal year, they are required to make an open offer to acquire a 25% or more stake in a public business. In both major and incremental purchases of control, this guarantees that shareholders have a way out. SEBI enforces adherence to stringent disclosure guidelines in order to improve openness and safeguard the interests of investors. As long as they include public firms, the rules generally apply to any purchase that exceeds certain criteria, regardless of transaction amount or company turnover[41].

Acquisition thresholds are determined using the entire ownership as of the date of each acquisition, SEBI explained in its 2012 guideline to *Akash Optifibre Limited* (AOL). For instance, after market purchases and FCCB conversions, the promoter's incremental acquisitions were calculated at 4.52%, which permitted an additional 0.48% acquisition without requiring open offer commitments. In keeping with its commitment to investor safety and regulatory clarity, SEBI places a strong focus on cumulative acquisition computations to guarantee that investors comply with creeping acquisition limitations, as this case demonstrates[42].

Irrespective of the transaction amount, deal size, or business turnover, SEBI's broad authority under the SAST Regulations extends to every purchase that exceeds the established criteria. Even while these rules only apply to publicly traded corporations, they don't impose any further requirements, guaranteeing that all pertinent acquisitions are examined. This strategy supports SEBI's regulatory goals by guaranteeing investor safety and acquisition process transparency.

---

[40] S. 13 of the Competition (Amendment) Bill 2012.

[41] *Public M&As in India: SAST Regulation Dissected A detailed analysis of Securities and Exchange Board of India*,NISHITH DESAI & ASSOCIATES. Available at: http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Public%20M%26As%20in%20India%20-%20Takeover%20Code%20Dissected.pdf

[42] SEBI document number CFD/DCR/TO/OW/25627/2012.

As long as public firms are involved, SEBI's authority extends to all acquisitions that violate the established standards, regardless of transaction amount or company turnover. This extensive use demonstrates SEBI's determination to protect the interests of investors in all pertinent situations.

(B) CCI's Threshold Limits and Sphere of Jurisdiction:

Transactions that have a negative impact on the market are null and void under Section 6(1) of the Competition Act[43], while some transactions that have no such impact are excluded under Regulation 4 of the Combination Regulations. Given that a sizable ownership is required to affect market dynamics[44], CCI requires reporting for acquisitions involving more than 25% of the shares. As long as the acquirer does not own 50% or more shares prior to or during the purchase, acquisitions that exceed 25% but fall below 5% additional shares are free from reporting requirements under the 2013 amendment. The previous strict regulations that required reporting for even 1% over the 25% level were loosened by this modification[45].

Under the SAST Regulations, SEBI permits purchases up to 75% of the shares (subject to transparency and open offer requirements); nevertheless, CCI enforces more stringent scrutiny for acquisitions that exceed 50% of the shares, even for small additional stakes. Although the Competition Act's calculation methodology is yet unknown, experts advise that it be in line with SEBI's gross percentage calculation methodology to maintain uniformity across the regulatory frameworks[46].

a. Understanding Competing Jurisdictions:

The Jet-Etihad transaction, the only one that required explanations from both authorities, demonstrated the interaction between SEBI and CCI. At first, neither regulator had to approve Etihad Airways' attempt to purchase a 24% share in Jet Airways[47]. But there were questions about "*persons acting in concert*" and if Jet's promoter group, under the leadership of Naresh Goyal, was giving Etihad actual control. Since Etihad was granted the authority to add three members to Jet's 12-member board, the Central Government requested clarity on the definitions of control under SEBI and CCI laws. Both regulators approved the transaction after the *Share*

---

[43]Section 6(1) of the Competition Act,2002

[44] Relaxation under Combination Regulations, Available at: http://www.deloitte.com/assets/Dcom-India/Local%20Assets/Documents/Regulatory%20alerts/2013/RA-03-2013.pdf.

[45] Ashish Sinha, *CCI eases compliance needs for M&A deals*, THE FINANCIAL EXPRESS, April 6, 2013. Available at: http://www.financialexpress.com/news/cci-eases-compliance-needs-for-m-a-deals/1098432.

