Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Regulation of Conglomerate Merger - Implications under the Competition Law

Rithvik Gundavarapu[a]

[a]Symbiosis Law School, Hyderabad, India

Received 23 October 2024; *Accepted* 25 November 2024; *Published* 28 November 2024

The issue surrounding conglomeration merger control under the Competition Act 2002 has far-reaching consequences for market purity and consumers in India. Conglomerate acquisitions, which are typified by the acquisition of firms in different industries, are problematic for competition authorities because they can lead to anti-competitive behaviours which are not readily identifiable. This paper seeks to examine the appliance of the Competition Act 2002, to these mergers through the participation of the Competition Commission of India (CCI) to make market effect appraisals. It looks at how key tests of dominance and 'appreciable adverse effect on competition' in the Act are used on conglomerate mergers, arguing that there must be proper economic analysis. The paper also examines the effects of the existence of such mergers in terms of the barriers to market entry, innovation as well as consumer choices, supported by recent case studies on CCI's approach. Besides, it raises questions about the sufficiency of the regulation framework concerning the issues of analysing conglomerate mergers and seeks clearer delineation and better analytical instruments. In sum, governance of conglomerate mergers under the Competition Act 2002 is important to unMEA for encouraging competitive market structures which warrant active engagement of regulators to dynamics of firms' behaviour.

Keywords: *CCI, competition, market competition, anti-competitive practices.*

INTRODUCTION

Vertical mergers can be described as the integration of enterprises operating in similar industries but performing completely different functions. Conglomerate Mergers, therefore, mainly differ from Horizontal mergers, where companies in the same trade unite and Vertical mergers, where companies from different stages of production or selling chain are merged.[1] The most common objective of a conglomerate merger is to diversify since organisational entities have the opportunity to expand into new industries, reduce risks and take advantage of opportunities within and across industries.[2] A conglomerate merger is roughly divided into two types: pure and mixed. The antecedent of a conglomerate merger is totally dissimilar from another in the sense that the markets of the merging businesses do not share or have anything in common, while in a mixed conglomerate merger, the companies may aim at expanding into other related products or markets. For example, a pure conglomerate merger might see a food firm acquiring a media company. A mixed conglomerate merger may occur whereby a firm in the automotive industry acquires a firm that supplies auto parts, but it does not operate in the same geographical region.

DIFFERENCE BETWEEN CONGLOMERATE, HORIZONTAL AND VERTICAL MERGER

The most obvious distinction between conglomerate mergers and other forms of mergers is the nature of the companies involved.

A horizontal merger occurs when one firm acquires another in the same line of production or offers similar products and services. These mergers are most common as they are normally aimed at ensuring that an organisation has control of a larger market, reduced competition or even achieved economies of scale. For instance, the merging of two companies producing smartphones falls under a horizontal merger because companies are in the same line of production.

[1] Amanda Athayde, 'Theories of Harm in Vertical and Conglomerate Mergers: Which Are the Risks?' (2023) SSRN Electronic Journal <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4562591> accessed 15 October 2024

[2] Zhijun Chen and Patrick Rey, 'A Theory of Conglomerate Mergers' (2023) Toulouse School of Economics Working Paper <https://www.tse-fr.eu/sites/default/files/TSE/documents/doc/wp/2023/wp_tse_1447.pdf> accessed 15 October 2024

Finally, there are vertical mergers where the acquiring firm and the target firm are involved in similar operations but at different levels, either in the manufacturing or in the supply network. Its purpose is to enhance resource productivity, supply chain management, as well as integration between manufacturing and distribution. An example of a vertical merger might be a merger of a car manufacturing company with a tyre manufacturing company. The mergers, more specifically, are conglomerate mergers in that the two firms are in unrelated industries. Such acquisitions are typically undertaken to reduce risks as diversification makes corporations reduce risks in other industries. For instance, when a consumer electronics firm acquires a construction firm, this is regarded as a conglomerate merger.

