**Introduction**

The world as we know it thrives on Competition. It is, without doubt, a fundamental incentivising agent in the grant arena of development and progress. And of course competitions aren’t always constructive and beneficial in the wider scheme of expansion. It is for this cause the Indian Constitution relays up on the Regulation of Combinations in Competition Law.

**Competition Law in India**

It is in the wake of harmonization of competition, the Finance Minister in the year 1999 during his budget speech renounced the then existing Monopolistic and Restrictive Trade Practices Act, as proposed within the international economic development. And in the year 2002 the Parliament passed the Competition Act, 2002.

The Competition Law preserves a state of balance within the realm of business, it specialises in regulating discrepancies among businesses and overseeing monopolies. The Competition Combination of India states “the need for Competition Law arises because markets can suffer from failures or distortions, and various players can resort to anti-competitive activities such as cartels, abuse of dominance etc. which adversely impact economic efficiency and consumer welfare.”

The Competition Act, 2002 declares objectives that are rudimentary to the law, encompassing the listed.

* Establish a Commission to prevent practices having adverse effect on competition.
* Competition to be promoted and sustained in the markets.
* Interests of the consumers are to be protected.
* Ensure freedom of trade in the Indian market

What are Combinations?

Section 5 of the Competition Act explains combination as:

***‘ACQUISITION OF ONE OR MORE ENTERPRISES BY ONE OR MORE PERSONS OR MERGER OR AMALGAMATION OF ENTERPRISES SHALL BE A COMBINATION OF SUCH ENTERPRISES AND PERSONS OR ENTERPRISES’.***

Combination within the Competition Law is the merger between two or more enterprises or firms or the business sector acquisitions (such as companies or firms) by other business enterprises. The Government controls combinations or mergers and acquisitions within the country to promote competition and thereby seeing to that small scale establishments are not overshadowed and swallowed by more reputed industries. This is because the merger of big shot companies not only reduce competition but also make it difficult and almost impossible for smaller firms to grow or profit from their business. The accumulation of wealth in certain sectors of business and the consumer concerns can lead to major economic and social discrepancies within the nation.

**Types Of Combinations**

**Horizontal Combinations**

Horizontal Combinations involve the merging of enterprises or firms with identical level of production process, with substitute goods and are competitors. The horizontal combination is primarily a friendly merger between companies, although it can be a takeout of one by the other. Of course the synergy formed by this combination enhances the business performance, financial gains and shareholder value in the long run. The cost efficiency with the staff cut-offs leads to the increased margins of the company. However this tends to pave way for reduced competition as a monopolist agenda emerges from the combinations of powerful enterprises, along with the unemployment that follows which has a very drastic and adverse effect on the economy of the country. It is also bad for the consumers as the reduced competition gives the companies a “higher pricing power.” Therefore these merges are the chief focus and are often scrutinised by the Competition Law Authority for the above given reasons.

**Non-Horizontal Combinations**

The non-horizontal combinations are of two types: Vertical and Conglomerate combinations.

**Vertical Combinations**

Vertical merging is “combining of business firms engaged in different phases of the manufacture and distribution of a product into an interacting whole”. This leads to increased competitiveness, a greater process control, wider market share, a better supply chain co-ordination and decline in cost as this sort of integration is the structuring of supply chain of companies under a particular company.

**Conglomerate Combinations**

Conglomerate combinations involve firms or enterprises in unrelated business fields. Such combination happens when two companies that provide different services and goods or are integrated into varying sectors of business merge together. This sort of merger happens when the companies achieve a stronger stand in the market both in products and services and profit management unlike when they are individual enterprises.

Conglomerate merges can lead to an ascend in “market share, synergy and cross selling”. Here diversification takes a major roll and thereby reduces the “risk exposure” factor. The cons of this particular combination can be the monopolization of a company over a certain market and the over expansion of the conglomerate can seriously affect the quality of functioning of the company and result in the collapse of the system. Such coalescence can be detrimental as it restricts business options for newly formed enterprises in the market. However it is to be note that Non Horizontal Conglomerations do not promote loss of direct competition and are therefore not anti-competitive within an overall framework.

**Regulation of Combinations**

A merger or a combination can be held valid under the purview of the Competition Act 2002 and its regulation policies only if the newly acquired or merged enterprise passes the threshold pertaining to the assets and the turnover mentioned in the Act. If not confined to the criteria then the attractancy of the new enterprise will be nil as far as the provisions of the Competition Act are concerned. Sections 5 and 6 of the Competition Act covers the definition and regulation of combinations.

**The Procedural Aspects**

**Step 1: To Notify**

Once the threshold is met the next step is to non-optionally notify the Competition Commission of India (CCI) on the merger or combination as prescribed in section 6 (2) of the Competition Act. This is for the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market while regarding factors like the actual and potential level of competition through imports in the market; extent of barriers to entry into the market; level of combination in the market; degree of countervailing power in the market etc.

The CCI has been amended on the 8th of January 2016 bringing in key changes closing in to complete ease of doing business in India and also in the regulation of combinations through the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulation, 2016. Any new enterprise to be considered by the CCI will have to abide by the section 6(2) of the Competition Act read with Regulation 5 and Regulation 8 of the Combination Regulation (2016).

**Step 2**

**Inspection of the Notice**: The CCI is to scrutinise the notice for defects or incompleteness on the premises of Regulation 14 of the CCI Amendment Regulation, 2016. After the process the parties to the merger are asked to remove the defects if any.

**Step 3: Prima Facie Opinion**

The Commission has to form a prima facie opinion under sub-section 1 of section 29 of the Act within thirty days of the receipt of said notice. The procedure related to forming a prima facie view is contained in Regulation 19. As per sub regulation 2 of Regulation 19, the Commission may, if considered necessary, require the parties to the combination to file additional information.

Further the parties are asked to publish the details of the combination as per section 29 (2) which creates an open invitation to the public to come forth with objections within fifteen working days from the publishing under section 29(3) , which are to be pacified by the CCI accordingly. The CCI may call upon the parties for additional information pertaining to the merger under section 29(4) read with section 29(5).

**Step 4**

Proceeding to the Final Order: After receiving the additional information the Commission decides as to whether or not the merger or combination will have unfavourable effects on the current competition market as per under section 31. If the commission has concluded after careful scrutiny that the combination at hand will not have harmful effects on the competition market then the Commission shall approve of the transaction under section 31(1) of the Act. On the other hand if the Commission has concluded negative on the transaction due to its adverse effect on the market, it shall hold the transaction null under Section 31(2) of the Act. In a third scenario the Commission can provide the parties with modifications to be made in the transaction to rinse out the provisions likely to be inharmonious to the competition market [Section 31(3)].