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Mergers and their regulation under the competition law in India: A multi-jurisdictional study

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Abstract
An attempt has been made in this paper to provide an overview of the regulation of mergers under the competition law regime in India. This paper shall primarily deal with the regulation of mergers under the Competition Act, 2002 and Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. Mergers are regulated in India and in other jurisdictions in order to avoid anti- competitive effects such as foreclosure of competition or concentration of few firms in the market. Firstly, the paper provides a brief overview of Mergers and their regulation in India. Secondly, the paper provides the extent and nature of regulation of Mergers under the Competition Act, 2002. The object and extent of regulation of horizontal mergers under Competition law in different jurisdictions will also be addressed. The paper also takes into consideration the extent and nature of regulation of Mergers in other common law jurisdictions. Thirdly, the paper advances the current regulatory scenario with respect to Mergers with the help of case laws and orders of the Competition Commission of India. Finally, a conclusion and suggestions shall be made by the researcher on the basis of the research undertaken. The aim of the paper is to delineate the procedure that is ascribed in the Competition Act, 2002 and the Combination regulations which shall be analysed through a comparative approach.

Keywords: overview, combination, mergers, jurisdictional

1. Introduction
In common parlance, a merger is defined as a form of amalgamation where all the properties and liabilities of the transferor company get merged with properties and liabilities of the transferee company [1].
Primarily, mergers can be classified into horizontal [2] and vertical mergers [3]. In addition, merger between enterprises operating in different markets are called conglomerate mergers [4].
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. A merger leads to a bad outcome only if it creates a dominant enterprise and subsequently abuses its dominance [5]. The general principle in keeping with the overall goal is that mergers should be challenged only if they reduce or harm competition and adversely affect welfare [6].
Generally, at least two conditions are necessary for a merger to have a likely anti-competitive effect. The market must be substantially concentrated after the merger and it must be difficult for new firms to enter the market in the near future and provide effective competition [7].
From the point of view of competition policy, it is horizontal mergers that are generally the focus of attention as the elimination of head to head competition between two leading firms may result in unilateral anti-competitive effects. In rare cases, where an enterprise in a dominant position makes a vertical merger with another firm in a (vertically) adjacent market to further entrench its position of dominance, the merger may provide a cause for concern.
In this paper, the researcher analyses the provisions of the Competition Act, 2002 (Hereinafter "Act") and the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Hereinafter "Combination regulations") with respect to mergers, amalgamation and acquisitions. The paper has been divided into four parts. The first part of the paper provides an overview of the regulation of combinations [8] under the Act. In doing so, the researcher provides an analysis of the provisions relating to the financial threshold requirement of a combination, notification procedure of the combination to the Competition Commission of India (Hereinafter "Commission") and the factors to be considered by the commission while adjudicating the combination. Subsequently, in the second part of the paper, the researcher has taken into consideration the regulation of mergers in India under the Combination regulations in force. In doing so, the researcher has provided an overview of the regulations as they stand after the latest amendment and the notifications issued by the Ministry of Corporate Affairs (Hereinafter "MCA") with respect to combinations. In the third part of the paper, the researcher has analysed the law relating to mergers in the United Kingdom and European Union. Pursuant to which a comparison has been drawn between the competition law regimes in India and the other jurisdictions. Lastly, the researcher shall make a conclusion and offer suggestions on the basis of the research.
The main objective of this paper is to delineate the procedure with respect to the regulation of combinations in India and understand the obligations that are imposed on the parties entering into a combination. The paper also aims at providing an analysis on different aspects of the competition law regime such as assessment of mergers, notification of mergers to the competition authorities and the remedies or orders of the competition authorities after conclusion of investigation into a merger.

2. Regulation of Mergers under the Competition Act, 2002

In India, Mergers are regulated by the Companies Act, 2013, Income Tax Act, 1961, SEBI Act, 1992, SEBI Takeover Code, 1994, Foreign Exchange Management Act, 1999 and the Competition Act, 2002.

The regulation of mergers was required to be enacted, primarily, with the objective of taking measures to avoid anti-competitive agreements and abuse of dominance as well as to regulate mergers and takeovers which result in distortion of the market [9]. It is pertinent to note that in 2015, the Competition Commission of India (Hereinafter "Commission") received 127 merger and acquisition cases [10], it received 94 (excluding 4 invalidated / withdrawn notices) notices of proposed combinations [11] in 2014-15 [12] and approved a record number of 87 combinations, with 84 of these approved in less than 30 days [13]. This goes on to show that the Commission has been quite effective in its procedure with respect to regulation of combinations.