IMPORTANCE OF CONGLOMERATE MERGER IN GLOBAL AND INDIAN CONTEXT

Globally, conglomerate mergers have had a profound impact on business landscapes, particularly during periods of economic turmoil. Businesses can mitigate market downturns by merging with enterprises in other areas. This multiplicity of revenue streams provides stability since unsuccessful efforts in one area may be countered by good success in another. Furthermore, conglomerates can use their financial resources, management skills, and economies of scale across many industries to improve overall performance.[3]

Mergers of conglomerates have also increased in India because of the need for firms to diversify in other markets. The opening up of the economy of India, especially after liberalisation in 1991 and the enhancement in the technologies have made it easier for opportunities to be sought across sectors. Tata Group of India, Reliance Group of India and Aditya Birla Group of India have applied for conglomerate mergers to extend their operations. For example, the earlier focused Tata Group, which was originally accorded to steel and auto, has diversified in fields like IT, Hotel (Taj) and Telecommunication.[4] This way of diversification has helped Indian corporations manage their risks and look for opportunities in many sectors. The greatest advantage of a conglomerate merger is that it allows one firm to acquire the skills to diversify

[3] Dennis E Logue and Philippe A Naert, 'A Theory of Conglomerate Mergers: Comment and Extension' (1970) 84(4) Quarterly Journal of Economics <https://www.jstor.org/stable/1880847> accessed 15 October 2024
[4] Apurva Pandya et al., 'The Analysis of Merger of Tata Group and Air India' (2023) 10(3) Journal of Emerging Technologies and Innovative Research <http://www.jetir.org/papers/JETIR2303151.pdf> accessed 15 October 2024

and capture new markets. Industry risks are managed by dispersing them across different industries using diversification. In other words, even if one of these industries is experiencing some problem–legislative, market, or even economic, the overall picture of the company and its financial situation remains higher due to the potential in other industries. This is because, through conglomerate mergers, the businesses also become able to use their financial clout to get into new disciplines and areas of operation. By acquiring such a company, a corporation can rapidly penetrate a targeted industry since it is already established, unlike the case when a new business venture is developed.[5] This situation often results in market exposure, which could be an advantage for businesses competing within the context.

REGULATORY FRAMEWORK UNDER THE COMPETITION ACT 2002

The Competition Act of 2002 is the primary legislation regulating competition and mergers & acquisitions in India.[6] In its essence, the Act aimed at encouraging market competition and prohibitive conduct, which were capable of adversely affecting the competition process and protecting consumers' interests. The Act requires control over mergers, acquisitions and amalgamation since the corporations cannot engage in activities that may distort market competition, erect barriers, or compromise the consumer's interest. Thus, the Competition Act of 2002 has a prominent role in the regulation of mergers and acquisitions, which often raise concentration whenever these combinations affect competition. The Act created a system where corporations had to notify the CCI of mergers or acquisitions over certain monetary thresholds. The CCI then evaluates the proposed combination to see if it will have a significant adverse effect on competition (AAEC) in the relevant market.

Section 5 of the Act defines 'Combinations' and establishes financial criteria for mergers and acquisitions that need notification to the CCI. The Act defines a combination as a merger, amalgamation, or purchase of shares, voting rights, assets, or control that meets particular asset

[5] Md Alam Ansari and M Mustafa, 'An Analytical Study of Impact of Merger and Acquisition on Financial Performance of Corporate Sector in India' (2018) 5(2) Journal of Management Research and Analysis <https://www.jmra.in/article-details/6928> accessed 15 October 2024

[6] B S Chauhan, 'Indian Competition Law: Global Context' (2012) 54(3) Journal of Indian Law Institute <https://www.jstor.org/stable/44782475> accessed 15 October 2024

or turnover levels.[7] Financial criteria are set both domestically and globally, depending on the size of the firms engaged in the transaction. Recent amendments require notification to the CCI for any merger involving firms with combined assets or turnover above ₹2,000 crores (in India) or ₹6,000 crores (in India).[8] Similarly, in worldwide operations, if the combined assets or turnover surpasses specific thresholds, the merger must be reported. These benchmarks assist the CCI in identifying mergers that have a major impact on competition in India. This need to inform the CCI is critical because it guarantees that huge combinations are reviewed before they are implemented. The goal is to avoid mergers and acquisitions that might monopolise markets, reduce competition, or hurt consumers by decreasing choice or raising costs.

