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*“Concept of Combinations and Appreciable Adverse Effect on Competition: A Study Under  
Competition Act 2002”*

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### **Abstract**

India is a developing country with population of about 130 Crores. Larger section of the population is poor and with the global trend of free market, government of India has immense responsibility not only of providing mass employment through inviting investment from abroad but it has ensured fair competition among the enterprises so that the common Indian is able to buy goods from the open market with cheapest price but of best quality. To prevent unfair competition and to prevent monopoly in the market, government of India has constituted Competition Commission of India whose main role is to safe guard the completion and to protect the consumers from any kind of exploitation. The present paper on the concept of “Combinations and Appreciable Adverse Effect on Competition” has been written by using Doctrinal and Exploratory Research method. All relevant offline, online Journals, books and periodicals have been used to write this paper. Attempt has been made to present the subject of the topic easy and simple to the reader.

**Key Words:** Competition Commission, Combination, Adverse Effect on Competition

**Introduction to Competition Act 2002 (12 of 2003):**<sup>1</sup> It is an act to provide for the establishment of a commission to prevent practises that harm consumers and to safeguard the freedom of trade carried on by other market participants in India, in light of the country's economic development, and for issues connected with or incidental thereto. India's Competition Commission is a competition regulator Competition Commission of India is the statutory body for enforcement of competition Act 2002 throughout India. Competition Commission of India through competition act 2002 ensures that there is fair competition among the producer of goods and services to innovate and specialize and provide the goods to consumers at reduced cost with wider choice.

Competition Act 2002 has been enacted to sustain fair competition in the economy, provide level playing field to producers and make the markets to work for the welfare of the consumers and anti-competitive agreements between firms in the manufacture, supply, distribution, storage, purchase, or control of goods or provision of services that create or are likely to cause an appreciable adverse effect on competition inside India are prohibited by the Competition Act. Competition Act, 2002 also ensures that no enterprise or group shall abuse its dominant position to cause appreciable adverse effect on the competition through predatory price mechanism, limiting or restricting the supply of goods and services, imposes unfair discriminatory condition to affect the competition and consumers in the relevant market in its favour.

The Competition Act of 2002 also states that the acquisition of one or more businesses by one or more people, or the merger or amalgamation of businesses, is a combination of those businesses, and that no person or business shall enter into a combination that causes or is likely to cause an appreciable adverse effect on competition in the relevant market in India. To protect the consumer welfare competition Act 2002 ensures that :

*“any enterprise or person entering into the combination and meeting the threshold of combined value of assets or turn over as provided in the Act, will have to give prior notice to the commission as per the regulations, in the specified form with the prescribed fee disclosing the*

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<sup>1</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021)5, Gurgaon, Haryana

*details of proposed combination within 30 days of the approval of merger or amalgamation or execution of such agreement.”<sup>2</sup>*

Competition commission of India, in accordance with the provisions of the competition act will inquire, investigate and may ask for the additional information or report to examine if there is anti-competitive agreement, abuse of dominance or formation of combination which has appreciable adverse effect on the competition and it then takes initiates action as per the provision of the Competition Act 2002.

**Composition of the Commission:**<sup>3</sup> According to the Competition Act 2002, The Commission shall consist of a Chairperson and not less than two and not more than six other members to be appointed by the central government. The Chairperson and every other member shall be a person of ability, integrity and standing and who has special knowledge of such professional experience of not less than fifteen years in International trade, economics, commerce, law, management and industry etc. including competition law which in the opinion of the central government may be useful to the commission. The Competition Commission has Economic Division, Combination Division, Anti-Trust Division, Legal Division, Investigation Division and advocacy Division etc. In addition to it there is Secretariat and DG Office.

**Definition of Combination:** According to *Section 5 of Competition Act, 2002*, the acquisition of one or more enterprise by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons if it satisfies the conditions of *sub sections (a), (b), and (c)* i.e. in case of<sup>4</sup>:

**Single Individual Enterprise:** Competition Act provides that combined assets of the enterprises should value more than (INR) 2000 Crores in India or the combined turnover of the enterprise should be more than (INR) 6000 crores in India to touch the threshold of combination. In case any of the enterprises have assets / turn over outside India also, then the combined assets of the enterprises should value more than US\$1 Billion, including at least assets of (INR) 1000 crores in India, or turnover should be more than US\$3 Billion, including at least turnover of (INR)3000 Crores in India.