The regulatory framework with respect to mergers under the Competition Act, 2002 ("Act") has been provided in Sections 5, 6, 20, 29, 30 and 31 read along with Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.

a) Requirement under the Act

According to the requirement as per the act, a merger shall be considered to be a combination within the meaning of the Act if the value of the combined assets or turnover of the combined entities is more than the amounts specified in the Act. The Act lays down a financial threshold requirement for combining parties on the basis of the turnover [14] or value of the assets [15] of the combined entity.

As per section 5 the asset worth required for a company based in India is 1000 cr and should be having turnover worth 3000cr or more and a company based in a country other than India should be having assets worth 2000cr along with a turnover of 2000cr. The acquired company

Recently, the Ministry of Corporate Affairs (Hereinafter "MCA") vide notification [16] has increased the threshold limits for turnovers and value of assets for determining transactions which would be considered a combination.

There is a financial threshold requirement directed towards combining entities with respect to an acquisition, merger or an acquisition of control. Furthermore, the MCA vide its notification [17] dated March 4, 2016 has provided an exemption to a group [18] exercising less than fifty per cent of the voting rights in another enterprise. The exemption has been provided for a period of five years. The above exemption facilitates ease of doing business and is a welcome step for various stakeholders entering into a combination.

b) In case of an Acquisition

As per the financial threshold requirement stated in the Act, an acquisition [19] of either control [20], shares, voting rights or assets of another entity shall be a combination within the meaning of the Act if the value of the combined assets or turnover of the acquiring entity as well as the entity being acquired is more than the amounts specified above.

When there is an acquiring of control by a person over an enterprise and when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control should jointly satisfy the financial threshold as illustrated above in order to be considered as a combination.

Recently, the Central Government has provided an exemption to enterprises on the basis of their value of assets and Turnover. The exemption provides that an enterprise, whose control, shares, voting rights or assets are being acquired has either assets of the value of not more than rupees three hundred and fifty crores in India or turnover of not more than rupees one thousand crores in India. Such enterprise is exempted from the above stated requirement for a period of five years [21].

c) In the case of Merger or Amalgamation

In the case of a merger or amalgamation, the financial threshold requirement is similar to that of an acquisition. The merger or amalgamation in which the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, has the threshold as has been explained above (refer table) would be liable to the notification requirement.

It is pertinent to note that if any of the the combinations (whether such transaction is in the form of an acquisition, merger or amalgamation) mentioned above does not fulfil the above mentioned financial threshold requirement, such transaction would not qualify as a "combination", within the meaning of the Competition Act [22].

3. Regulation of Mergers as per the Combination Regulations

The Commission in furtherance of its duty to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India [23] and through the power conferred on it by the Competition Act (Hereinafter "Act") of making regulations [24] enacted the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Hereinafter "regulations").

The regulations read along with the Act prescribe, inter alia, the procedure for notification of combinations to the Commission and the remedies available to the parties thereafter. The regulations came into force with the objective of restricting anti-competitive conduct in proposed combinations to come into existence and allowing combinations which do not have anticompetitive effects on market. The procedure with respect to notification of combination to the commission has been highlighted below.

a) Notice for the proposed combination

The Combinations if found to satisfy the abovementioned financial threshold requirement, the parties entering into the combination would require a notice to be filed with the Commission within thirty days of entering into a combination by the person [25] or enterprise [26] entering into a combination [27].

Furthermore, if the Commission does not, on the expiry of a period of two hundred and ten days from the date of notice given to the Commission, pass an order or issue direction in

accordance with the provisions of the Act, the combination shall be deemed to have been approved by the Commission [28].

The notice to the commissions shall ordinarily be filed in Form I as specified in schedule II to the regulations, duly filled in and accompanied by evidence of payment of requisite fee by the parties to the combination [29]. The details that need to be filled in the form include, inter alia, detailed information about each party to the combination, a description of the combination proposed to be entered by the parties and information with respect to the relevant market of the combination.

