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# **THE ROLE OF ANTI-TRUST LAW ON MERGERS AND ACQUISITIONS IN INDIA**

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## **ABSTRACT**

M&A has become a crucial strategy for corporate growth and gaining market shares in India. Such consolidations, even though desirable, may result in monopolistic practices, reduction of competition, and adverse implications on consumers. Anti-trust laws, more so the provisions under The Competition Act 2002, are required to regulate these transactions with a view toward ensuring fair competition and preventing abuses of market dominance. This paper looks at the role of anti-trust laws in the market for merger and acquisition activities in India, thus analyzing the impact in the market, the regulatory framework, and notable case studies that bring out the effectiveness of these laws.

**INTRODUCTION:**

Merger and acquisition basically form an important part of corporate strategy, through which companies can have economies of scale, new markets, and new technology. Merger and acquisition sometimes lead to excessive market concentration, which may cause adverse effect on competition and consumer's interest. To nullify such anti-competitive effects, India has framed a proper legislation in the form of the Competition Act 2002, that governs anti-trust practices in India relating to mergers and acquisitions.

It also explains the role that antitrust laws play in the regulation of mergers and acquisitions in India. It shall look into the objectives and mechanism of the Competition Act, the role of CCI, and the key case studies that outline the application of these laws.

**OVERVIEW OF COMPETITION ACT, 2002:**

The Competition Act, 2002, is the cornerstone of India's antitrust regulatory framework.

It replaced the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, with the aim of promoting competition, preventing anti-competitive practices, and protecting consumer interests.

The Act specifically addresses three key area: anti-competitive agreements, abuse of dominant position, and regulation of combinations (which includes, mergers, acquisitions, and amalgamations). The regulation of combinations is crucial in preventing the emergence of monopolistic entities that could adversely affect competition.<sup>1</sup>

**REGULATION OF COMBINATIONS UNDER THE COMPETITION ACT:**

Under the competition act, combinations that exceed certain thresholds in terms of assets and turnover require mandatory notifications to the CCI. The CCI is tasked with assessing whether a proposed combination would lead to an appreciable adverse effect of completion (AAEC) within the relevant market in India.

The thresholds for mandatory notification are periodically revised to reflect economic changes.

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<sup>1</sup> <https://blog.ipleaders.in/competition-law-relevant-mergers-acquisitions-private-equity/?amp=1>

The thresholds are:

- The combined assets of the merging entities exceed INR 2,000 crore, or
- The combined turnover exceeds INR 6,000 crore.

These thresholds are designed to capture only significant transactions, ensuring that the CCI focuses its resources on M&A activities with the potential to impact competition.

### **THE ROLE OF COMPETITION COMMISSION OF INDIA (CCI):**

The Competition Commission of India is the chief regulatory body of competition act enforcement. It shall have powers to oversee combinations and acquisitions of mergers; it also assesses if such combination is anti-competitive. CCI deploys a structured process to assess combination, including:

1. **Pre-filing consultation:** It gives firms a chance to seek guidance from the CCI before a combination is finally notified. For example, this will be helpful in the identification of potential issues early, thus speeding up the review process.
2. **Phase I review:** CCI grants the initial review within 30 working days in case the combination is likely to cause an AAEC. If there are no significant concerns, combination is approved.
3. **Phase II review:** If the CCI identifies potential competition concerns during phase 1 review, it initiates a detailed investigation phase 2. This involves more in-depth analysis, including market studies, stakeholder, consultation, and economic modelling.
4. **Final Decision:** Based on the finding of phase II review, the CCI can either approve the combination (“with or without conditions) or block it. In some cases, the CCI may require the parties to divest certain assets or businesses to maintain competition.

### **CHALLENGES IN ANTI-TRUST REGULATIONS OF M&A IN INDIA:**

Despite robust framework application of anti-trust laws in MNA faces, several challenges in India-

1. **Evolving market structures-** The rapid evolution of digital markets presents unique challenges for the CCI. Traditional market definition may not apply, and new methods of assisting competitions are required.
2. **Cross borders M&A-** With the increasing number of cross border transaction, the CCI must collaborate with international regulators to access global competition concerns. this adds complexity to the regulatory process.
3. **Judicial Delays-** The legal process in India can be slow leading to delays in resolution of disputes related to M&A. This can create uncertainty for business and impact investment decisions.
4. **Economic impact v. competition concern-** Balancing economic growth with competition concerns as a delicate task. The CCI must ensure that its decision does not stiff innovation or discourage foreign investment while maintaining fair competition.