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<sup>2</sup> Competition Commission of India, [https://www.cci.gov.in/sites/default/files/advocacy\\_booklet\\_document/combination.pdf](https://www.cci.gov.in/sites/default/files/advocacy_booklet_document/combination.pdf) (last visited 22 July, 2021)

<sup>3</sup> Section 8 of the Competition act, 2002

<sup>4</sup> Section 5 of Competition Act, 2002

**Group of Enterprises:** The group to which the enterprise whose control, shares, assets or voting rights are being acquired would belong after the acquisition or the group to which the enterprise remaining the merger or the amalgamation would belong has either assets of value of more than (INR) 8000 crores in India or turn over more than (INR) 24000 crores in India. Where the group has the presence in India as well as outside India than the group has assets more than US\$ 3 billion including at least INR 1000 crores in India or turn over more than US\$ 12 billion including at least INR 3000 crores in India.<sup>5</sup>

The term Group has been explained in the Act, under explanation (b) of *Section 5*. Two enterprises belong to a “group” if one is in position to exercise at least 26% or more of the voting rights or appoint at least 50% or more of the members of the board of Directors in the other enterprise or controls the management or affairs in the order<sup>6</sup>. Vide notification S.O 481 (E) dated 4<sup>th</sup> March, 2011, the government has exempted “Group” exercising less than 50% of voting rights in other enterprise from the provisions of *section 5* of t

he Act for a period of five years.

Under the act, a combination is defined as the acquisition of control, shares, voting rights, or assets by a person who also has direct or indirect control over another enterprise engaged in competing businesses, as well as mergers and amalgamations between or among enterprises when the combining parties exceed the Act's thresholds. The thresholds are stated in the Act in terms of assets or turn over in India and abroad. The words combinations and merger are used interchangeably in this paper.<sup>7</sup>

Under the Competition Act 2002, entering into a combination that produces or is likely to cause a considerable adverse effect on competition within the relevant market in India is illegal, and such a combination is void.

**Thresholds for combinations under the Act:**<sup>8</sup> India is one of the fastest growing economies in the world. The growth process is driven both by **organic and inorganic** (through the mergers and acquisition route) growth enterprises. It is neither feasible nor advisable to review all

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<sup>5</sup> Supra 3

<sup>6</sup> Explanation (b) to section 5 of the Competition Act, 2002

<sup>7</sup> Tax Guru-Corporate Law, <https://taxguru.in/corporate-law/provision-relating-to-combination-under-competition-act-2002.html> (last visited 22 July, 2021)

<sup>8</sup> Supra 3 and Competition act 2002, Bare act, by Universal LexisNexis, (2021)5, Gurgaon, Haryana and

mergers and acquisitions. It is natural to presume that in case of small size combinations, there is less likely hood of appreciable adverse effect on competition in markets in India. The act provides for sufficiently high thresholds in terms of assets / turn over, for mandatory notification to the commission.

The Act also provides for revision of the threshold limits every two years by the government, in consultation with the commission, through notification, based on the changes in whole sale price index (WPI) or fluctuations in exchange rates of rupee or foreign currencies.<sup>9</sup> Vide notification S.O 480 (E) dated 4<sup>th</sup> march, 2011, the government has enhanced the value of the assets and turn over mentioned in *section 5*, by 50%. The current threshold s for the combined assets/ turnover of the combining parties are as follows.

The turnover shall be determined by taking into account the values of sales of goods and services. The value of assets shall be determined by taking the book value of the assets as shown in the audited books of accounts of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation. The value of assets shall include the brand value, value of goodwill, or Intellectual Property Rights etc.

The above thresholds are presented in the form of table below:<sup>10</sup> -

India	Applicable to	Assets		Turnover	
	Individual	Rs.2000 Cr.		Rs.6000 Cr.	
	Group	Rs.8000 Cr.		Rs.24000 Cr.	
India and Outside		Assets		Turnover	
		Total	Minimum Indian Component Total	Total	Minimum Indian Component
	Individual	\$1 Billion	Rs.1000 Cr.	\$3 Billion	Rs.3000 Cr

<sup>9</sup> Sub section (3) of section 20 of the Competition Act 2002.

<sup>10</sup> Prof.Nishank Bibhu,Class Tutorials of Galgotias University

	Parties	or \$1000 Cr		or Rs.24000 Cr.	
	Group	\$4 Billion	Rs.1000 Cr	\$12 Billion	Rs.3000 Cr

**What is Appreciable adverse effect on Competition:**<sup>11</sup> Adverse effects on competition refers to various economic factors, some of which have been laid out under *section 19(3)* of the Act such as “creation of barriers of new entrants in the market, driving existing competitors out of the market, foreclosure of the competition by hindering into the market accrual of benefits to consumers, improvements in production or distribution of goods or provision of services, and promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services etc.

