ROLES AND RESPONSIBILITIES OF CCI IN BANK MERGERS

-A LEGAL PERSPECTIVE

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MERGERS AND ACQUISITIONS IN BANKING SECTOR IN INDIA- A LEGAL PERSPECTIVE

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CHAPTER 1 – ABSTRACT

The purpose of this report is to provide an insight into the banking sector, and the impact of mergers and acquisitions in the banking sector on the consumer and the competition of such entities in the market as defined in the competition act, 2002. Through the report, we approach the problem of exclusion of CCI from investigating any merger, acquisition, reconstruction, transfer or restitution of any banking entity(s). Such exclusion, as proposed in the new amendment of the banking regulations act, 1949, would prove to be detrimental to a healthy economy and a healthy market. To arrive at a more focussed solution to the problem, we discuss various banking entities, M&A in the banking sector, competition issues involved in banking sector, banking regulations pertaining to M&A in the same, CCI’s role in bank mergers, the banking law (amendment) bill, 2011 and finally a conclusion and recommendation that deals with mitigation of such a problem.
CHAPTER 2- INDIAN BANKING INDUSTRY-AN OVERVIEW

India has an extensive banking network, in both urban and rural areas. All large Indian banks are nationalized, and all Indian financial institutions are in the public sector. The Reserve Bank of India is the central banking institution. It is the sole authority for issuing bank notes and the supervisory body for banking operations in India. It supervises and administers exchange control and banking regulations, and administers the government's monetary policy. It is also responsible for granting licenses for new bank branches. 36 foreign banks operate in India with full banking licenses.

The banking system has three tiers. These are the scheduled commercial banks; the regional rural banks which operate in rural areas not covered by the scheduled banks; and the cooperative and special purpose rural banks. Commercial banks are categorized as scheduled and non-scheduled banks, but for the purpose of assessment of performance of banks, the Reserve Bank of India categories them as public sector banks, old private sector banks, new private sector banks and foreign banks.

There are various types of banks which operate in our country to meet the financial requirements of different categories of people engaged in agriculture, business, profession, etc. On the basis of functions, the banking institutions in India may be divided into the following types:

1 www.india-reports.com/RNCOS/banking.aspx
A) Central Bank

A bank which is entrusted with the functions of guiding and regulating the banking system of a country is known as its Central bank. Such a bank does not deal with the general public. It acts essentially as Government’s banker, maintains deposit accounts of all other banks and advances money to other banks, when needed. The Central Bank provides guidance to other banks whenever they face any problem. It is therefore known as the banker’s bank. The Reserve Bank of India is the central bank of our country.

B) Commercial Banks

Commercial Banks are banking institutions that accept deposits and grant short-term loans and advances to their customers. In addition to giving short-term loans, commercial banks also give medium-term and long-term loan to business enterprises. Now-a-days some of the commercial banks are also providing housing loan on a long-term basis to individuals. There are also many other functions of commercial banks, which are discussed later in this lesson.

C) Development Banks

Business often requires medium and long-term capital for purchase of machinery and equipment, for using latest technology, or for expansion and modernization. Such financial assistance is provided by Development Banks. They also undertake other development measures like subscribing to the shares and debentures issued by companies, in case of under subscription of the issue by the public. Industrial Finance Corporation of India (IFCI) and State Financial

D) Co-operative Banks

People who come together to jointly serve their common interest often form a co-operative society under the Co-operative Societies Act. When a co-operative society engages itself in banking business it is called a Co-operative Bank.

E) Specialised Banks

There are some banks, which cater to the requirements and provide overall support for setting up business in specific areas of activity. EXIM Bank, SIDBI and NABARD are examples of such banks. They engage themselves in some specific area or activity and thus, are called specialised banks. Let us know about them.
Restructuring can be broadly classified into three types\(^2\). They are:

a) Portfolio restructuring: - If a firm is reshuffling its assets by selling some of its existing production facilities or acquiring some new facilities to produce the feeding raw–material for the main product, it is called portfolio restructuring.

b) Financial restructuring: - In financial restructuring the composition of debt and equity are shuffled.

c) Organizational restructuring: - In the process of organizational restructuring, Organizational Structure is revisited and changes are made.

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\(^2\) [www.imi.edu/MDP/December7-8,2009.pdf](www.imi.edu/MDP/December7-8,2009.pdf)
Types of Mergers³:
When a company acquires another company, the acquiring company is called the ‘Acquirer Company’ and the company which is being acquired is called the ‘Acquired Company’. The acquirer company has two alternatives for dealing the acquired company. First the acquiring company can take over the management of acquired company and run it as a separate company with its own new Management. This is called the ‘Takeover’ or the ‘Change of Management’. The second alternative for Acquirer Company is to merge the acquired company into itself. This is called the ‘merger’.

Merger is a combination of two or more companies into one company. In India, mergers are called as amalgamations, in legal parlance. The acquiring company, (also referred to as the amalgamated company or the merged company) acquires the assets and liabilities of the target company (or amalgamating company). Typically, shareholders of the amalgamating company get shares of the amalgamated company in exchange for their existing shares in the target company. Merger may involve absorption or consolidation.

A) Merger and amalgamation: the term merger or amalgamation refers to a combination of two or more corporate into a single entity. It may involve either;
   a) absorption- one bank acquires the other. Or
   b) consolidation- two or more banks combine to former a new entity. In India the legal term for merger is amalgamation.

Other way of classifying merger is upon the basis of what type of corporate combine⁴. It can be of following types-

1) Horizontal merger⁵: This is the merger of the corporate engaged in the same kind of business. E.g.: Merger of bank with another bank.
2) Vertical merger⁶: This is the merger of the corporate engaged in various stages of production in an industry. A vertical merger (entities with different product profiles) may

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³ www.icwai.org/icwai/knowledgebank/fm34.pdf
⁴ http://www.learnmergers.com
⁵ Ibid
⁶ http://law.jrank.org/pages/8543/Mergers-Acquisitions-Types-Mergers.html
help in optimal achievement of profit efficiency. Consolidation through vertical merger would facilitate convergence of commercial banking, insurance and investment banking.

3) **Conglomerate merger** - A conglomerate merger arises when two or more firms in different markets producing unrelated goods join together to form a single firm. An example of a conglomerate merger is that between an athletic shoe company and a soft drink company. The firms are not competitors producing similar products (which would make it a horizontal merger) nor do they have an input-output relation (which would make it a vertical merger).

**B) Acquisition**: This may be defined as an act of acquiring effective control by one corporate over the assets or management of the other corporate without any combination of both of them. For example recently oracle major software firm has agreed to acquire a majority stake in Indian banking software company I-flex Solutions. It can be characterized in terms of the following:

a) The corporate remain independent.

b) They have a separate legal entity.

**C) Take over**: Under the monopolies and restrictive trade practices act, take over means acquisition of not less than 25% of voting powers in a corporate.

### MOTIVES FOR MERGER

Any acquisition takes place with a number of motivations culminating in a positive synergy (2+2=5 relationship). This means that the performance of the combined company is more than the sum of the performance of erstwhile two independent companies.

A study conducted in the U.S.A., identified 12 motives that promote merger and acquisition activity. They are given below in the order of their priority:

1) Taking advantage of awareness that a company is undervalued.

2) Achieving growth more rapidly than by internal effort.

3) Satisfying market demand for additional products/services.

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7 [http://www.wisegeek.com/what-is-a-conglomerate-merger.htm](http://www.wisegeek.com/what-is-a-conglomerate-merger.htm)

8 [www.investorwords.com/80/acquisition.html](www.investorwords.com/80/acquisition.html)

9 [www.investorwords.com/4868/takeover.html](www.investorwords.com/4868/takeover.html)

4) Avoiding risks of internal start-ups of expansion.
5) Increasing earnings per share.
6) Reducing dependence on a single product/service.
7) Acquiring market share or position.
8) Offsetting seasonal or cyclical fluctuations in the present business.
9) Enhancing the power and prestige of the Owner, CEO, or Management.
10) Increasing utilization of present resources, i.e., physical plant and individual skills.
11) Acquiring outstanding Management or Technical Personnel.
12) Opening new markets for present products/services.

A survey, conducted in 1955, by the U.S. Federal Trade Commission, to find out why companies choose the merger and acquisition route, listed seven major benefits of acquisition for the acquiring company. They are:

1) Gaining additional capacity to supply to a market already being serviced by the acquirer.
2) Gaining extended product lines.
3) Achieving diversification of product base.
4) Gaining facilities to produce goods purchased earlier.
5) Gaining facilities to process or distribute goods sold earlier.
6) Gaining access to additional markets.
7) Other advantages such as empty plants, control of patents, etc.

