ILE

LEX SPECULUM

VOLUME 1 AND ISSUE 1 OF 2023

INSTITUTE OF LEGAL EDUCATION

ILE LEX SPECULUM

APIS – 3920 – 0036 | ISBN - 978-81-964391-3-2

(Free Publication and Open Access Journal)

Journal's Home Page – https://ls.iledu.in/

Journal's Editorial Page - https://ls.iledu.in/editorial-board/

Volume 1 and Issue 1 (Access Full Issue on - https://ls.iledu.in/category/volume-1-and-issue-1-of-2023/)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 - info@iledu.in / Chairman@iledu.in

© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer https://ls.iledu.in/terms-and-condition/

CONSIDERING A COMBINATION UNDER THE COMPETITION LAW

AUTHOR - SHIVANGI KUMARI, STUDENT AT GALGOTIAS UNIVERSITY

BEST CITATION - SHIVANGI KUMARI, CONSIDERING A COMBINATION UNDER THE COMPETITION LAW, *ILE LEX SPECULUM (ILE LS),* 1 (1) OF 2023, PG. 249-251, APIS – 3920 – 0036 | ISBN - 978-81-964391-3-2.

Introduction

Competition is what keeps our world as we know it alive. It is without a doubt an essential incentive in the grant sector of advancement and growth. Of course, in the grand scheme of expansion, competitions are not always constructive and advantageous. The Indian Constitution emphasizes the regulation of combinations under competition law as a result.

Key Words - Competition, Combination, Section 5 of competition law, Regulation

COMPETITION LAW IN INDIA

Following the harmonization of competition, the finance minister renounced the Monopolistic and Restrictive Trade Practices Act in 1999 during his budget address, as was suggested within the global economic development. The Competition Act, 2002 was also passed by Parliament in 2002. Competition Law protects a state of equilibrium in the commercial world; it focuses on controlling disparities between firms and supervising monopolies. "The need for Competition Law arises because markets can experience failures or distortions, and various players can engage in anti-competitive activities such as cartels, abuse of dominance, etc. which adversely impact economic efficiency and consumer welfare," the Competition Combination of India states.

What are Combinations?

Combination is defined as follows in Section 5 of the Competition Act:

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

In terms of Competition Law, a combination is a merger of two or more businesses or firms, as well as the purchase of businesses (such as firms or companies) by other businesses. The government regulates combinations, mergers, and acquisitions within the nation in order to foster competition and prevent smaller businesses from being eclipsed and absorbed by bigger well-known companies. This is due to the fact that when major corporations merge, it not only lessens competition but also makes it difficult or nearly impossible for smaller businesses to expand or turn a profit. There may be significant economic and social inequalities within the country as a result of the wealth buildup in some company sectors and consumer concerns.

Types Of Combination

Horizontal Combinations

In horizontal combinations, businesses or firms that have equivalent levels of manufacturing processes, produce comparable items, and are rivals join together. The horizontal combination mainly involves the friendly merger of two businesses, though it can also involve the takeover of one by the other. In the long run, the synergy created by this combination undoubtedly improves shareholder value, financial profits, and corporate performance. Increased firm margins result from the cost-effectiveness of personnel reductions. However, as a result of the alliances of strong businesses, there is a tendency for less competition to develop. This, coupled with the ensuing

ILE LEX SPECULUM
VOLUME I AND ISSUE I OF 2023
APIS – 3920 – 0036 | ISBN - 978-81-964391-3-2

Published by
Institute of Legal Education
https://iledu.in

unemployment, has a very negative impact on the nation's economy.

Non - Horizontal Combinations

Vertical and conglomerate combinations are the two categories of non-horizontal combinations.

Vertical Groupings

"Combining of business firms engaged in different phases of the manufacture and distribution of a product into an interacting whole" is what vertical merging is defined as. Due to the fact that this type of integration structures the supply chains of several enterprises under a single company, it increases competitiveness, improves process control, expands market share, and lowers costs.

Combinations of Conglomerates

Conglomerate pairings involve companies or enterprises from unrelated commercial sectors. Such a combination occurs when two businesses that offer various services and items or are integrated into various business sectors come together. In contrast to when they were private companies, this type of merger occurs when the companies have a stronger position in the market for their goods and services as well as for profit management.