The parties to the Combination have an option of filing the notice in either Form I or Form II [30]. However, Form-II is preferable particularly in the instances where the parties to the combination are engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable [31] goods or provision of similar or identical or substitutable services and the combined market share of the parties to the combination after such combination is more than fifteen percent (15%) in the relevant market [32].

The option of filing the notice in Form-I or Form-2 can be availed by parties which are not engaged in similar businesses provided that the individual or combined market share of the entities does not exceed 25% of the total market share in the relevant market.

b) Penalty for failure to file notice

If any person or enterprise who fails to file notice of the combination to the Commission, the Commission shall impose on such person or enterprise a penalty which may extend to one percent, of the total turnover or the assets, whichever is higher, of such a combination [33].

A. Time period for evaluating notice

According to the Act, a combination shall not come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission or the Commission has passed orders with respect to the combination, whichever is earlier [34].

Moreover, the time period shall commence from the date of receipt of notice in the prescribed Form [35].

Thereby, it is safe to say that any person or enterprise entering into a combination which satisfies the threshold requirement as mentioned above must notify the commission in the appropriate form as detailed above. Once the notice has been filed, the commission may call for additional information from either of the parties entering into a combination.

B. Procedure post notification: Investigation into Combination

After receipt of all information from the parties entering into a combination, the Commission shall proceed to deal with the case in accordance with the procedure mentioned below.

In the case that the Commission is of the prima facie opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination.

Furthermore, the notice shall call upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted against the parties [36].

After the receipt of the response of the parties with respect to the show cause to the combination, the Commission may call for a report from the Director General [37].

Further, when the Commission is of the prima facie opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India the Secretary shall, within four working days of such decision convey the direction of the Commission to the parties to the combination, to publish the details of the combination within ten working days of the date of such direction [38].

Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect [39].

C.1. Factors to be taken into consideration during investigation

While adjudicating whether a merger would have an appreciable adverse effect on competition, the Act provides a number of factors that the commission shall take into consideration. They include actual and potential level of competition through imports in the market, extent of barriers to entry [40] into the market, level of combination [41] in the market degree of countervailing power [42] in the market, likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase, prices or profit margins; extent of effective competition likely to sustain in a market, extent to which substitutes are available or are likely to be available in the market; market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market; nature and extent of vertical integration in the market; possibility of a failing business, nature and extent of innovation; relative advantage, by way of the contribution to the economic development, by any combination having or likely to have, whether the benefits of the combination outweigh the adverse impact of the combination, if any.

However, where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given.

C.2. Modification of Combination

Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination [43]. Subsequently, the parties, who accept the modification proposed by the Commission shall carry out such modification within the period specified by the Commission or if the parties to the combination, who have accepted the modification proposed by the commission, fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition [44].

Also, if the parties to the combination do not accept the modification proposed by the Commission, such parties

may, within thirty working days of the modification proposed by the Commission, submit an amendment to the modification proposed by the Commission and subsequently if the Commission agrees with the amendment submitted by the parties under, it shall, by order, approve the combination [45]. However, if the Commission does not accept the amendment submitted, then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission.

Where the Commission has directed that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition, then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that the acquisition or the acquiring of control or the merger or amalgamation shall not be given effect.

D. Orders of the Commission

D.1. Acquisition of iGate by Capgemini [46]

The Commission received a notice by Capgemini S.A. ("Capgemini" "Acquirer"), pursuant to an Agreement and Plan of Merger ("Agreement"), entered into between Capgemini S.A., Capgemini North America Inc., Merger Sub Inc. ("Merger Sub") and iGate Corporation ("iGate""Target") on 25th April 2015.The competitive effects of the combination were analysed by delineating the relevant market in terms of the relevant product market and relevant geographic market. The markets were defined in a manner that would include the relevant constraints on the behaviour of firms. The relevant product market for the proposed combination was identified as "Information Technology and Information technology enabled services." The relevant geographic market was identified as entire India as there are no regulatory or other barriers in the country in the market of IT and IT enabled services.

As regards the proposed combination, it was observed that within the overall market for IT and IT enabled services, there were overlaps between Capgemini and iGate in the segments of consulting, implementation services, business process outsourcing and IT outsourcing in India. However, it was also observed that the overall IT services industry is fragmented and characterized by the presence of large players. This was evident from the fact that even the largest player in the market of IT and IT enabled services in India, had an estimated market share of around 10-13 percent for the year 2014.