**NARASIMHAM COMMITTEE REPORT**

The Narasimham Committee on Banking Sector Reform was set up in December, 1997. This Committee’s terms of reference include: review of progress in reforms in the banking sector over the past six years, charting of a programme of banking sector reforms required making the Indian banking system more robust and internationally competitive and framing of detailed recommendations in regard to banking policy covering institutional, supervisory, legislative and technological dimensions. The Committee submitted its report on 23 April, 1998 with the following suggestions:

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11 http://www.lib.washington.edu/business/guides/mergers.html
12 http://www.msmementor.in/SIDBI_Publications/Narsimham%20Committee.pdf
• The Committee recommended for merger of large Indian banks to make them strong enough for supporting international trade.
• The Committee recommended the use of mergers to build the size and strength of operations for each bank.
• Large banks should merge only with banks of equivalent size and not with weaker banks.
• Two or three banks with international orientation, eight to 10 national banks and a large number of local banks.
• Rehabilitate weak banks with the introduction of narrow banking.
• Confine small, local banks to States or a cluster of Districts.
• Review the RBI Act, the Banking Regulation Act, the Nationalization Act and the State Bank of India Act.
• Speed up computerization of public sector banks.
• Review the recruitment procedures, and the training and remuneration policies of PSU banks.
• Depoliticization of appointments of the bank CEOs and professionalization of the bank Boards.
• Strengthen the legal framework to accelerate credit recovery.
• Increase capital adequacy to match the enhanced banking risk.
• Budgetary support non-viable for recapitalization.
• No alternative to the asset reconstruction fund.

Hence, one of the major reasons for bank mergers was the Narasimham Committee report on Banking reforms.

Reasons for Bank Mergers:¹³
In India, the merger and takeover phenomenon in the past was understood largely as one of the sick units being taken over by healthy ones. This is because of the reason that Sec. 72A of the Income Tax Act, 1961, provides for the carry forward of losses. The advantage that the merging corporations get is that the book losses of the sick corporation get written off against the future profits, thus saving the profitable corporations some tax outflow.

¹³ http://finance.mapsofworld.com/merger-acquisition/bank/
As far as the Banking sector is concerned following reasons are more relevant:

1) **Growth with External Efforts**: With the economic liberalization the competition in the banking sector has increased and hence there is a need for mega banks, which will be intensely competing for market share. In order to increase their market share and the market presence some of the powerful banks have started looking for banks which could be merged into the acquiring bank. They realized that they need to grow fast to capture the opportunities in the market. Since the internal growth is a time taking process, they started looking for target banks.

2) **Deregulation**: With the liberalization of entry barriers, many private banks came into existence. As a result of this there has been intense competition and banks have started looking for target banks which have market presence and branch network.

3) **Technology**: The new banks which entered as a result of lifting of entry barriers have started many value added services with the help of their technological superiority. The older banks which cannot compete in this area may decide to go for mergers with these high-tech banks.

4) **New Products/Services**: New generation private sector banks which have developed innovative products/services with the help of their technology may attract some old generation banks for merger due to their incapacity to face these challenges.

5) **Over Capacity**: The new generation private sector banks have begun their operation with huge capacities. With the presence of many players in the market, these banks may not be able to capture the expected market share on its own. Therefore, in order to fully utilize their capacities these banks may look for target banks which may not have modern day facilities.

6) **Customer Base**: In order to utilize the capacity of the new generation private sector banks, they need huge customer base. Creating huge customer base takes time. Therefore, these banks have started looking for target banks with good customer bases. Once there is a good customer base, the banks can sell other banking products like car loans, Housing loans, consumer loans, etc., to these customers as well.

7) **Merger of Weak Banks**: There has been a practice of merging weak banks with a healthy bank in order to save the interest of customers of the weak Bank. Narasimham Committee–II discouraged this practice. Khan Group suggested that weak Developmental Financial Institutions (DFIs) may be allowed to merge with the healthy banks.\(^{14}\)

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\(^{14}\) [www.thehindubusinessline.com/.../2009100751170600.htm](http://www.thehindubusinessline.com/.../2009100751170600.htm)
8) In the Banking Sector of any economy, the most crucial concern is the Risk Management. Banks of every country are supposed to make a proper risk analysis in order to balance the deposit and credit portfolios. Mergers can diversify these risks to a significant extent.

9) Drastic increase in market competition, innovation of new financial products and consolidation of regional financial systems and national financial systems are the other reasons, for which banks are going for mergers, around the world.

10) As the banking markets are becoming more developed and competitive, increasing market share or margins is becoming difficult. In this environment it is becoming more likely that banks will seek to expand and cut costs by way of acquisitions and mergers.

11) Merger can be proved really useful in fighting market competition, as merger has the capability to generate economies of scale. These Economies of scale can help the banks in lowering their servicing cost and in this way can provide a competitive edge to them\(^{15}\).

12) Moreover, when Mergers happen, Transfer of Skills takes place between the two banking organizations and this transfer of skills lead to higher efficiency on the part of the merged bank.

13) Banking Sectors of every economy of the world are becoming global sooner or later. This globalization or economic liberalization has exerted a great impact on the Bank Mergers\(^{16}\).

**BENEFITS OF CONSOLIDATION**

Why Merger in banks- the benefits.

A merger involves a marriage of two or more banks. It is generally accepted that mergers promote synergies. The basic idea is that the combined will create more value than the individual banks operating independently.

- **Economies of scale** refer to the lower operating costs (per unit) arising from spreading the fixed costs over a wider scale of production and economies of scope refer to the utilization of skill assets employed in the production in order to produce similar products or services. The resulting combined entity gains from operating and financial synergies\(^{17}\). In a combined entity, the skill used to produce separate and limited results will be used to produce results on `wider scale. Additional financial

\(^{15}\) http://www.hinduonnet.com/businessline/2001/01/27/stories/042708ma.htm


\(^{17}\) www.banknetindia.com/banking/70920.htm
synergies refer to the effect of a merger on the financial activities of the resulting company. The cash flows arising from the merger are expected to present opportunities in respect of the cost of financing and investment.

- **Greater efficiency**
  Banks often are able to operate more cost effectively by increasing their size. The costs of many functions don't double when the scale of operation doubles. As a result, mergers are one way to keep costs and prices down.

- **Leveraging technology**
  Banks and their customers have become increasingly accustomed to the advantages of new and expensive technologies. Many of these technologies are too expensive unless costs can be spread over a large number of customers. Mergers are often necessary to allow banks to introduce and maintain the technologies customers increasingly demand.

- **Changing laws**
  Laws which had prevented many banks from operating in more than one state recently have been removed or overridden. The advent of interstate banking and branching means more opportunities for banks operating in different states to merge with each other.

- **Diversification**
  One effective method of controlling risks inherent in bank lending is to diversify operations across different geographic regions and different types of customers. Mergers can help diversify such risks.

- **Broader array of products**
  Mergers may give banking institutions an opportunity to offer a broader array of services. A merger of two banks with different expertise can result in a combination more to the liking of customers looking for one-stop shopping.

**WHY CONSOLIDATION IN INDIAN BANKING INDUSTRY**

Financial Sector Reforms set in motion in 1991 have greatly changed the face of Indian Banking. The banking industry has moved gradually from a regulated environment to a
deregulated market economy. The pace of changes gained momentum in the last few years. Globalization would gain greater speed in the coming years particularly on account of expected opening up of financial services under WTO.

Banks in India are gradually going for:

1) Consolidation of players through mergers and acquisitions,
2) Globalization of operations,
3) Development of new technology and
4) Universalisation of banking.

With the international banking scenario being dominated by larger banks, it is important that India too should have a fair number of large banks, which could play a meaningful role in the emerging economics. Among the top twenty banks in the emerging economics, India has only one, whereas China has five banks and Brazil had six banks.

The performance of banks in India indicates that certain performance characteristic is not restricted to a particular bank. Therefore, consolidation of banking industry is critical from several aspects. Mainly, the reasons for mergers and acquisitions can include motives for value maximizations well non-value maximization. The factors including mergers and acquisitions usually include technological progress, excess capacity, emerging opportunities, consolidation of international banking markets and deregulations of geographic, functional and product restrictions. Policy inducements such as the government’s incentives that could accrue to the top managers are also other important factors, which may determine the pace of consolidation.

It is found that in all major economics, banking industry undergoes some sort of restructuring process. The economy, which delays this process, leads to stagnation. That is why, it is important from the point of view of long term prospect of the economy, the consolidation process should be given prime attention.

The major gains perceived from bank consolidation are the ability to withstand the pressures of emerging global competition, to strengthen the performance of the banks, to effectively absorb the new technologies and demand for sophisticated products and

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19 www.coolavenues.com/know/fin/rachna_1.php3
services, to arrange funding for major development products in the realm of infrastructure, telecommunication, etc. which require huge financial outlays and to streamline human resources functions and skills in tune with the emerging competitive environment.\(^\text{20}\)

The international experience reveals a wide range of processes and practices involving consolidation, their impact on the banking market and the trends in post merger performance of banking institutions. These experiences could provide useful inputs to the banking policy in India.

An important observation which may be induced from various past mergers that the merger between big and small banks led to greater gains as compared to merger between equals. It is also observed from past experiences that if the merger follows business aided by appropriated technology and diversified product range, it could lead to greater gains for the banking industry as a whole. Similarly, consolidation increases the market power and does not cause any damage to the availability of services to small customers.