[46]SEBO Order in the matter of Monotype India limited, Document number WTM/PS/22/CFD/JULY/2014

[47] *Jet-Etihad deal: Sebi seeking further clarity from CCI, finance and civil aviation ministries*, BUSINESS TODAY, March 12, 2014. Available at: http://businesstoday.intoday.in/story/jet-etihad-deal-in-sebi-air-pocket/1/204196.html

Purchase Agreement and *Corporate Co-operation Agreement* were amended[48].

This case serves as further evidence that Indian authorities such as SEBI and CCI often function within their respective areas without encountering direct conflicts. The government and organisations like the FIPB are reluctant to provide exceptions, guaranteeing rigorous adherence to regulatory frameworks, therefore transactions that need permission from many regulators are frequently subject to increased scrutiny.

b. Solution to Competing Jurisdiction:

For many years, SEBI and CCI have been involved in regulating transactions that negatively affect the market or investor protection. One significant difference, nonetheless, exists between how SEBI and CCI understand the justification for regulating these staggered transactions. The protection of investors is SEBI's top priority, while the impact of such acquisitions on market dynamics is CCI's.

The SEBI-issued SAST Regulation states that if an acquirer purchases shares that currently hold 25% or more of the voting rights, they will be subject to open offer obligations if the purchase amounts to 5% or more of the voting rights[49]. According to the logic, an exit option should be offered in the event of a progressive acquisition of control of the company, just as it is required in the event of an en masse purchase, in order to safeguard investor interests[50]. The open offer obligations must be accompanied by a number of disclosure requirements.

VII. Recommendations & suggestions

- Simplify SEBI and CCI clearance schedules to avoid procedural hold-ups and make sure that competing deadlines don't impede deal completion or result in fines.
- To reduce misunderstandings in merger and acquisition situations, clearly define the regulatory scope and provide clear guidance about the jurisdictional overlap between SEBI and CCI.
- Provide a centralised filing platform that satisfies CCI and SEBI regulations, cutting down on duplication and simplifying stakeholder compliance.
- Encourage cooperation between SEBI and CCI by forming joint committees or working

[48] Kanika Chaudhary & Nidhi Singh, *Skies over Control*, LUTHRA & LUTHRA LAW OFFICES. Available at: http://www.luthra.com/admin/article_images/Skies-under-Control.pdf
[49] Regulation 3(2) of the SAST Regulation.
[50] Public M&As in India: SAST Regulation Dissected A detailed analysis of Securities and Exchange Board of India, NISHITH DESAI & ASSOCIATES. Available at: http://www.nishithdesai.com/fileadmin/user_upload /pdfs/Research%20Papers/Public%20M%26As%20in%20 ndia%20-%20Takeover%20Code%20Dissected.pdf

groups to assess transactions thoroughly and minimise conclusions that contradict one another.

- To help firms know the regulatory procedures and prevent unintentional infractions, provide comprehensive advice papers and hold seminars.
- In order to prevent unintentional procedural errors from unfairly penalising businesses and to promote a more business-friendly atmosphere, fines should be matched to the seriousness of non-compliance.

VIII. Conclusion

SEBI and CCI's overlapping responsibilities highlight how complicated India's regulatory environment is, especially when it comes to securities transactions and market competitiveness. While CCI concentrates on preserving fair competition and combating anti-competitive behaviour, SEBI guarantees openness and safeguards investor interests. Although the goals of these regulations are complimentary, companies frequently face uncertainty, higher expenses, and delays in the process as a result of their concurrent jurisdiction. These difficulties are demonstrated by transactions like as the Jet-Etihad case, in which answers from both authorities were required due to concern about oversight and economic effect. Simplifying regulatory procedures is essential to resolving these problems. Conflicts and delays may be greatly decreased by coordinating approval schedules, developing a single filing system, and encouraging cooperation between SEBI and CCI. Market integrity will be protected while regulatory efficiency is increased through coordinated decision-making and clearly defined authority boundaries. India's attractiveness as a location for investment will be strengthened by a balanced strategy that guarantees protection for investors and competitive fairness, promoting both local growth and international competitiveness.

*****