Section 6 of the Act improves the regulatory framework by banning combinations that are likely to have a significant AAEC in the relevant market in India.[9] Once a combination is notified under Section 5, the CCI determines whether the proposed merger or acquisition would reduce competition or create a monopoly. It regulates combinations based on the idea of AAEC. The factors considered by the CCI when doling out the probability of AAEC are the market share of the specific firms, the degree of concentration in a market, barriers to entry to other competitors, and whether the merger would mean the exclusion of competition. The CCI also looks at whether the merger will create or enhance the combined entity's influence in market power, which may mean higher prices or lower innovation.[10]

If the CCI determines that a planned combination is likely to result in AAEC, it may either prohibit the merger or impose limitations or changes to guarantee that the competitive environment remains unaltered. For example, the CCI may compel the divestment of certain assets or businesses to maintain competition. This regulatory control guarantees that any

---

[7] Satyam Sharat, 'Mergers and Acquisitions Under the Competition Act, 2002' (*Manupatra*, 13 February 2004) <https://articles.manupatra.com/article-details/Mergers-Acquisitions-Under-the-Competition-Act-2002> accessed 15 October 2024

[8] K R Srivats, 'India enforces mandatory CCI approval for M&As over ₹2,000 crore under new regulations' *BusinessLine* (10 September 2024) <https://www.thehindubusinessline.com/economy/india-enforces-mandatory-cci-approval-for-mas-over-2000-crore-under-new-regulations/article68625191.ece> accessed 15 October 2024

[9] Gurpreet Kaur, 'Regulation of Combinations Under the Competition Act, 2002: An Analysis' (2024) 9(4) International Journal of Novel Research and Development <https://www.ijnrd.org/papers/IJNRD2404434.pdf> accessed 15 October 2024

[10] Giulio Federico et al., 'Antitrust and Innovation: Welcoming and Protecting Disruption' (Conference: European Commission Yale University and NBER University of California, Berkeley, 2020)

combinations that potentially undermine competition are investigated and appropriate remedies implemented.

ROLE OF THE COMPETITION COMMISSION OF INDIA IN MERGERS

The types of mergers that the CCI assesses and controls are conglomerate mergers. Conglomerate mergers refer to the merger or acquisition of firms within different markets or industries. As such, the above mergers may not necessarily affect competition in the same markets, but they trigger a debate on dominance and anti-competitive orientation asynchronously. The CCI evaluates conglomerate mergers depending on how they will lead to anti-competitive effects for products, including the shifting of market control between segments and the quashing of competition through cross-subsidization.[11] Despite the fact that there may not be direct competition between two merging conglomerate companies, the CCI opposes such mergers because it considers that their impact would be to eliminate competition or competition pressure in neighbouring or related markets. Unfortunately, when conglomerate mergers are proposed to occur, the CCI lays down a rigorous evaluation process to avoid any possibility of the mergers distorting competition. For this reason, concerning conglomerate mergers, besides analysing the possible effects on several markets and the criteria adopted for this analysis, such as the market share and entry barriers, the CCI is sure that these mergers are organised in a manner that promotes the efficiency of the markets while seen at the same time encouraging competitive practices.

ANTITRUST CONCERNS AND IMPLICATIONS FOR CONGLOMERATE MERGERS

Conglomerate mergers, which combine corporations from multiple industries, can pose significant antitrust issues. These mergers, unlike horizontal or vertical mergers, may not instantly eliminate direct rivals in a market, yet they can nevertheless have a considerable impact on competition. The key concerns focus on the possibility of market dominance, the loss of competition, and limited consumer choices, all of which might result in anti-competitive results across several industries.

[11] *Ibid*

POTENTIAL COMPETITION CONCERNS IN CONGLOMERATE MERGERS

One of the primary competition problems raised by conglomerate mergers is market dominance.[12] Even if the firms involved are in different industries, conglomerate mergers allow the combined organisation to use its power in one market to obtain an unfair advantage in another. For example, a firm with strong market dominance in a core industry may utilise its financial resources and established market position to cross-subsidize its activities in a new market, thereby pushing out smaller competitors that lack the financial wherewithal to compete.