Evaluation of banks carried out by individual banks reveal that higher capital adequacy and lower nonperforming assets explain to a greater extent the growth, Profitability and productivity of banks since increase in capital and steep reduction in non-performing assets cannot be entirely left to the individual banks in the present scenario. Consolidation in the banking industry is of great relevance to the economy.\(^\text{21}\)

A diagnostic performance evolution study would reveal out important aspects of divergence in the performance of the domestic banking institutions. A high degree of variations is found in the performance of various groups of banks. Since, public sector banks account for the large scale of banking assets and the lower performance ratio reflect the entire banking industry, it is considered important that suitable consolidation process may be initiated at the earliest, so that, the efficiency gain made by the large number of banks of other groups will be reflected which could lead to a positive impact on the image of banking.

Consolidation can also be considered critical from the point of view of quantum of resources required for strengthening the ability of banks in assets creation. It indicates

\(^{20}\) [www.iba.org.in/legal/LA-consolidationmodified1.doc]

\(^{21}\) [www.financialexpress.com/.../banking-industry-consolidation/192711/]

By Ruchi Sahay, Internee
that restructuring in Indian banking may not be viewed from the point of particular
group rather it can be evolved across the bank groups.

Indians banks have unique character in displaying similar characteristics of
performance despite consisting of different size and ownership. This trend further
substantiates the scope for consolidation across banks group.

As per the Quantitative Impact Study published by Basel Committee in May 2003,
there would be increase in capital requirements by 12% for banks in developing
countries on the implementations of the Basel II Accord. Mergers among the banks
will be one of the ways to increase market power and thereby increase the revenue-
generation of the Banks.

The Reserve Bank of India (central bank) has set up an experts committee to
implement Basel II accord by 2006 to strengthen the financial health of banks by
adopting globally accepted norms for capital adequacy. The RBI also wants all banks
in India to have a capital base of Rs 300 crore (Rs 3 billion) over the next three years.
This will bring about number of acquisitions in the banking industry.

Over the last two years, the RBI has stopped issuing branch licenses to cooperative
banks, after the unbridled growth of co-operative banks during the last decade. For
cooperative banks to expand there is no alternative to go for merger an amalgamation.
The Mumbai-based Saraswat Co-operative Bank is now poised to take over
Maharashtra-based Maratha Mandir Co-operative Bank which is in trouble. This could
mark the beginning of voluntary mergers of cooperative banks after the Reserve Bank
of India (RBI) unveiled for mergers and amalgamations among urban co-operative
banks. The other suitor for Maratha Mandir was Pune-based Cosmos Co-operative
Bank.

Last but most important reason for consolidation in any industry is tax saving and this
thing is true for the banking industry also.
CHAPTER 5 - MERGER IN INDIAN BANKS

In the 1950s and 1960s there were instances of private sector banks, which had to be rescued or closed down because they had very low capital and were mostly operating with other people’s money. For instance, against total deposits of Rs.2750 crore at the end of December 1968, the paid-up capital of private sector banks was only Rs.28.5 crore or just a little over 1%. In 1960, the failure of Palai Central Bank and Laxmi Bank led to loss of confidence in the banking system as a whole. So mergers were initiated to avoid losses to depositors and maintain confidence in the system.

In 1961, the Banking Companies (Amendment) Act empowered RBI to formulate and carry out a scheme for the reconstitution and compulsory amalgamation of sub-standard banks with well managed ones. Consequently, out of 42 banks which were granted moratoria, 22 were amalgamated with other banks, one was allowed to go into voluntary liquidation, one to amalgamate voluntarily with another bank, three were ordered to be wound up and the moratorium on three was allowed to lapse.

In India, mergers have been used to bail out weak banks till the Narasimham Committee-II discouraged this practice. For instance, since the mid-1980s, several private banks had to be rescued through mergers with public sector banks:

**Target Group of Banks for M&A**

There are four categories of banks interested in M&A in a big way.

1) First, there are banks (like Indian Bank) that have survived on the government's largesse in the form of thousands of crores of recapitalization bonds over the past decade. They are now keen to take over other banks to become strong and acquire widespread reach.

2) In the second category are two types of banks. In one group are strong public sector banks with large domestic presence (like State Bank of India) that want to acquire a bank with an overseas presence to become global entities. The other group of banks increasing their domestic presence and reach. For instance, Bank of Baroda presence in western India has started looking out for opportunities in the north, east and south. Vijaya Bank, which is based in Bangalor India major Punjab National Bank, headquartered in Delhi, is looking southwards.

3) In the third category, are "make banks headed by CEOs who were denied opportunities to head big banks and are believed to be taking the initiative to acquire other banks so that they can prove their leadership qualities.

4) In the fourth category is a weak and small bank, which needs to be taken over by larger to remain viable. These can be the potential targets of foreign banks and investors. Over 90 percent of private sector banks have a capital base of less than Rs 100 crore (Rs 1 billion). Some of them even do not have a net worth of Rs 300 crore. Larger cooperative banks are in trouble and looking for take has been looking at -- which has a solid Bangalore, is interested in picking up a northern bank. North make-believe" M&As that are purely personality-driven. These are Large numbers of urban take-over/acquisition to survive.

M&A Activity after Nationalization of Indian banks

![Graph showing M&A activity after nationalization of Indian banks.](image)

*Source: Banknet India*
Numerous studies have assessed the
  - Efficiency of banks; and
  - Efficiency gains from mergers amongst banks and financial institutions

Efficiency is measured or defined as the definition and choice of the inputs and outputs used for measuring the efficiency of banks depends on the specific approach used to model the banking business.

Various approaches have been used for measuring the bank efficiency. Two major approaches are:
  - Production,
  - Intermediation,

**Production approach:** The production approach views banks as producers of various types of accounts in form of deposits and loans by incurring cost of production. The input is measured by the cost of production and excludes the interest expenses. Cost of production includes the costs of physical capital and labour. The output is measured in terms of number of accounts serviced; and not measured in terms of the currency value of deposits.

**Intermediation Approach:** This approach considers banks as intermediary of financial services. It assumes that banks collect funds (deposits and purchased funds) and transform these into loans and other assets by incurring the cost of production. Inputs are the deposits and the cost of production. Costs are defined to include both interest expense and total costs of production. Output is the volumes of earning assets.

**CASE STUDY - PUNJAB NATIONAL BANK AND NEW BANK OF INDIA MERGER:**
In year 1970 fourteen banks including PNB were nationalized. In 1980 six more banks including New Bank of India were nationalized. Both these banks were merged in 1993 by the Central Government. The New Bank of India was incurring losses and by the year 1991-92, its financial position had become so bad that its capital and deposits completely stood eroded. Punjab National Bank commenced its operations on April 12, 1895 from Lahore with an authorized capital of Rs. 2 lakhs and working capital limit of Rs. 20,000/- . The Bank has more than 100 years of history and has faced many financial and other crises in the Indian financial system over these years\(^23\). New Bank of India was a comparatively small bank.

\(^23\) [http://www.iilm.edu/files/merger%20&%20Acquisition%20in%20Banks.pdf](http://www.iilm.edu/files/merger%20&%20Acquisition%20in%20Banks.pdf)
among the nationalized banks. It had around 600 branches all over the country with 12,400 employees and was having 2,500 crores of deposits and advances Rs. 970 crores.

The PNB and NBI merger has not been a marriage of convenience. It had the seeds of long-term detrimental effect to the health of PNB. The most ticklish problem which the amalgamated entity faced was the complete absorption of the sizeable NBI workforce into its own work culture. The NBI was notorious for rampant indiscipline and intermittent dislocation of work due to fierce inter-union rivalries.
CHAPTER 5 – COMPETITION ISSUES INVOLVED IN BANKING SECTOR (OECD)

OECD has indicated a number of competition issues in banking

I. Multi-market contacts: banks that compete in many markets recognize the need to co-exist rather than compete

II. Barriers to entry: Contestable markets are highly competitive. However, entry restrictions exist in the form of:
   - Regulatory barriers: minimum capital requirements; restraints on lines of business; licensing of branches or subsidiaries; restrictions on entry of foreign banks etc.
   - Substantial state ownership of banks would mean that foreign firms cannot take over domestic banks of any substance
   - Exit barriers in the form of measures to prevent bank insolvencies, especially the too big to fail factor

III. Access to competitor’s proprietary ATM networks and to competitor run or dominated credit card networks and cheque clearance system. Electronic networks can be a barrier entry ¾ Access to the networks on fair and reasonable terms is important in facilitating entry and in ensuring fair competition. Incumbent banks may not allow the network access easily

IV. Economies of scale and scope and branch networks: Banks market access depends on the network of branches it has and its nation or world wide presence.

V. Switching costs and asymmetric information: Banks provide long and short term credits to customers, some of which can be called back at short notice, with discretion by the bank. When a customer shifts to another bank for a new service the first bank can make matters difficult for the customer.
   - Customers may find it difficult to transfer their accounts of different types from one bank to another. There are substantial switching costs
   - Incumbent banks have several reputational and informational advantages over the new entrant. Incumbents may not share credit risks with new entrants.
VI. Efficiencies: Especially in merger cases efficiencies arise. One example is that by closing redundant branches. However, from competition policy point of view this may be at the cost of competition in the relevant geographic market.