Further, the combined market share of Capgemini and iGate in the relevant market in India was negligible. Even within the narrower scope of each overlapping segment as identified above, the combined market share of Capgemini and iGate was insignificant and below 3% in each segment in India. Thereby, the commission approved the combination.

D.2. Merger between Pfizer, Hospira, Inc. and Perkins Holding Company [47]

The Commission received a notice from Pfizer, Inc. ("Pfizer" or the "Acquirer"). The notice was filed pursuant to the execution of an agreement and Plan of Merger between Pfizer, Hospira, Inc. ("Hospira") and Perkins Holding Company ("Perkins"), a wholly owned subsidiary of Pfizer.

It was further noted that at the molecule level, i.e., medicines/formulations based on the same API, there is limited overlap between Pfizer and ZHOPL in relation to formulations based on 'Epirubicin'. However, this overlap did not raise any competition concerns as the incremental market share, in the market of formulations based on 'Epirubicin', was less than 1-5 per cent, in India. Pfizer is engaged in the business of formulations, whereas Hospira is in the business of APIs which are the primary inputs for manufacture of the formulations. The Commission therefore, analysed the possibility of any vertical foreclosure in the upstream or the downstream market, resulting from the proposed combination. In this regard, it was noted that the majority of the APIs manufactured by 'Hospira' in India are for captive consumption by 'Hospira', i.e. 'Hospira' uses these APIs to manufacture formulations, which are then sold outside India. However, there are certain APIs which are manufactured by Hospira for supply to another pharmaceutical company in India. It was observed that amongst these APIs, there is only one API i.e. 'Tadalafil', which may have the potential usage for Pfizer, as Pfizer sells formulations based on 'Tadalafil' at present. In this regard, it is also noted from the information provided by the Acquirer that there are other suppliers who supply 'Tadalafil' to the entities engaged in the downstream market of formulations based on the said API and that the merged entity would not have the ability to foreclose access to inputs for such entities. In view of the forgoing, the commission held that the proposed combination is not likely to result in any vertical foreclosure in the relevant market of Tadalafil API in India.

4. Regulation of mergers in other jurisdictions

A. Merger control regulations in United Kingdom

The United Kingdom merger control legislation is primarily contained in the Enterprise Act, 2002 [48] (Hereinafter "EA 2002") and is enforced by the Competition and Markets Authority (Hereinafter "CMA") [49]. The assessment of mergers in the United Kingdom (Hereinafter "UK") is conducted as a two-phase process, giving distinct but interrelated roles to the CMA, and, exceptionally, to the Secretary of State for Business, Innovation and Skills (Hereinafter "SoS"). Both anticipated and completed mergers are covered by the Act [50].

A.1. Competition and Markets Authority

The Enterprise and Regulatory Reform Act, 2013 established the CMA as a body corporate [21] and subsequently abolished the Office of Fair Trading and the Competition Commission as assessing authorities [52]. The CMA's primary duty is to seek to promote competition, both within and outside the UK, for the benefit of consumers.

A.2. Relevant merger situation

According to the EA, 2002, a relevant merger situation [53] is created if two or more enterprises [54] have ceased to be distinct enterprises at a time or in circumstances mentioned below; and the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million [55].

Moreover, a relevant merger situation is created if two or more enterprises have ceased to be distinct enterprises; and as a result, one or both of the conditions prevails or prevails

to a greater extent. The condition mentioned is that, in relation to the supply of goods of any description, at least one-quarter [56] of all the goods of that description which are supplied in the United Kingdom, or in a substantial part of the United Kingdom are supplied by one and the same person or are supplied to one and the same person; or are supplied by the persons by whom the enterprises concerned are carried on, or are supplied to those persons [57].

In relation to the supply of services of any description, the supply of services of that description in the United Kingdom, or in a substantial part of the United Kingdom, is to the extent of at least one-quarter supply by one and the same person, or supply for one and the same person; or supply by the persons by whom the enterprises concerned are carried on, or supply for those persons.

The EA, 2002 provides for enterprises which shall for the purposes of EA, 2002 not be distinct enterprises. Two enterprises shall not be considered to be distinct if they are bought under common control [58] or common ownership [59]. The provision makes it clear that any two enterprises that are under the common control of a person or the person has substantial influence over the policy of the enterprise, such enterprises would cease to be distinct for the purposes of EA, 2002 and would be considered to be within the ambit of a relevant merger situation.