Another issue is the foreclosure of competition.[13] This can occur in two ways: input foreclosure or consumer foreclosure. In input foreclosure, the combined corporation may dominate access to critical resources or supply chains, reducing other firms' capacity to compete in the marketplace. In customer foreclosure, the combined firm may restrict rivals' access to consumers, either by bundling products or services across its many business areas or by developing loyalty programs that make it difficult for smaller competitors to obtain market share. This can result in less market competition and, over time, customer suffering in the form of higher pricing, less product diversity, or slower innovation.

Furthermore, conglomerate mergers might limit consumer choices.[14] A conglomerate that dominates various sectors might create hurdles to entry for new or smaller businesses. This loss in competition may allow the corporation to influence pricing or quality standards, restricting consumers' alternatives. Without adequate competition, customers may be forced to pay higher prices or accept lower-quality goods and services.

---

[12] Jules Backman, 'Conglomerate Mergers and Competition' (2012) 44(5) St John's Law Review <https://core.ac.uk/download/pdf/216995431.pdf> accessed 15 October 2024

[13] Gotz Drauz, 'Unbundling GE/HONEYWELL: The Assessment of Conglomerate Mergers Under EC Competition Law' (2001) 25(4) Fordham International Law Journal <https://core.ac.uk/download/pdf/144226494.pdf> accessed 15 October 2024

[14] Orley Ashenfelter and Daniel Hosken, 'The Effect of Mergers on Consumer Prices: Evidence from Five Mergers on the Enforcement Margin' (2010) 53(3) Journal of Law and Economics <https://www.journals.uchicago.edu/doi/10.1086/605092> accessed 15 October 2024

APPLICATION OF DOMINANCE TEST

The Competition Act of 2002 of India has the framework for the Conglomerate Merger being analysed by the CCI, where this dominance test is to be used to check whether the outcome of the Conglomerate Merger would be detrimental to competition by a considerable amount. Preoccupation in this area is a simplified evaluation of the possibility the combined business will acquire or reinforce a position of dominance in a relevant market. The act does not prohibit dominance but the abuse of dominance. Predominance in conglomerate mergers is never apparent, and the merging enterprises seldom compete within the same market. However, the CCI assesses if the merger will enable the new firm to engage in the above activities that are perceived as anti-competitive exploitation of power through predatory pricing, product tying or bundling, as well as exclusive dealing. For instance, if a conglomerate can influence the decision-making of buyers to obtain goods from various business divisions, it may easily cartelise markets, denying efficient competitors a chance. The CCI also evaluates whether the merger would raise entry barriers for other enterprises. If a conglomerate merger increases the company's capacity to control resources or customer access across various industries, new or smaller competitors may find it difficult to enter the market, restricting competition.

LANDMARK JUDGMENTS AND CASE STUDIES ON CONGLOMERATE MERGERS

The Act regulates conglomerate mergers through key decisions by the CCI and courts, which shape the framework for examining such mergers. These verdicts are aimed at avoiding market domination, maintaining competitive markets, and safeguarding consumer interests. Conglomerate mergers, while typically perceived as less troublesome than horizontal or vertical mergers, can nonetheless have far-reaching consequences for competition, which is why they are scrutinised.

The CCI assessed many important conglomerate mergers, including the 2011 merger of ***Cairn India and Vedanta Resources***.[15] Cairn India Ltd, Operating in the oil and gas segment, is the

[15] 'Vedanta to acquire 60 % in Cairn India for $9.6 billion' *The Hindu* (28 November 2021) <https://www.thehindu.com/business/companies/Vedanta-to-acquire-60-in-Cairn-India-for-9.6-billion/article16135234.ece> accessed 15 October 2024

right fit with Vedanta, the global natural resources company with operations in Zinc, Aluminum, Iron ore, Oil and gas. Cairn and Vedanta were into different businesses altogether; however, the CCI had to then try and understand what, if any, anti-competitive conditions would arise if there was a merger and whether the merged entity would be capable of excluding competition. After considering the analysis, the CCI approved the deal because the two parties did not compete in similar markets since they were in different industries. This was brought out by the CCI ruling in making a statement that it is important to ensure that there should be no cross-sector overlap after a conglomerate merger that will harm incumbent rivals or restrict market entry. This case bore out the proposition that, although vertical mergers do not usually bear a direct relationship to competition in the same sense, they should still be looked at to determine the possible long-term effects of the mergers on the market structures and the competitive behaviour of the markets.