VII. Remedies: Mergers that might initially be prohibited will eventually be permitted subject to certain conditions, which would ensure competition in the markets (Behavioural and Structural)

- Obtain commitments to restrain the exercise of market power
- Obtain commitments to indirectly facilitate new entry or strengthen existing competitors
- Require steps intended to directly transfer market share i.e. divest part of business – usually branches or lines of activities

Another OECD document on competition issues in bank mergers indicates that:

- The impact of electronic banking developments on proper market definition and assessment of barriers to entry must be carefully considered in bank merger cases;
- Competition problems in bank mergers are most commonly encountered as regards loans to small and medium sized businesses;
- Barriers to entry in banking could well be high enough to prevent a sufficiently rapid neutralization of any anti-competitive effects that may be expected from bank mergers in sufficiently concentrated markets.
- Efficiencies could be relevant in bank mergers, but competition officials should be sceptical of claims linked to supposed economies of scale especially in dealing with mergers where all the parties are sufficiently large that each has probably exhausted virtually all available economies of scale;
- When faced with anti-competitive bank mergers, competition agencies should consider proposals to make appropriate changes in the transaction, but should generally avoid “remedies requiring ongoing monitoring and enforcement;
- There is little inherent potential for conflict between competition agencies and prudential regulators; and
- The general competition law should be applied to bank mergers by the general competition agency. It is also essential to foster co-ordination and co-operation between prudential regulators and competition agencies.
CHAPTER 6 - REGULATIONS REGARDING MERGERS AND ACQUISITION IN INDIA

Merger control requirements in India are currently governed by the provisions of the Companies Act, 1956 (the “Companies Act”) and the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 (the “Takeover Code”) framed by the Securities and Exchange Board of India (“SEBI”). Also, in exercise of the powers conferred by sub-section (1) and clauses (b), (c) and (f) of sub-section (2) of section 64 read with sub-sections (2) and (5) of section 6 of the Competition Act, 2002 (12 of 2003), the Competition Commission of India has introduced a new regulation for merger control, The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (the “Combination Regulation”). Moreover, every sector has a sector-specific legislation, for example, in case of banking sector, approval is required from the Reserve Bank of India (the “RBI”) under the Banking Regulation Act, 1949.

A) THE COMPANIES ACT, 1956

Under the companies Act, prior approvals are required in relation to the transfer or acquisition of shares and amalgamation and merger of companies. Filings with regard to acquisition or transfer of shares are only in relation to dominant undertakings.

**Dominant undertakings:** Acquisition of shares is subject to requirement of approval from central government only where the acquirer is a dominant undertaking or would become a dominant undertaking as a result of such acquisition of shares. Similarly, in cases of transfer of shares, the intimations to the central government is required to be given only where the transferor or transferee is a dominant undertaking. Dominant undertaking has not been defined in the Companies Act. However, Section 2(d) of the Monopolies and Restraint Trade Practices Act, 1969 (“MRTP Act”) defines a dominant undertaking as one which by itself or together with its interconnected undertakings produces, supplies, distributes or controls one-forth of any goods or controls one-fouth of any services, factors such as value, cost, price, quantity, or capacity of the goods or services are to be taken into consideration. Determination of dominance is to be done by computing the average annual quantity of such goods supplied, distributed or controlled in India for the previous 3 calendar years. However,
any goods exported out of India are excluded for the purpose of computing the average annual quantity.

**Threshold requirements:**
Where any acquisition of equity shares, (taken together with the previous shareholding) exceeds 25% of the paid up equity share capital of the target company, the acquirer(s) (any individual, firm, group, constituent of a group, body corporate or bodies corporate under the same management) is required to obtain prior approval of the central government before acquiring or agreeing to acquire such shares. However, the requirement of obtaining approval only arises when shares of a public company or private company, which is not a subsidiary of a public company, does not require prior approval. The approval of the central government is required only if the total acquisition, together with the prior shareholding in the target company are exceeds 25%. Also, the requirement of obtaining approval applies only in cases of acquisition of equity shares. No approval is required when any preference shares are acquired whether or not such shares happen to posses voting rights. Also, such approval of the central government is required even where there is only an agreement to acquire such shares. The Andhra Pradesh High Court in Karamsad Investment Ltd vs. Nile Ltd\(^{24}\) has held that the expression “agree to acquire” has reference to an agreement between some of the persons to jointly acquire the shares of a company, and not to an agreement between the prospective purchaser and seller. Such decision to acquire 25% of the shares should be brought to notice of the central government. The reason for such stipulation is that even a decision to acquire shares in bulk would have a serious effect on the stock market and if implemented would have serious impact on the management of the target company and in some cases even on the community at large depending on the nature of the industry run by the target company.

Similarly, the transfer of shares by a body corporate or bodies corporate under the same management which hold 10% or more of the equity shares of any other company must be intimated to the central government and the same is subject to the directions of the central government. This provision applies only where the equity shares of any company are being transferred. Central Government approval is only needed in cases of transfer of equity shares of a company and not preference shares. The provision also apply to any body corporate

\(^{24}\) (2002) 1 Comp Lj 251 (AP)
transferring equity shares of a foreign company that has an established place of business in India to any Indian citizen or company incorporated in India. Such transfer can only be given effect to after prior-intimation to the Central Government.

**Approval:** Section 391-396 of Companies Act provide the machinery for the amalgamation of companies to be approved by the company court and Central Government. These sections deal with the right of a company to enter into a compromise or agreement between (a) itself and its creditors or any class of them, or (b) itself and its members or any class of them. The terms used in Section 391 are “arrangement” and “compromise” of a company. The terms compromise and arrangements are wide enough to incorporate any arrangement of the company including amalgamation and mergers. In Sneath V. Valley Gold Ltd., it was held that there could be no compromise until such time as there is a dispute. The word “compromise” therefore presupposes the existence of some dispute. “Arrangements” is wider than “compromise” and implies an arrangement of rights or liabilities with or without existence of any dispute. The term “amalgamation” is used where two or more companies are amalgamated or where one is merged with another or taken over by another. In Inland Steam Navigation Workers Union vs. R.S. Navigation Company Limited, it was observed that in cases of amalgamation, the rights and liabilities are amalgamated into another so that the transferee company becomes vested with all rights liabilities of the transferor company.

![Diagram](image-url)
A. **Company Court**

Amalgamation Sanction has to be done by the Company Court, which is a judicial body consisting of High Court judge. Company Court has a supervisory power and can-

- Approve, 
- Reject, or
- Give some modifications

Jurisdiction – Miheer H.Mafatal v. Mafatlal Industries Ltd. 25

B. **Central Government**

Approval of Central Government is only required in cases where the acquirer is a dominant undertaking and there would be an increase in its dominance as a result of this.

Section 396, of Companies Act, the central Government has the power to order amalgamation of companies, if it is essential in public interest.

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**B) THE TAKEOVER CODE, 1997**

The regulations apply to the companies registered under the Companies Act as well as to corporations established by Acts of Parliament by virtue of listing agreements. It is for this reason that corresponding new banks increasing capital by issue of shares to the public are required to comply with SEBI regulations in spite of the fact that the other provisions of the companies Act in regard to issue of shares etc. do not apply to the corresponding new banks. In view of this position in respect of acquisitions and mergers of any banking institutions whose shares are listed at the Stock Exchanges will be required to comply with all the relevant regulations of SEBI. In India take-over are regulated by SEBI’s Takeover Code for substantial acquisitions of shares in listed companies of November 1994 26.

SEBI announced a take-over code for the regulation of substantial acquisition of shares, aimed at ensuring better transparency and minimizing the occurrence of clandestine deals. In accordance with the regulations prescribed in the code, on any acquisition in a company which makes acquirer’s aggregate shareholding exceed 15%, the acquirer is required to make

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26 http://www.books.iupindia.org/overview.asp?bookid=1B1101814
a public offer. The take-over code covers three types of takeovers-negotiated takeovers, open market takeovers and bail-out takeovers.

➢ **Shareholder approval**

The shareholders of the amalgamating and the amalgamated companies are directed to hold meetings by the respective High Courts to consider the scheme of amalgamation. The scheme is required to be approved by 75% of the shareholders, present and voting, and in terms of the voting power of the shares held (in value terms). Further, Section 395 of the Companies act stipulates that the shareholding of dissenting shareholders can be purchased, provided 90% of the shareholders, in value terms, agree to the scheme of amalgamation. In terms of section 81(1A) of the Companies Act, the shareholders of the "amalgamated company" also are required to pass a special resolution for issue of shares to the shareholders of the "amalgamating company".

➢ **Creditors/Financial Institutions/Banks approval**

Approvals from these are required for the scheme of amalgamation in terms of the agreement signed with them.

➢ **High Court approvals**

Approvals of the High courts of the States in which registered offices of the amalgamating and the amalgamated companies are situated are required.

➢ **Reserve Bank of India approval**

In terms of section 19 of FERA, 1973 Reserve Bank of India permission is required when the amalgamated company issues shares to the non resident shareholders of the amalgamating company or any cash option is exercised. Reserve Bank approval is also required in case of mergers involving a banking entity.

**The Evolution of the Takeover Code**:27

• **1990:** The Government amends clause 40 of the listing agreement according to which, threshold acquisition level reduced from 25% to 10% ; change in management control to trigger public offer’; minimum mandatory public offer of 20% disclosure requirement through mandatory public announcement.

• **November 1994:** SEBI notifies Substantial Acquisition of Shares and Takeover, 1994. New provisions introduced to enable both negotiated and open market acquisitions and competitive bids allowed.