A rise in "market share, synergy, and cross selling" might result from conglomerate mergers. Here, diversification plays a significant role and lowers the "risk exposure" component.

The disadvantages of this particular combination include the potential for market monopolization by a firm and the over-expansion of the conglomerate, which can substantially impair the company's performance and lead to the breakdown of the system. Such coalescence can be harmful since it limits the commercial possibilities available to newly established businesses in the market. It is important to keep in mind, nevertheless, that Non-Horizontal Conglomerates do not encourage the loss of direct competition and are not, in the grand scheme of things, anticompetitive.

Regulation of Combinations

Only if the newly acquired or merged firm surpasses the threshold relative to the assets and the turnover specified in the Act can a merger or combination be considered lawful under the scope of the Competition Act 2002 and its regulation policies. If the conditions are not followed, the new enterprise's attraction will be zero in terms of the Competition Act's rules. Combinations are defined and governed by Sections 5 and 6 of the Competition Act.

The Administrative Elements

Step 1: To Inform

Following the achievement of the threshold, the merger or combination must be non-optionally notified to the Competition Commission of India (CCI) in accordance with section 6(2) of the Competition Act. Considering factors such as the actual and potential level of competition from imports in the market, the severity of entry-level barriers, the level of combination in the market, the degree of countervailing power in the market, etc., this is done in order to figure out if any of them would have the effect of or is likely to have a significant negative impact on competition in the relevant market.

By way of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulation, 2016, the CCI was amended on January 8th, 2016, bringing about significant changes that will eventually result in complete ease of doing business in India. Section 6(2) of the Competition Act, as well as Regulations 5 and 8 of the 2016 Combination Regulation, must all new businesses that the CCI intends to consider comply with.

Step 2

Inspection of the Notice: In accordance with Regulation 14 of the 2016 CCI Amendment

Regulation, the CCI shall examine the notice for errors or incompleteness. The parties to the merger are requested to fix any faults that may have existed after the process.

Step 3 Prima Facie Opinion

Within thirty days of receiving the relevant notice, the Commission must formulate a prima facie opinion in accordance with subsection 1 of Section 29 of the Act. Regulation 19 outlines the process for creating a prima facie case. In accordance with Sub regulation 2 of Regulation 19, the Commission may, if it deems appropriate, demand additional information from the parties to the combination.

Additionally, the parties are required to publish the terms of the combination in accordance with section 29 (2), which serves as a public invitation for anybody to voice their objections within fifteen working days of the publication in accordance with section 29(3), which are to be resolved by the CCI in accordance with that. In accordance with section 29(4) read with section 29(5), the CCI may request more information on the merger from the parties.

Step 4

Moving on to the Final Order: The Commission evaluates whether the merger or combination will have a negative impact on the current competitive market in accordance with section 31 after receiving the additional information.

According to section 31(1) of the Act, the Commission must approve the deal if it has been determined after careful examination that the proposed merger won't affect the competitive market. However, if the Commission has reached a negative conclusion about the transaction because of its negative impact on the market, it must hold the transaction void in accordance with Section 31(2) of the Act. A third option is for the Commission to inform the parties of changes that should be made to the transaction in order to remove any clauses that would affect the market for competition [Section 31(3)].

Conclusion

There are two ways to express the regulation of combinations in a general sense. The first one is the order in which the parties and the CCI must proceed, beginning with contacting the Commission and ending with the distribution of the final order. According to the relevant Act requirements, the transactions submitted to the Commission by notification may be approved, approved with a modification, or declared invalid. Any resolution adopted by the Commission has as its core the COMPETITION APPRAISAL, which specifically addresses vertical and horizontal combinations. The careful and knowledgeable assessment of the unilateral and coordinated effects due to individual circumstances, both numerically and qualitatively, aids in the challenge of steading the competitive market. When evaluating combinations, a lot of variables come into play, but the main principle is to trade off the pro- and anti-competitive impacts.

References

https://blog.ipleaders.in/comprehending-combination-competition-law/

https://www.cci.gov.in/public/images/publications_booklet/en/provisions-relating-to-combinations1652177374.pdf