**Exemption Notification:**<sup>12</sup> Central Government may, by notification, exempt from application of this Act, or any provision thereof, and for such period as it may specify in such notification as per *Sections 54(a), (b) and (c)*; provided that in case an enterprise is engaged in any activity including the activity relatable to sovereign functions of the government, the central government may grant exemption only in respect of activity relatable to the sovereign functions.

**Combinations in respect of which notice need not normally be filed:**<sup>13</sup> In accordance with “The Competition Commission of India(Procedure in Regard to the Transaction of Business relating to Combinations) Regulations, 2011<sup>14</sup>, *Section 4* provide that notice under *sub section (2) of section 6 of the Act*, in respect of certain combinations, specified under schedule -I, need not normally be filed with the Commission as those transactions are ordinarily not likely to cause appreciable adverse effect on competition in India.

<sup>11</sup> Section 19(3) of Competition Act 2002 (2021), Universal LexisNexis, Gurgaon Haryana

<sup>12</sup> Chapter IX Miscellaneous, Competition Act 2002, (2021), Universal LexisNexis, Gurgaon Haryana

<sup>13</sup> Section 4. categories of transactions not likely to have appreciable adverse effect on competition, the Competition Commission of India (procedure in regard to the transaction of business relating to combinations) regulations,2011 (2021),164, Universal LexisNexis, Gurgaon Haryana

<sup>14</sup> Vide Notification Bo.1.1/Combination regulations/2011-12/CD/CCI, dated 11<sup>th</sup> May,2011, published in the Gazette of India, Extra., Pt-III, Section 4.

**Schedule I to the Combination Regulations:<sup>15</sup> -**

(1) *“An acquisition of shares or voting rights, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of section 5 of the act, solely as an investment or in the ordinary course of business in so far as the total shares or voting rights held by the acquirer directly or indirectly, does not entitle the acquirer to hold 25% or more of the total shares or voting rights of the company, of which shares or voting rights are being acquired, directly or indirectly, or in accordance with the execution of any document including a shareholders’ agreement or articles of association, not leading to acquisition of control of the enterprise whose shares or voting rights are being acquired.”*

(1A) *“An acquisition of additional shares or voting rights of an enterprise by the acquirer or its group, not resulting in gross acquisition of more than 5% of the shares or voting rights of such enterprise in a financial year, where the acquirer or its group, prior to acquisition, already hold 25% or more shares or voting rights of the enterprise, but does not hold 50% or more of the shares or voting rights of the enterprise, either prior to or after such acquisition: Provided that such acquisition does not result in acquisition of sole or joint control of such enterprise by the acquirer or its group.”*

(2) *“An acquisition of shares or voting rights, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of Section 5 of the act, where the acquirer, prior to acquisition, has 50% or more shares or voting rights in the enterprise whose shares or voting rights are being acquired, except in the cases where the transaction results in transfer from joint control to the sole control.”*

(3) *“An acquisition of assets, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of section 5 of the act, 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, not leading to control of the enterprise whose assets are being acquired except where the assets being acquired represent substantial business operations in 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.”*

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<sup>15</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021)5, Gurgaon, Haryana

- (4) *“An amended or renewed tender offer where a notice to the commission has been filed by the party making the offer, prior to such amendment or renewal of the offer”:*
- (5) *“Provided that the compliance with regulation 16 relating to intimation of any change is duly made.”*
- (6) *“An acquisition of shares or voting rights pursuant to a bonus issue or stock splits or consolidation of face value of shares or buy back of shares or subscription to rights issue of shares, not leading to acquisition of control.”*
- (7) *“Any acquisition of shares or voting rights by a person acting as a securities underwriter or a registered stock broker of a stock exchange on behalf of clients, in the ordinary course of business and in the process of underwriting or stock broking, as the case may be.”*
- (8) *“An acquisition of shares or voting rights or assets, by one person or enterprise, of another person or enterprise within the same group, except in cases where the acquired enterprise is jointly controlled by enterprises that are not the part of the same group.”*
- (9) *“A merger or amalgamation of two enterprises where one of the enterprise has more than 50% shares or voting rights of the other enterprise, and /or merger or amalgamation of enterprise in which more than 50% shares or voting rights in each of such enterprises are held by enterprise(s) within the same group: Provided that the transaction does not result in transfer from joint control to sole control.”*
- (10) *“Acquisition of shares, control, voting rights or assets by a purchaser approved by the commission pursuant to and in accordance with its order under section 31 of the act.”*

**Combination Notice:**<sup>16</sup> Subject to the provisions contained in *Section 6 (2)*, the review process for combination under the Act involves mandatory pre-combination notification to the commission. Any person or enterprise proposing to enter into a combination shall give notice to the Commission in the specified form disclosing the details of proposed combination within 30 days of the approval of the proposal relating to merger or amalgamation by the board of directors or of the execution of any agreement or other document in relation to the acquisition, as the case may be. In case a notifiable combination is not notified, the commission has the power to inquire into it within one year of the taking into effect of the combination.