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• **November 1995**: SEBI sets up committee under former Chief Justice of India P.N. Bhagwati to review the 1994 takeover Regulations in order to frame comprehensive regulations.

• **January 1997**: The Bhagwati Committee submits its report on the takeover code to SEBI.

• **February 1997**: SEBI accepts Bhagwati committee report and the Substantial Acquisition of Shares and Takeovers Regulations, 1997, notified.

• **February 1998**: SEBI proposes to revise the takeover code make it mandatory for acquirers to make a minimum open offer for 20% (and not 10% as earlier) of the target company’s equity, even if the holding goes beyond 51% as a result of the offer.

• **June 1998**: SEBI asks justice Bhagwati to conduct a complete review of the takeover code. Issues likely to be taken up are, the extent of disclosure in an open offer and if any change in the objective of the offer needs to be spelt out in the revised offer.

• **June 1998**: SEBI proposes to raise the creeping acquisition limit under its Takeover Code from 2% to 5%. It also proposes to increase the share acquisition limit for triggering the takeover code from 10% to 15%.

• **November 1998**: Takeover panel amends the takeover code to incorporate buyback offers by companies. The committee decides to allow takeover offers to be made when a buyback offer is open and vice versa.

• **December 1998**: Justice P.N. Bhagwati criticizes SEBI for unilaterally increasing the trigger limit for making a public offer from 10% to 15%. The Bhagwati Committee also recommends that once an acquirer acquires 75% of shares or voting rights in a company, he should be outside the purview of the Takeover Regulations.

• **January 2000**: SEBI again proposes that all open offers made by promoters for consolidating their holding in a company will have to be for a minimum of 20% of equity. Exemption to the minimum 20% requirement should be given only in the case of such companies in which promoters hold over 75%. The SEBI’s Takeover Committee also recommends that a special resolution approved by 75% of the shareholders should be made mandatory for effecting a change in the management of professionally managed companies. The step aims to avoid misuse of the earlier provision, under which certain groups with 51% stake could effect the changes through a simple resolution.

Another recommendation that follows was that venture capital funds should be treated on par with State Financial Institutions. And like financial institution, they should be exempted from making a public offer, in the event of acquiring a 15% stake in a company.
February 2000: SEBI finalizes the recommendations of takeover panel and review the takeover norms. However, the crucial decision on issue relating to ‘change in management control of professionally managed companies’ left unresolved.

June 2000: SEBI plans to bring public financial institutions under the ambit of its takeover code, both as acquirers and as pledgees.

October 2000: Confederation of Indian Industry, FICCI and ASSOCHAM seek amendments in the takeover code, especially in the case of creeping acquisitions, to provide the promoters a level-playing field against corporate raiders who may disrupt existing managements. Under the current takeover code, corporate raiders can pick up 15% of the paid-up equity of the target company over a 12 month period without triggering off the takeover code.

November 2000: SEBI takeover panel decides to make it mandatory for an ‘acquirer’ to disclose his holdings in the target company to the company as well to the exchanges, at three levels; 5%, 10% and 14%, instead of the existing stipulation of only 5%.

December 2000: SEBI promises a new draft on the takeover code in place by the end of March 2001 with ‘investor protection’ as its pivot. The main objective of the new code would be to ensure that acquiring companies are prompt in informing the stock exchanges when they cross the prescribed limits of holding a company’s stake make public announcements and allow companies to make counter offers.

Mergers and Takeovers are generally seen in Public Policy as activities, which, if left uncontrolled, can lead to negation of Public interests. As a result, these activities are controlled through various Statutes and Codes of Conduct.

Section 111 and 390 to 396a of the Companies Act, 1956, govern mergers and acquisitions.

Similarly Sections 19, 26 and 29 of the erstwhile FERA relate to transfer of shares. Where one of the transacting parties is a Non-Resident Indian, the Act prohibits the transaction except with the sanction of the Reserve Bank of India (R.B.I.).

Section 30(A) to 30 (F) of the MRTP Act pertain to transfer of shares relating to dominant undertakings as defined in the Act.

Further, Sec. 22 (A) of the Securities Contract (Regulation) Act, 1956, deals with the transfer of shares.

http://articles.manupatra.com/PopOpenArticle.aspx?ID=5babca31-1192-4bce-af0c-eb4b7be26ff7&txtsearch
• Clauses 40 (A) and 40 (B) of the Stock Exchange Listing Agreement Form also lay down the rules in case of takeover bids.

• Before 1960, section 44A of the Banking Regulation Act only provided for the voluntary amalgamation of banks. But after widespread weakness in the banking sector, the Act was amended by adding Section 45 to allow for compulsory amalgamation wherever necessary and on a voluntary basis wherever possible, in order to strengthen the banking system by eliminating small and weak banks. The main difference between an amalgamation and a transfer is that, under amalgamation the company, which is taken over, ceases to exist, while under transfer the company can opt to either go into liquidation or convert itself into a non-banking company.

• Under Section 45 of the Act, RBI has the power to compulsorily reconstruct or amalgamate a weak bank with any other bank.

• Section 44A of the Banking Regulation Act lays down the procedure for amalgamation of banking companies.

• Section 44B of the Act further empowers RBI in the matter of compromise arrangements between a bank and its creditors. These have to be approved by RBI and such compromise cannot be sanctioned even by a High Court.

• Under Section 36 AE of the Act, the Central Government can under advice from RBI take over a weak bank. When a bank is placed under liquidation, the High Court can appoint RBI, SBI or any other bank as the official liquidator and monitor the speedy disposal of winding up proceedings.

• Part-II C of the Banking Regulation Act deals with the acquisition of the undertaking of banking companies.

• Section 36-AE of the Banking Regulation Act deals with the power of Central Government to acquire undertakings of banking companies in certain cases.

• Sec.36-AF deals with the powers of Central Government to make scheme

• Section 36AG deals with compensation to be given to shareholders of the acquired bank.

• The Central Government on receipt of a report from the RBI may acquire a banking company if it fails to comply with the directions given to it under Sec.21 or Sec. 35-A of the Banking Regulation Act.

• Similar action may also be taken if the Banking Company is being managed in a manner which is detrimental to the interest of its depositors, or against the banking policy. Reasonable opportunity should be given to the bank before taking such action.
C) BANKING REGULATION ACT, 1949

Under Banking Regulation Act, there is presently no provision for obtaining approval of the Reserve Bank of India for any acquisition or merger of any financial business by any banking institution. In other words, if a banking institution desires to acquire nonbanking finance company there is no requirement of approval of the Reserve Bank of India. Further, in case of a merger of an all India financial institution with own subsidiary bank, there was no express requirement of obtaining the approval of Reserve Bank of India for such merger, under the provisions of the Banking Regulation Act or the Reserve Bank of India Act. Such approval of the Reserve Bank of India is required only in the context of relaxation of regulatory norms to be complied with by a bank. However, for a regulator, it is a matter of concern to ensure that such acquisitions or mergers do not adversely affect the concerned banking institutions or the depositors of such banking institutions.

Reserve Bank’s Review Process

Reserve bank of India has laid down guidelines for the process of merger proposal, determination of swap ratios, disclosures, the stages at which boards will get involved in the merger process and norms of buying and selling of shares by the promoters before and during the process of merger Reserve bank of India (RBI) in its capacity of the primary regulator and supervisor of the banking systems has information on the present functioning of all the banks in India, the RBI is the best suited to undertake the merger review process. While undertaking the merger review process, RBI will need to examine the proposal for the merger from a prudential perspective to gauge the impact on the stability and the financial well being of the merger applicants and on the financial systems. In addition to the assessment of the proposed merger on the competitiveness and stability of the financial systems, RBI will also need to examine the implications on regional development, impact on society etc. as a result of merger since banks in India also have to fulfill various social obligations. The RBI will need to examine the reasonableness of financial projection, including business plan and earning assumptions as well as the effect of the proposed merger on the merged entity’s capital position.

29 www.indialawjournal.com/volume1/.../article_by_vikram_malik.html
Finally RBI will have to consider potential changes to risk profile and the capacity of the merger applicants’ risk management systems, particularly the extent to which the level of risk would change as a result of the proposed merger and the merged entity’s ability to measure, monitor and manage those risks.