A.2. Notification Requirement

In the United Kingdom, there exists a voluntary notification requirement which means that parties entering into a merger may voluntarily notify the same to the CMA if the merger satisfies the turnover threshold requirements as per the EA, 2002.

In case, the notification is not made voluntarily by the parties entering into a merger, the CMA may on its own initiative commence a *suo motu* investigation into the merger when the CMA has a reasonable belief, objectively justified by facts that there is a realistic prospect that the merger will lessen competition substantially.

A.3. Investigation into a relevant merger situation

In the United Kingdom, the investigation into a relevant merger situation by the CMA can be divided into two phases. In the first phase the merger is reviewed in order to assess any competition concerns by the CMA.

A.3.1. First phase of investigation

The first phase can be further broken down into different stages. At stage one of the investigation process, the CMA holds pre-notification discussions with the parties involved in the merger [60]. It also allocates a case team of CMA staff to review transactions. In case the notification to the parties is a voluntary notification by the merger parties, the CMA assesses whether the notification is in compliance with the Act, following which it confirms the consequent statutory deadline for its decision [61].

In case the investigation by the CMA is on its own initiative, then it sends an inquiry letter to the merger parties requesting further information from the parties about the transaction.

The 40 day initial period for the CMA's investigation begins on the first day after it confirms to the parties that it has received a complete merger notice [62]. It is within the aforementioned time period that the CMA shall clear the transaction if it is of the view that the transaction does not have any effect on lessening competition. However, in the case it is of the opinion that the reference shall have an adverse effect on competition, CMA refers the transaction to the second phase of investigation.

A.3.2. Second phase of investigation

In the second phase, an in depth review of the merger is conducted in order to assess if the merger has any contentious issues with respect to competition.

The CMA considers any request by merging parties, whether the transaction may be abandoned and whether to suspend the phase 2 investigation for up to three weeks. CMA issues phase 2 opening letter to main parties as well as an initial data request and request for an initial phase two submission. It also considers the need for modified interim measures which were adopted in the previous phase [63]. Furthermore, the CMA conducts an analysis of evidence and produces working papers. Extracts of those papers are put back to relevant parties to check factual accuracy and to identify confidential information. It holds a main party hearing. In the following weeks, CMA considers the responses to provincial findings and remedies proposals. At the last stage, the CMA publishes a final report.

B. Merger control regulations in European Union

The main competition legislative texts in the European Union for merger decisions are 'The control of concentrations between undertakings' (Hereinafter "The ECMR") and the Implementing Regulation [65]. The ECMR contains the main rules for the assessment of concentrations [67], whereas the Implementing Regulation concerns procedural issues.

B.1. Requirement

The regulations apply to a merger ('Concentration' referred to in ECMR) that have a community dimension. A concentration has a Community dimension [68] where:

a) The combined aggregate worldwide turnover [69] of all the undertakings concerned is more than EUR 5000 million; and
b) The aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million, unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State.

A concentration with a community dimension should be deemed to exist where the aggregate turnover of the undertakings concerned exceeds given thresholds; that is the case irrespective of whether or not the undertakings effecting the concentration have their seat or their principal fields of activity in the Community, provided they have substantial operations there.

B.1.1. Calculation of Turnover

For the purpose of calculating the turnover of an entity, it comprises of the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales

rebates and of value added tax and other taxes directly related to turnover [70].

B.2. Examination of Concentrations

The examination of concentrations commences as soon as the commission receives a notification [71]. If the commission concludes that the concentration notified does not fall within the scope of the ECMR, it records that finding by means of a decision [72]. It is pertinent to note that the decision declaring a concentration compatible is deemed to cover restrictions directly related and necessary to the implementation of the concentration [73].

The investigation proceedings are initiated when the Commission finds that the concentration notified falls within the scope of ECMR and raises serious doubts as to its compatibility with the common market.

B.3. Time limits for initiating proceedings and decisions

Where the commission concludes that the concentration notified does not fall within the scope of the regulations, it shall take a decision with respect to the same within 25 working days [74]. Moreover, where the commission concludes that the concentrations come within the scope of the regulations and do have an impact on the common market, the decision with respect to the same concentrations shall be taken within not more than 90 working days of the date on which the proceedings are initiated. The period shall be increased to 105 working days where the undertakings concerned offer commitments pursuant to a modification being undertaken by the entities with a view to rendering the concentration compatible with the common market.