Another notable example in India is the 2009 merger of ***Reliance Industries Limited (RIL) and Reliance Petroleum Limited (RPL)***.[16] Although both companies were in similar businesses (petrochemicals and oil refining), the merger was classified as a conglomerate due to their separate operational regions. The CCI evaluated the merger based on whether it would result in dominance in neighbouring industries and harm competition in the larger market. The CCI eventually allowed the merger, stating that it would not fundamentally change market dynamics in a way that would harm competition. However, the decision underscored the necessity of determining whether such acquisitions allow a business to use its dominance in one market to influence competition in another. The ruling helped to define the role of conglomerate mergers in India's fast-expanding energy and resources industry, highlighting the importance of comprehensive market share research and the identification of potential anti-competitive behaviours such as predatory pricing or bundling.

[16] B S Reporter, 'RIL-RPL merger ratio at 1:16' *Business Standard* (Mumbai, 20 January 2013) <https://www.business-standard.com/article/companies/ril-rpl-merger-ratio-at-1-16-109030300076_1.html> accessed 15 October 2024

LANDMARK CASES FROM INTERNATIONAL JURISDICTIONS

International precedents, particularly those from established markets like the United States and Europe, have affected India's stance on conglomerate mergers. ***United States v General Electric***[17] (1963) is a significant decision that influenced global antitrust viewpoints on conglomerate mergers. In this case, when GE acquires a business in an unrelated industry, this creates sentiments that GE has experience in the industry and, therefore, would use this to gain a monopoly in the market. The decision also stressed that acquisitions of conglomerates could mean that corporations may use their resources across industries in ways that are anti-competitive, setting the pace for future scrutiny by more formal regulators. Similarly, in Europe, the European Commission's ruling on the ***GE/Honeywell merger* (2001)**[18] is frequently highlighted as a leading example of conglomerate merger regulation. GE, a massive industrial giant, wanted to buy Honeywell, a major provider of avionics and aircraft goods. While US regulators authorised the merger, the European Commission vetoed it, citing anti-competitive impacts from the combination of financial resources and bundling activities. The case highlighted the necessity of preventing corporations from leveraging their combined market strength to influence competition in neighbouring markets. These foreign verdicts have influenced the CCI's approach to conglomerate mergers, namely in terms of cross-subsidization, market foreclosure, and anti-competitive bundling. India has drawn notes from these worldwide instances and modified its own regulatory structure to guarantee that conglomerate mergers do not undermine competition or limit consumer choice.

CONCLUSION

Achieving a balance between supporting business development through mergers and ensuring fair competition is critical for a thriving economy. Conglomerate mergers enable businesses to diversify and develop into new markets, therefore stimulating innovation and economic

---

[17] *United States v General Electric Co* [1926] 272 US 476

[18] 'GE-Honeywell: The US Decision' (*Antitrust Division, US Department of Justice*, 29 November 2001) <https://www.justice.gov/atr/speech/ge-honeywell-us-decision> accessed 15 October 2024

progress. However, unregulated mergers can result in market domination, fewer customer alternatives, and anti-competitive behaviour. Thus, regulatory control is critical.

The expanding role of regulatory agencies such as the CCI and the NCLT is critical to protecting the public interest. The CCI guarantees that mergers do not result in monopolistic circumstances or impair competition, whilst the NCLT monitors corporate law compliance. Both organisations must adapt to the changing dynamics of contemporary business, evaluating not just the immediate impacts of mergers but also their long-term influence on market competition. Companies must conform to competition and corporate regulations. Transparency in merger procedures and rigorous antitrust studies can help to avoid risks. Regulators, in turn, must continue to refine their ways to ensure that mergers boost development while maintaining market fairness and competitiveness. This balanced strategy guarantees that corporate growth benefits both enterprises and consumers equally.