Broadly the information that will need to be examined by RBI while evaluating a proposal for merger would include:

- The objective to be achieved by the merger.
- What impact could the merger have on the financial markets?
- What impact could be the creations of mega bank have on monetary policy, the management of interest rates? What threat to the Indian economy would be posed by the difficulties experienced by a mega bank in its international activities?
- The impact that the merger might have on the overall structure of the industry.
- The possible costs and benefits to customer and to small and medium size businesses, including the impact on bank branches the availability of financing price, quality and the availability of services.
- The timing and the socio–economic impact of any branch closures resulting from the merger.
- The manner in which the proposal will contribute to the international competitiveness of the financial services sector.
- The manner in which the proposal would indirectly affect employment and the quality of jobs in the sector, with a distinction made between transitional and permanent effects.
- The manner in which the proposal would increase the ability of the banks to develop and adopt new technologies.
- Remedial steps that the merger applicants would be willing to take to mitigate the adverse effects identified to arise from the merger.
CHAPTER 7 - COMPETITION COMMISSION OF INDIA’S ROLE IN MERGERS AND ACQUISITION

The Competition Act, which received Presidential assent on January 13, 2003, established the Competition Commission of India (the CCI) as the new statutory authority to inquire into alleged contraventions of the legislation. The Competition Act is a dramatic shift from the previous competition-related legislation, the Monopolies and Restrictive Trade Practices Act, which had been in place long before India undertook its significant market reforms and, as a result, was increasingly irrelevant, ineffective, and overly bureaucratic.\(^1\)

The Merger Control provisions contained in Sections 5 and 6 of the amended Competition Act are perhaps the most noteworthy elements of the new law, insofar as mergers were not specifically addressed under the erstwhile MRTP Act. Section 5 defines “combinations” and lays out the relevant thresholds for regulation. Combinations, in terms of the meaning given to them in the Act, include mergers, amalgamations, acquisitions and acquisitions of Control.\(^2\) Section 6 authorizes the CCI to investigate combinations above certain size


\(^2\) Section 5 of the Competition Act, 2002. For the purpose of this paper, we will be looking at the Merger provisions specifically. Section 5 reads:

Combination.-The 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, if (a) any acquisition where- (i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,- (A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or (ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,- (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or (B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or (b) acquiring of control by a person over an enterprise 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, if- (i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,- (A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or (ii) the group, to which
MERGERS AND ACQUISITIONS IN BANKING SECTOR IN INDIA- A LEGAL PERSPECTIVE

thresholds, which includes mergers, amalgamations, and acquisitions of shares, assets, voting rights, or control. Section 6(1) states that combinations that cause, or are likely to cause, an appreciable adverse effect on competition are prohibited. Section 6(2), as amended in 2007, provides for mandatory pre-merger notification within 30 days of either approval of the proposal for a combination or execution of the agreement for an acquisition.

As in the case of agreements, mergers are typically classified into horizontal and vertical mergers. In addition, mergers between enterprises operating in different markets are called conglomerate mergers.

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enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,- (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or (B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or (c) any merger or amalgamation in which- (i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,- (A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or (B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or (ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,- (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or (B) in India or outside India, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars. Explanation.-For the purposes of this section,- (a) "control" includes controlling the affairs or management by- (i) one or more enterprises, either jointly or singly, over another enterprise or group; (ii) one or more groups, either jointly or singly, over another group or enterprise; (b) "group" means two or more enterprises which, directly or indirectly, are in a position to - (i) exercise twenty-six per cent or more of the voting rights in the other enterprise; or (ii) appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or (iii) control the management or affairs of the other enterprise; (c) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as deduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

33 Section 6(1) of the Competition Act, 2002.
34 Section 6(2) of the Competition Act, 2002.
Mergers are a legitimate means by which firms can grow and are generally as much part of the natural process of industrial evolution and restructuring as new entry, growth and exit.\textsuperscript{36} From the point of view of competition policy, it is horizontal mergers that are generally the focus of attention. As in the case of horizontal agreements, such mergers have a potential for reducing competition. In rare cases, where an enterprise in a dominant position makes a vertical merger with another firm in an adjacent market to further entrench its position of dominance, the merger may provide cause for concern.\textsuperscript{37}

A merger leads to a “bad” outcome only if it creates a dominant enterprise that subsequently abuses its dominance. To some extent, the issue is analogous to that of agreements among enterprises and also overlaps with the issue of dominance and its abuse, discussed earlier. Viewed in this way, there is probably no need to have a separate law on mergers. The reason that such a provision exists in most laws is to pre-empt the potential abuse of dominance where it is probable, as subsequent unbundling can be both difficult and socially costly. Thus, 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.

The Act makes it mandatory for the parties to notify their proposed agreement or combinations to the CCI, if the aggregate assets of the combining parties have a value in excess of Rs.1000 crores or turnover in excess of Rs. 3000 crores.\textsuperscript{38} In the event either of the combining parties is outside India or both are outside, the threshold limits are $500 million for assets and $1500 million for turnover.\textsuperscript{39} If one of the merging parties belongs to a group, which controls it, the threshold limits are Rs. 4000 crores in terms of assets and Rs. 12000 crores in terms of turnover. If the group has assets or turnover outside India also, the threshold limits are $2 billion for assets and $6 billion for turnover.\textsuperscript{40}

For this purpose a group means two or more enterprises which directly or indirectly

- have: The ability to exercise 26% or more of the voting rights in the other enterprise; or

\textsuperscript{36} Id.

\textsuperscript{37} Supra. note 41.

\textsuperscript{38} Section 5 of the Competition Act, 2002.

\textsuperscript{39} Section 5 of the Competition Act, 2002.

\textsuperscript{40} Section 5 of the Competition Act, 2002.
• The ability to appoint more than half the members of the Board of Directors in the other enterprise; or
• The ability to control the affairs of the other enterprise.\textsuperscript{41}

Control which expression occurs in the third bullet defining ‘group’ above) has also been defined in the Act. Control includes controlling the affairs or management by

i. one or more enterprises, either jointly or singly, over another enterprise or group;

ii. one or more groups, either jointly or singly, over another group or enterprise.\textsuperscript{42}

The threshold limits of assets and of turnover would be revised every two years on the basis of the Wholesale Price Index or fluctuations in exchange rate of rupee or foreign currencies.\textsuperscript{43}

The Act has listed the following factors to be taken into account for the purpose of determining whether the combination would have the effect of or be likely to have an appreciable adverse effect on competition.\textsuperscript{44}

• The actual and potential level of competition through imports in the market;
• The extent of barriers to entry to the market;
• The level of combination in the market;
• The degree of countervailing power in the market;
• The likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
• The extent of effective competition likely to sustain in a market;
• The extent to which substitutes are available or are likely to be available in the market;
• The market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
• The likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
• The nature and extent of vertical integration in the market;
• The possibility of a failing business;

\textsuperscript{41} Section 5 of the Competition Act, 2002.
\textsuperscript{42} Section 5 of the Competition Act, 2002.
\textsuperscript{43} Section 20(3) of the Competition Act, 2002.
\textsuperscript{44} Section 20(4) of the Competition Act, 2002.
The nature and extent of innovation;

Relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;

Whether the benefits of the combination outweigh the adverse impact of the combination, if any.

On finding a combination to have ‘appreciable adverse effect on competition’, the CCI is empowered under Section 31 to direct the combination not to take effect or propose appropriate modification to the combination.

Currently, the Act allows for a maximum 210-day waiting period, but an initial 30-day period is also available and most transactions are expected to be cleared within a 30-60 day window. There has been considerable commentary regarding the maximum waiting period, and it is likely that there may be some modification or clarification of this in the final Implementing Regulations. For transactions where there are no overlaps of competing products or other competitive issues, a short form can be used — but use of this abbreviated form requires a mandatory 60-day waiting period. Thus, the main thrust behind the merger regulations as laid down in the Competition Act, 2002 is that the entity which is created after the merger should not have an appreciable adverse effect on competition. The CCI’s main duty is to investigate whether the proposed combination will have effect or is likely to have an appreciable adverse effect on competition post-merger based on the criteria that have been laid down in the Act itself. The CCI is not mandated to look at other factors which may be at work in the merger, since it is not the duty of the CCI to do so. It is only required to ensure that combinations do not create a situation which may either lead to cartelization or potential abuse of dominant position by the entity which either remains or is newly created after the combination takes place. The viability of the merger is not within the mandate of the CCI, but instead it is the sectoral regulators such as TRAT, IRDA and RBI itself, along with the relevant Ministry who have been given the duty to look at the various aspects pertaining to viability of combinations, keeping in mind the several factors which play a role in that particular sector. Moreover, the primary objectives of the Competition Act, 2002 should also be kept in mind while analyzing the application of the Act. Competition Act, 2002 is passed keeping in view of the economic development of the country with following objective:

1) To prevent practices having adverse effect on competition,

\[45\] Preamble to the Competition Act, 2002.
2) To promote and sustain competition in markets,
3) To protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets.

Thus, promotion of competition, ensuring freedom of trade of the participants in the market and protection of consumer interests are the core principles which the CCI will always keep in mind while implementing the Competition Act, 2002.

**SALIENT FEATURES OF THE COMBINATION REGULATION, 2011**

Competition Commission of India (CCI) has on 11 May 2011 issued the *Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Combination Regulations)* which deals with merger and acquisitions in India. The Combination Regulations shall come into force on 1 June 2011. Combination Regulations deals with procedural aspects related to notification of Combination under the Competition Act, 2002 (Competition Act), exemptions and pre-merger notification process.