#### **KEY CASES STUDIES:**

##### **1. SUN PHARMA-RANBAXY MERGER (2014)<sup>2</sup>-**

The mergers between Sun pharmaceuticals and Ranbaxy laboratories marked one of the largest consolidations in India's pharmaceutical industry. Both companies had significant market shares in several therapeutic segments, raising concerns about reduce competition and potential monopolistic behaviour.

**Antitrust issues:** The competition commission of India identified over lapse in the product portfolio of Sun pharma and Ranbaxy which could lead to reduce competition in certain drug markets. This potential reduction and competition could have led to higher prices or reduce choices for consumers.

**Regulatory Action:** To address these concerns, CCI approved the merger on condition that sun pharma divest several products in overlapping areas. This condition approval ensured that the merger did not lead to a dominant market position that could harm competition.

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<sup>2</sup> <https://www.nishithdesai.com/ArticleContent/47/6133/MA-Lab.html>

**Significance:** The Case highlights how Anti-trust laws through CCI plays a crucial role in preserving competition by requiring diversities in case where a merger might otherwise create monopoly or reduce market competition.

## 2. FLIPKART-WALMART ACQUISITION (2018)<sup>3</sup>:

Walmart's acquisition of a majority stake in Flipkart. One of India's leading e-commerce platforms was a landmark deal in the Indian retail sector. The transaction was closely scrutinized due to potential impact on rapidly growing e-commerce market in India.

**Antitrust Issues:** Stakeholders expressed concerns that the acquisition could lead to Walmart, gaining significant control over the e-commerce space, potentially harming smaller retailers and reducing competition in the market.

**Regulatory Action:** The CCI reviewed the acquisition and ultimately approved it, concluding that the transaction would not lead to an appreciable adverse effect on competition (AAEC) in the relevant market. The CCI determined that the e-commerce market was still competitive with other players like Amazon making significant market share.

**Significance:** The case illustrates CCI's balanced approach to M&A where it assesses not only the potential for market dominance but also the broader competitive dynamics within industry. The approval showed that CCI is willing to allow significant mergers where they do not harm competition or consumer welfare.

## 3. ZOMATO- UBER EATS AQUITIONS (2020)<sup>4</sup>:

Zomato a leading online food delivery platform in India acquired the Indian operation of Uber eats the deal consolidated Zomato position, info delivery market, raising concerns about reduce competition.

**Antitrust issues-** The acquisition led to a significant reduction in the number of players in the food delivery sector, which could have potentially led to higher prices, reduce

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<sup>3</sup> <https://corporate.walmart.com/news/2020/07/23/walmarts-majority-owned-flipkart-launches-wholesale-business-to-help-small-businesses-in-india-source-directly-from-manufacturers-and-producers>

<sup>4</sup> <https://corporate.walmart.com/news/2020/07/23/walmarts-majority-owned-flipkart-launches-wholesale-business-to-help-small-businesses-in-india-source-directly-from-manufacturers-and-producers>

service, quality, or less innovation in the market.

**Regulatory Actions-** The CCI conducted a detailed review of the acquisition focusing on the market dynamics in food delivery. despite consolidation, CCI approved the transaction. Noting that the market would remain competitive with the presence of other significant players like Swiggy.

**Significance-** The Zomato Uber eats Case underscore the challenges of regulating M & A in fast evolving digital markets. The CCI approval indicated its understanding of dynamic nature of digital market and its willingness to adapt its regulatory approach accordingly.

## **CONCLUSION:**

Antitrust law plays a pivotal role in regulating mergers and acquisitions in India, ensuring that such transaction does not harm competition or consumer welfare Competition Act 2002, along with the CCI vigilant oversight provides a robust framework for assessing and regulating M & A, however, as market structure evolve new challenges arise, the CCI must continue to adapt its approach to remain effective.

The case studies of Sun pharma and Ranbaxy, Flipkart- Walmart and Zomato- Uber eats, demonstrate the CCI ability to navigate complex transaction and maintain a competitive market environment. Going forward. It will be essential for the CCI to address the challenges of digital market, cross M&A and judicial delays that will hamper integrity of India's competitive landscape.

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