B.4. Orders and penalties on Concentrations

When a concentration is found to be incompatible with the common market of which the commission is notified subsequent to its implementation, the Commission may require the undertakings concerned to dissolve the concentration, in particular through the dissolution of the merger or the disposal of all the shares or assets acquired, so as to restore the situation prevailing prior to the implementation of the concentration [75].

However, in circumstances where restoration of the situation prevailing before the implementation of the concentration is not possible, the Commission may take any other measure appropriate to achieve such restoration as far as possible and order any other appropriate measure to ensure that the undertakings concerned dissolve the concentration or take other restorative measures as required [76].

Additionally, the Commission may by decision impose on the persons, undertakings or associations of undertakings, fines not exceeding 1% of the aggregate turnover of the undertaking or association of undertakings concerned where, intentionally or negligently they supply incorrect or misleading information in a submission, certification, notification or supplement thereto.

5. Concluding remarks and suggestions

In conclusion, it is pertinent to note that the current merger control regulations in India, United Kingdom and European Union are similar when looked from a general view. However, after a detailed perusal of the regulations, it can be held that there do exist differences in the anti-trust regimes of the countries when looked at from a procedural point of view.

Beginning with the notification requirement of mergers to the appropriate competition agencies, it can be seen that the while the mandatory notification requirement does seem to be more effective in controlling mergers that harm competition in the market, the voluntary merger regime existing in the United Kingdom and certain other countries has been proved to be effective in its ability to penalise parties who have not notified the merger.

Secondly, there also does exist a difference in the factors that are to be taken into consideration while adjudicating mergers, amalgamations and acquisitions that adversely affect competition. Under the Indian competition law regime, the factors that are to be taken into consideration include market share of the combined entity post the combination. In United Kingdom, due consideration is given to the fact that the entity in question is in common control or under common ownership of another entity.

Thirdly, with respect to the type of combinations that are covered with its ambit, it is submitted that in India, the Act covers mergers, amalgamations and acquisitions. As compared to the European Union and the United Kingdom, where the merger regulations take within its fold joint venture between two companies apart from merger, amalgamations and acquisitions that adversely affect competition.

As per the time period for assessment of mergers, in India there is a two hundred and ten day period within which the commission shall give an order with respect to a combination. The time period in United Kingdom and the European Union for giving an order on combinations is relatively lower. In the case of the European Union, the maximum time period for the commission extends to a period of one hundred and five days from the date of notification of the merger. In United Kingdom gives a phase one decision within a period of forty days from the date of notification of the merger.

6. References

1. KAPOOR GK, SANJAY DHAMIJA, COMPANY LAW AND PRACTICE 815, (19th ed. 2014).
2. A merger between two or more businesses that are on the same market level because they manufacture similar products in the same geographic region; a merger of direct competitors. Also termed horizontal integration. *See Horizontal Merger,* Black's law Dictionary, (10th ed. 2014).
3. A merger between businesses occupying different levels of operation for the same product, such as between a manufacturer and a retailer; a merger of buyer and seller. *See Vertical Merger,* Black's law Dictionary, (10th ed. 2014).
4. A merger between unrelated businesses that are neither competitors nor customers or suppliers of each other. *See Conglomerate Merger,* Black's law Dictionary, (10th ed. 2014).
5. An enterprise is said to abuse its dominance when it directly or indirectly, imposes unfair or discriminately condition in purchase or sale of goods or services: or price in purchase or sale of goods or services or limits or restricts production of goods or provision of services or market or technical or scientific development relating to goods or services to the prejudice of consumers or indulges in practice resulting in denial of