**Meaning of Combination**

As per the Act, a “Combination” comprises of any of the following -

- any acquisition of – control / shares / voting rights / assets of enterprises
- acquiring of control by person over an enterprises, where such person already has direct / indirect control over another enterprise engaged in similar / competitive business
- any merger or amalgamation between enterprises

If it exceeds the monetary threshold of assets and or turnover as under:

<table>
<thead>
<tr>
<th>Person/ Enterprise</th>
<th>Rs.</th>
<th>USD / Rs.</th>
</tr>
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<tbody>
<tr>
<td>In India</td>
<td></td>
<td>In or Outside India</td>
</tr>
<tr>
<td>Assets*</td>
<td>Turnover</td>
<td>Assets*</td>
</tr>
<tr>
<td>Acquirer + Target</td>
<td>&gt; 15 billion</td>
<td>&gt; 45 billion</td>
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^Group post acquisition | > 60 billion | > 180 billion | USD > 3 billion | USD > 9 billion |
<table>
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<td></td>
<td></td>
<td></td>
<td>Including at least Rs. 7.50 billion should be in India</td>
<td>Including at least Rs. 22.50 billion should be in India</td>
</tr>
</tbody>
</table>

* Assets – book value as per audited accounts and includes intangibles

^ Group means two or more enterprises, which directly or indirectly –

- Exercise => 26% of voting rights in other enterprise
- Appoint > 50% of board members in other enterprise
- Control (#) the management or affairs of the other enterprise

# Control include controlling the affairs or management, either singly or jointly:

- by one or more enterprises over another enterprise or group; or
- by one or more groups over another group or enterprise

**Exemptions from Section 5 of the Act:**

1. An enterprise, whose control, shares, voting rights or assets are being acquired has assets of the value of not more than ` 2.50 billion or turnover of not more than ` 7.50 billion is
exempted from the provisions of Section 5 of the Act for a period of 5 years from 4 March 2011.

2. A “Group” exercising less than 50% of voting rights in other enterprise is exempted from the provisions of Section 5 of the Act for a period of 5 years from 4 March 2011.

**Overview of Regulation of Combination**

Section 6 of the Act inter alia provides that no person or enterprise shall enter into a Combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

If any proposed Combination exceeds the threshold of assets and / or turnover specified in Section 5 of the Act (as aforesaid), the person / enterprise need to intimate the same to the CCI within 30 days of board approval / entering into of the agreement for Combination for approval.

A Combination cannot come into effect until a period of 210 days has passed from the day on which the notice was given to CCI or CCI has passed an order under Section 31 of the Act, whichever is earlier.

**Salient features of the Combinations Regulations are as under:**

1. Exemption from filing intimation of Combination: Transactions that are ordinarily not likely to have an Appreciable Adverse Effect [AAE] on competition in India does not require filing of application with CCI as prescribed under the Act. Some of such transactions are as under:

   o Acquisition of shares or voting rights made, solely as an investment or in the ordinary course of business, such that the total shares or voting rights held by the acquirer directly or indirectly, does not exceed 15% of the total shares or voting rights of the company.

   o Acquisition of shares or voting rights, where the acquirer, prior to acquisition, has 50% or more shares or voting rights in the target enterprise, except in the cases where the transaction results in transfer from joint control to sole control.

   o Acquisition of assets, not directly related to the business activity of the party acquiring the asset or made solely as an investment or in the ordinary course of business and not leading to control of the target enterprise except where the assets being acquired represent substantial business operations in a particular location or for a particular product or service of the enterprise, of which assets are being acquired, irrespective of whether such assets are organized as a separate legal entity or not.
Amended or renewed tender offer where a notice to CCI has been filed by the party making the offer, prior to such amendment or renewal of the offer and that intimation of any change is duly made to CCI.

Acquisition of stock-in-trade, raw materials, stores and spares in the ordinary course of business.

Acquisition of shares or voting rights pursuant to a bonus issue or stock splits or consolidation of shares or subscription to rights issue to the extent of their entitled proportion, not leading to acquisition of control.

Any acquisition of shares or voting rights by a person acting as underwriter or a registered stock broker on behalf of its clients.

Acquisition of control or shares or voting rights or assets by one person or enterprise of another person or enterprise within the same group;

Acquisition of current assets in the ordinary course of business;

Combination taking place entirely outside India with insignificant local nexus and effect on markets in India.

2. In cases of combinations which are not exempt from filing of notice, the parties to the combinations are required to file requisite information with CCI within 30 days of approval of the proposal by the Board of directors or execution of any agreement in the prescribed format with prescribed fees.

3. Failure in filing of notice:

If parties to a combination fail to file notice of combination, CCI may on its own inquire whether the combination has any AAE.

If CCI commence an inquiry, it shall apart from imposing any penalty or initiating any prosecution, direct the parties to file notice in the prescribed time and prescribed form along with requisite fees.

4. CCI shall form a prima facie opinion on the notice filed within thirty days, as to whether the transaction can cause any AAE or not in India market.

5. Publication of details of Combination:

If CCI is prima facie of the opinion that the combination has / is likely to cause AAE on competition within the relevant market in India, the direction of CCI shall be conveyed to the parties for taking prescribed actions.

6. Modification of proposed Combination:
If CCI is of the opinion that the combination has / is likely to cause AAE on competition but such AAE can be eliminated by suitable modification to such combination, CCI may propose appropriate modification to the parties.

If Parties accept the modification proposed by CCI, it shall carry out the modifications to such combinations in accordance with directions issued by CCI.

If parties fail to accept the modification, the combination is deemed to have AAE and shall be dealt with as per the Competition Act.

7. Co-operation with regulatory authorities:

CCI may seek opinion of any other regulatory body / authority in relation to a combination.

**COMPARITIVE STUDY OF RBI AND CCI'S DISTINCTIVE ROLE**

Since 1961 till date, under the provisions of the Banking Regulation Act, 1949, there have been as many as 77 bank amalgamations in the Indian banking system, of which 46 amalgamations took place before nationalisation of banks in 1969 while remaining 31 occurred in the post nationalisation era. Of the 31 mergers, in 25 cases, the private sector banks were merged with a public sector bank while in the remaining six cases both the banks were private sector banks.⁴₆

Report of the Committee on Banking Sector Reforms (the Second Narasimham Committee - 1998) had suggested, inter alia, mergers among strong banks, both in the public and private sectors and even with financial institutions and NBFCs.⁴⁷ Indian banking sector is no stranger to the phenomenon of mergers and acquisition across the banks. Since the onset of reforms in 1990, there have been 22 bank amalgamations.⁴⁸ It would be observed that prior to 1999, the amalgamations of banks were primarily triggered by the weak financials of the bank being

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⁴⁷ http://www.ibef.org/industry/Banking.aspx

⁴⁸ Id.
MERGERS AND ACQUISITIONS IN BANKING SECTOR IN INDIA- A LEGAL PERSPECTIVE

merged, whereas in the post-1999 period, there have also been mergers between healthy banks driven by the business and commercial considerations.\(^{49}\)

The procedure for voluntary amalgamation of two banking companies is laid down under Section 44-A of the Banking Regulation Act, 1949. After the two banking companies have passed the necessary resolution proposing the amalgamation of one bank with another bank, in their general meetings, by a majority in number representing two-thirds in value of the shareholding of each of the two banking companies, such resolution containing the scheme of amalgamation is submitted to the Reserve Bank for its sanction. If the scheme is sanctioned by the Reserve Bank, by an order in writing, it becomes binding not only on the banking companies concerned, but also on all their shareholders.\(^{50}\)

Based on the recommendations of the Working Group to evolve the guidelines for voluntary merger between banking companies RBI had issued guidelines in May 2005 laying down various requirements for the process of such mergers including determination of the swap ratio, disclosures, the stages at which Boards will get involved in the merger process, etc.\(^{51}\)

While amalgamations are normally decided on business considerations (such as the need for increasing the market share, synergies in the operations of businesses, acquisition of a business unit or segment, etc.), the policy objective of the Reserve Bank is to ensure that considerations like sound rationale for the amalgamation, the systemic benefits and the advantage accruing to the residual entity are evaluated in detail. While sanctioning the scheme of amalgamation, the Reserve Bank takes into account the financial health of the two banking companies to ensure, inter alia, that after the amalgamation, the new entity will emerge as a much stronger bank.\(^{52}\)

If we take a look at the banking regulations, we will never find the word cartel, dominance, or agreements in their legislations. Now if that is the case, it becomes obvious that asking the RBI to deal with competition issues using banking regulations is a non-starter. Thus there is no question that CCI should check abuse of dominance and cartelisation.

\(^{49}\) Supra. note 37
\(^{50}\) Section 44-A of the Banking Regulations Act, 1949.

\(^{52}\) Id
However, the major concern of the RBI has been with regards to the bank mergers. The RBI has urged the Ministry of Finance that the RBI alone should have sole jurisdiction over the bank mergers and it should be outside the purview of the Competition Authorities, as the RBI has the special knowledge required to regulate the banking sector.

The guidelines by the RBI regarding mergers have been discussed above. The guidelines of the RBI specify the prudential regulations with respect to bank mergers. They do not look at the issues which the CCI looks at. As mentioned above, CCI only checks whether a combination will likely result in dominance or likely facilitate cartelisation. They will not go beyond this to check on prudential regulation, which they do not have the mandate or competence to do. RBI on the other hand will only check whether the banks will remain sound and whether public money will remain safe after a combination. They will not go further and assess whether a dominant position will be created or whether cartelisation is likely, which is what CCI does.