market access or makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which by their nature or according to commercial usage with the subject of such contracts or uses its dominant position in one relevant market to enter into or protect other relevant market. *See* Competition Act, 2002 , 4.
6. U P MATHUR, GUIDE TO COMPETITION LAW, Lexis Nexis, 2002, 1.
7. *See* MATHUR, *supra note* 2.
8. The term combination includes an acquisition, acquisition of control and a merger or amalgamation. *See* Competition Act, 2002, 5.
9. Steel Authority of India v. CCI (2010) 10 SCC 744
10. Competition Commission of India received record 127 M&A cases in 2015, Economic Times, 2015.
11. Combination as per the Act means acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has direct or indirect control over another enterprise engaged in a competing businesses, and mergers and amalgamations between or amongst enterprises when the combining parties exceed the thresholds set in the Act. *See* Competition Act, 2002, 5.
12. Annual Report of Competition Commission of India (2014-2015). Accessed from http://www.cci.gov.in/sites/default/files/annual%20reports/Annual%20Report%202014-15%20Eng.pdf. (Last visited on April 17, 2016).
13. Ibid
14. The term 'turnover' includes value of sale of goods or services. *See* Competition Act, 2002, 2(y).
15. The value of the assets shall be determined by taking the book value of the assets shown, in the audited books of account of the enterprise in the financial year immediately preceding the financial year in which the date of the proposed merger falls. *See* Competition Act, Explanation to § 5.
16. MINISTRY OF CORPORATE AFFAIRS, Notification S.O. 675(E), 2016.
17. MINISTRY OF CORPORATE AFFAIRS, Notification S.O. 673(E),, 2016.
18. The term "group" means two or more enterprises which, directly or indirectly, are in a position to exercise twenty-six per cent or more of the voting rights in the other enterprise; or appoint more than fifty per cent of the members of the board of directors in the other enterprise or control the management or affairs of the other enterprise. *See* Competition Act, Explanation (b) to § 5, (2002).
19. Acquisition means, directly or indirectly, acquiring or agreeing to acquire shares, voting rights or assets of any enterprise; or control over management or control over assets of any enterprise. *See* Competition Act, § 2(a), (2002).
20. "Control" includes controlling the affairs or management by one or more enterprises, either jointly or singly, over another enterprise or group; one or more groups, either jointly or singly, over another group or enterprise. *See* Competition Act, Explanation (a) to § 5, (2002).
21. MINISTRY OF CORPORATE AFFAIRS, Notification S.O. 674(E), 2016.
22. Thomas Cook (India) Limited and ors. v. Competition Commission of India, Comp LR 953, 2015.
23. Competition Act, § 18, 2002.
24. Competition Act, § 64, 2002.
25. "Person" includes an individual, a Hindu undivided family; a company, a firm, an association of persons or a body of individuals, whether incorporated or not, in India or outside India; or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); Any body corporate incorporated by or under the laws of a country outside India; a co-operative society registered under any law relating to cooperative societies; and a local authority; every artificial juridical person, not falling within any of the above. *See* Competition Act, 2002, 2(l).
26. "Enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space. *See* Competition Act, § 2 (h) (2002).
27. Competition Act, 2002, 6(2).
28. Competition Act, 2002, 31(11).
29. Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, 5(2).
30. Competition Act, 0022, 3A.
31. Competition Act, Schedule II, 2002.
32. Relevant market means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets. *See* Competition Act, § 2(r), 2002.
33. Competition Act, § 43A, 2002.
34. Competition Act, § 6 (2A), 2002.
35. Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, Proviso to Reg, 5(5).
36. Competition Act, 2002, 29(1).
37. Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, 20.
38. Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, 22.
39. Competition Act, 2002, 31(2).
40. Barriers to entry to the relevant market are a significant factor to be considered. They include high initial cost of investment in the business, requisite technology not being freely available, government restrictions on entry. *See* T. RAMAPPA, COMPETITION LAW IN INDIA:

POLICY, ISSUES AND DEVELOPMENTS, (3rd Ed. 2006).

41. This would refer to the distribution of control over the market at the time of examination of the proposed combination. *See* T. RAMAPPA, COMPETITION LAW IN INDIA: POLICY, ISSUES AND DEVELOPMENTS, (3rd Ed. 2006).
42. Any scope for buyers to obtain substitutes as well as for the suppliers to consider supplying substitute products or close substitute would act as a constraint to a combination that may be considered to adversely affect competition in India. *See* T. RAMAPPA, COMPETITION LAW IN INDIA: POLICY, ISSUES AND DEVELOPMENTS, (3rd Ed. 2006).
43. Competition Act, 2002, 31(3).
44. Competition Act, 2002, 31(5).
45. Competition Act, 2002, 31(7).
46. Case No. C-2015/05/274. Accessed from http://www.cci.gov.in/sites/default/files/C-2015-05-274_0.pdf. Last visited on April 19, 2016.
47. Case No. C-2015/03/255. Accessed from http://www.cci.gov.in/sites/default/files/C-2015-03-255_0.pdf. Last visited on April 19, 2016.
48. An Act to make provision about mergers and market structures and conduct; to amend the constitution and functions of the Competition Commission; to create an offence for those entering into certain anti-competitive agreements; to provide for the disqualification of directors of companies engaging in certain anti-competitive practices; to make other provision about competition law; to make further provision about the disclosure of information obtained under competition and consumer legislation. Accessed from http://www.legislation.gov.uk/ukpga/2002/40/introduction (Last visited on April 9, 2016).
49. Duty of reporting mergers which was earlier imposed through the EA, 2002 on the Office of fair trading, has now been shifted to the Competition and Markets authority.
50. The International Comparative Legal Guide to Merger Control 2016 (12th ed.), Global Legal Group
51. Enterprise and Regulatory Reform Act, 2013 § 25 (1), 2013.
52. Enterprise and Regulatory Reform Act, 2013 § 26 (1) & 26 (2), 2013.
53. The question whether a relevant merger situation has been created shall be determined as at in the case of a reference which is treated as having been made under section 22 by virtue of section 37(2), such time as the Commission may determine; and in any other case, immediately before the time when the reference has been, or is to be, made. *See* Enterprise Act, 2002 § 23(9) (2002).
54. Enterprise means the activities, or part of the activities, of a business. *See* Enterprise Act, 2002 § 129 (2002).
55. Enterprise Act, 2002 § 23(1) (2002).
56. For the purpose of deciding whether the proportion of one-quarter mentioned in subsection (3) or (4) is fulfilled with respect to goods or (as the case may be) services of any description, the decision-making authority shall apply such criterion (whether value, cost, price, quantity, capacity, number of workers employed or some other criterion, of whatever nature), or such combination of criteria, as the decision-making authority considers appropriate. See Enterprise Act, 2002, 23(5).
57. Enterprise Act, 2002, 23(3).
58. Two or more enterprises under common control, a person or group of persons may be treated as bringing an enterprise under his or their control if being already able to control or materially to influence the policy of the person carrying on the enterprise, that person or group of persons acquires a controlling interest in the enterprise or, in the case of an enterprise carried on by a body corporate, acquires a controlling interest in that body corporate; or (b)being already able materially to influence the policy of the person carrying on the enterprise, that person or group of persons becomes able to control that policy. *See* Enterprise Act, 2002, 26(2).
59. Enterprise Act, 2002 § 29 (2002).
60. Competition and Markets Authority, *Mergers: Guidance on Competition and Markets Authority's jurisdiction and procedure*, January, 2014. (Last visited on April 12, 2016). Accessed from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384055/CMA2__Mergers__Guidance.pdf.
61. Ibid.
62. Ibid.
63. Ibid.
64. http://ec.europa.eu/competition/mergers/legislation/regulations.html#merger_reg (Last visited on April 6, 2016)
65. A concentration for the purposes of the ECMR shall be deemed to arise where a change of control on a lasting basis results from the merger of two or more previously independent undertakings or parts of undertakings, or the acquisition, by one or more persons already controlling at least one undertaking, or by one or more undertakings, whether by purchase of securities or assets, by contract or by any other means, of direct or indirect control of the whole or parts of one or more other undertakings. *See* Article 3(1) of EC Merger Regulations
66. Article 1(2) of the EC Merger Regulations.
67. Aggregate turnover within the meaning of the ECMR shall comprise the amounts derived by the undertakings concerned in the preceding financial year from the sale of products and the provision of services falling within the undertakings' ordinary activities after deduction of sales rebates and of value added tax and other taxes directly related to turnover. The aggregate turnover of an undertaking concerned shall not include the sale of products or the provision of services between any of the undertakings referred to in paragraph 4.
68. Turnover, in the Community or in a Member State, shall comprise products sold and services provided to undertakings or consumers, in the Community or in that Member State as the case may be.
69. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, Article 5(1).
70. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, Article 6(1).
71. Ibid

72. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, 6.
73. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, 10.
74. Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, 8(4).
75. Ibid.