A distinction should be made between prudential regulation of banks by RBI and competition regulation of the whole economy, including financial sector, by CCI. Prudential regulation is largely centred on laying and enforcing rules that limit risk-taking of banks, ensuring safety of depositors’ funds and stability of the financial sector. Thus regulation of M&As by the RBI would be determined by such benchmarks. Competition regulation of M&As in the banking sector on the other hand is a different matter. This is aimed at ensuring that banks compete among themselves in fighting for customers by offering the best terms, lower interest rates on loans and higher interest rates on deposits and securities. Merger regulation by CCI would be therefore intended to ensure that such activities are not motivated by the desire to collude and make excessive profits at the expense of customers or to squeeze other players out of the market through abusive practices. While CCI does not have either the expertise or the remit on prudential regulation, RBI does not have the expertise or remit to regulate anticompetitive behaviour.  

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53 Pradeep Mehta, “CCI has a Role to Play in Bank Mergers”, http://www.cuts-ccier.org/ArticlesJan10-CCI_has_a_role_to_play_in_bank_mergers.htm.
Competition policy and prudential regulation, to the extent that both seek to prohibit undesirable behaviour, are mutually compatible.\(^5\) In particular, as long as both prudential and competition authorities confine themselves to blocking undesired (rather than forcing or requiring) mergers, banks will have no difficulty abiding by both agencies’ merger decisions. As regards certain mergers, prudential regulation and competition policy can be complementary. A prominent example is mergers creating "too big to fail" banks, i.e. banks that are so large that market participants assume the government would take whatever steps might be necessary to preserve their solvency in a crisis.\(^5\) Such banks might be inclined to take what regulators regard as excessive risks. Banks seen by consumers as too big to fail could also give rise to competitive distortions since they may have an artificial advantage in raising funds, especially in markets where deposit insurance is inadequate.\(^5\)

There is a limited potential for conflict between prudential and competition policy goals when it comes to mergers designed to shore up a failing or weakened bank. Even in such cases, however, it will normally be possible to avoid competition problems by choosing the right partner, or by structuring the merger so as to minimise its effects on local market concentration. In any case, conflict between prudential and competition policy goals can be reduced by close co-operation, including prior consultation between the pertinent agencies.\(^5\)

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\(^5\) Id.

\(^5\) Supra. note 48.

\(^5\) Supra. note 48.
CHAPTER 8 - BANKING LAW (AMENDMENT) BILL, 2011

The Government tabled the Banking Law (Amendment) Bill before the Lok Sabha in the month of March, 2011. The amendment exempts mergers and acquisitions in the banking sector from the scrutiny of the Competition Commission of India.

Section 2A of The Banking Laws (Amendment) Bill, 2011 is as follows:
Notwithstanding anything to the contrary contained in section 2, nothing contained in the Competition Act, 2002 shall apply to any banking company, the State Bank of India, any subsidiary bank, any corresponding new bank or any regional rural bank or co-operative bank or multi-state co-operative bank in respect of the matters relating to amalgamation, merger, reconstruction, transfer, reconstitution or acquisition under—

i. this Act;
ii. the State Bank of India Act, 1955;
iii. the State Bank of India (Subsidiary Banks) Act, 1959;
iv. the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970;
v. the Regional Rural Banks Act, 1976;
vi. the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980;
vii. the Multi-State Co-operative Societies Act, 2002; and
viii. any State law relating to co-operative societies.”.

CCI should object to the new amendment bill on bank regulation act, which talks about the total exemption of Competition Act in cases of Banking companies being mergers, amalgamated, reconstructed, transferred, reconstituted, acquired.

There might be a conflict of law once the bill is enacted. This bill only exempts The Competition Act and no other regulation from looking into the mergers and acquisition. Role of RBI is to protect the interest of depositors and ensure safety of fund. This can be best achieved by allowing banks to increase profit on their funds. On the other side in an opposite direction CCI ensures that lenders of bank do not suffer by being charged higher interest due to lack of competition or depositors are offered good interest by way of competition.

Therefore both have distinct role and both require their role to play in the interest of their constituency. By way of combinations banks can become very powerful once they control funds and have dominant position in the market. Today SBI plays that kind of role and our day today finances do gets influenced by their policy. In case the same SBI was in a private
hands it was possible for the private players to completely work on profit motive, which many other privatised system is facing. CCI would be the only arm of govt in such a scenario to keep control. A private sector SBI can work on further consolidation to gain further dominance. RBI in a way for financial prudence may start ignoring such activities. CCI alone will have jurisdiction to play the role of regulator for saving interest of small customers of bank, be it the depositor or the lenders. The main objective of RBI is to reduce the risks involved in investments, hence to protect the investors and not to profit out of these investments. The exemption clearly shows the profiteering nature of RBI as CCI would come in vogue to check undue profiteering due to lack of competition.
A distinction should be made between prudential regulation of banks by RBI and competition regulation of the whole economy, including financial sector, by CCI. Prudential regulation is largely centred on laying and enforcing rules that limit risk-taking of banks, ensuring safety of depositors’ funds and stability of the financial sector. Thus regulation of M&As by the RBI would be determined by such benchmarks. Competition regulation of M&As in the banking sector on the other hand is a different matter. This is aimed at ensuring that banks compete among themselves in fighting for customers by offering the best terms, lower interest rates on loans and higher interest rates on deposits and securities. Merger regulation by CCI would be therefore intended to ensure that such activities are not motivated by the desire to collude and make excessive profits at the expense of customers or to squeeze other players out of the market through abusive practices. While CCI does not have either the expertise or the remit on prudential regulation, RBI does not have the expertise or remit to regulate anticompetitive behaviour. A distinction should be made between prudential regulation of banks by RBI and competition regulation of the whole economy, including financial sector, by CCI. Prudential regulation is largely centred on laying and enforcing rules that limit risk-taking of banks, ensuring safety of depositors’ funds and stability of the financial sector. Thus regulation of M&As by the RBI would be determined by such benchmarks. Competition regulation of M&As in the banking sector on the other hand is a different matter. This is aimed at ensuring that banks compete among themselves in fighting for customers by offering the best terms, lower interest rates on loans and higher interest rates on deposits and securities. Merger regulation by CCI would be therefore intended to ensure that such activities are not motivated by the desire to collude and make excessive profits at the expense of customers or to squeeze other players out of the market through abusive practices. While CCI does not have either the expertise or the remit on prudential regulation, RBI does not have the expertise or remit to regulate anticompetitive behaviour.
CHAPTER 10 - ANALYSIS

- Various Industrial and financial sectors are seeking to get exemption from CCI to look into their M&As. Section-60 of CCI act overrides all such legislation. Banking regulation (amendment) is one such law. CCI needs to object such laws through MCA.

- CCI cannot give up its role in M&As as once a dominant position is acquired by any entity, it will be a marathon task with huge legal impediments to restrict that entity in their role in anti-competitive area.

- RBI’s role as a regulator is to ensure safety of funds of depositors and monitor the role of banks in economic growth. CCI’s role in a way is opposed to this as it looks at checking the profiteering motive of banks in charging unreasonable interest or giving lower returns to depositors etc. Both are distinctive and important.

- Section 45 of the banking regulation act requires that RBI, restructure or amalgamate any number of weak banks with a stronger bank, if it finds that the failing weaker bank will have some impact on the economic development. But, the same banking regulation Act (should the new proposed amendment be carried out) requires that only the RBI (CCI is excluded) is authorized to look into any merger taking within the banking sector. This is a contradictory situation, as it gives RBI the ultimate power to both initiate a merger and also gives it the authority to look into it, and determine its legality and correctness.

- RBI has made it mandatory for all banking entities in India to follow the Basel II banking regulation policies. This international policy stipulates proper risk management procedure to be taken by all banking entities which follow it. Risk management, includes under its purview, mitigation of a possible financial/operational/market risk that may arise out of M&A of two such banking entities. Whereby, after the M&A the credibility of one bank may go down, and/or its bad debt or risky debt might go up. Such an outcome might not be favourable to the consumers to whom the CCI is directly responsible. Hence, by this policy, under any such M&A, CCI should be consulted by the RBI to determine if the M&A is in the interest of the public.
CHAPTER 10 – RECOMMENDATIONS

I. Recommendation- I

- One of the major concerns amongst industries who are seeking exemption are the lack of technical expertise with CCI to look into a case of merger and acquisition.
- Presently CCI can seek views of experts if it feels it is relevant. It is proposed that in order to have an expert opinion right at the outset, CCI may seek expert opinion on each of the proposed M&A falling in its jurisdiction. Towards this it may keep a panel of many experts in financial, Industry segments etc. This will help it in quickly requisitioning the services. Panel must only contain Expert in their own capacity and not Organizations or firms which can have other business Interests. Such other checks and balances can be thought out.

Advantages of this will be:
- Each M&A objection or acceptance will be based on expert opinion. This will reduce litigation and will help in quicker clearance.
- DG (Investigation) while carrying investigation can base the same on Industry expert helping him do his Investigation quicker. Even DG(Investigation) who is directly appointed by Govt to carry independent investigation can be allowed to independently hire experts. This will help in transparency of the exercise.
- Once the entire premise is based on experts opinion coupled with CCIs diligent views, time of process will shorten, which in turn will help Industry grow through M&A.

II. Recommendation-II

- Section-5 of Competition Commission Act needs to also include the transaction cost of any mergers and acquisitions in the threshold amount defined.
- This will help including within its purview any entity with high potential to capture the market but which has turnover or assets lower than the defined threshold amount.