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<sup>16</sup> Supra 3 and Competition act 2002, Bare act, by Universal LexisNexis, (2021), Gurgaon, Haryana.

The Commission also has the power to impose a fine under *Section 43A* and *Section 44* which may extend to one percent of total turnover or the assets of the combination, whichever is higher, for failure to give notice to the Commission of the combination.

In accordance with *Section 6(2A)*, Any combination for which notice has been filed with the Commission would not take effect for a period of 210 days from the date of notification or till the Commission passes an order, whichever is earlier. If the Commission does not pass an order during the said period of 210 days, the combination shall be deemed to have been approved.

**Procedure in case of notice under the sub section (2) of Section 6:** As per *Section 30*; When any person or enterprise has given a notice under Sub –Section (2) of section 6, the Commission shall examine such notice and form its prima-facie opinion as provided in sub section (1) of section 29 and proceed as per provisions contained in that section.

**Acquisition or Financing facility by PFIS, FIIs, Bank or VCFS Etc.:** As per *Section 6(5)*, in case of share subscription or financing facility or any acquisition, inter alia, by a Public Financial Institution, Foreign Institutional Investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement, details of such acquisition are required to be filed with the Commission within seven days from the date of acquisition.

**Procedure for Investigation of combinations:** The procedure for investigation of combinations is contained in detail in *sub sections 29(1), (1A), (2), (3), (4), (5) and (6)*. In accordance with *Section 29*; As per the combination regulations, the Commission shall form its prima facie opinion as to whether the combination is likely to cause or has caused appreciable adverse effect on competition within the relevant market in India within 30 days from the receipt of notice. If the Commission is of the prima facie opinion that a combination has caused or is likely to cause appreciable adverse effect on competition in Indian markets, it shall issue a notice to show cause to the parties as to why investigation in respect of such combination should not be conducted. On receipt of the response, If Commission is of the prima facie opinion that the combination has or is likely to have appreciable adverse effect on competition, the Commission shall deal with the notice as per the provisions of the Act.

**Evaluation of ‘Appreciable Adverse Effect on Competition’:**<sup>17</sup> The act envisages appreciable adverse effect on the competition in the **relevant market** in India as the criterion for regulation of combinations. In order to evaluate appreciable adverse effect on competition, the Act empowers the Commission to evaluate the effect of combination on the basis of factors mentioned *in sub Section (4) of Section 20*.

Factors to be considered by the Commission while evaluating appreciable adverse effect of Combinations on competition in the relevant market:

- a) Actual and Potential level of competition through imports in the market;
- b) Extent of barriers to entry into the market;
- c) Level of concentration in the market;
- d) Degree of countervailing power in the market;
- e) Likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- f) Extent of effective competition likely to sustain in a market;
- g) Extent to which substitutes are available or are likely to be available in the market.
- h) Market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination:
- i) Likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- j) Nature and extent of vertical integration in the market;
- k) Possibility of failing businesses;
- l) Nature and extent of innovation;
- m) Relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
- n) Whether the benefits of the combination outweigh the adverse impact of the combination, if any.

**Relevant Market:**<sup>18</sup> - For the purpose of determining appreciable adverse effect on the competition in the relevant market, Relevant Market has been defined in Section 2(r) of the competition Act. Relevant Market means the market which may be determined by the

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<sup>17</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021), 21, Gurgaon, Haryana

<sup>18</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021), 6, Gurgaon, Haryana

commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets.

**Relevant Geographic Market:**<sup>19</sup> To extend the concept of Relevant Market for purpose of checking appreciable adverse effect on competition, relevant geographic market has been defined in *Section 2(s) of the Competition Act 2002*. Relevant geographic Market means a market comprising the area in which the conditions of competition for supply of goods or provision of service or demand of **goods or services** are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas. The Commission shall, while determining the “relevant geographic market”, have due regard to all or any of the following factors as per *Section 19(6) of the competition act 2002* namely: -

- (a) Regulator trade barriers
- (b) Local specification requirement policies
- (c) Adequate distribution facilities
- (d) National procurement policies
- (e) Transport costs
- (f) Language
- (g) Consumer preferences
- (h) Need for secure or regular supplies or rapid after sales services.

**Relevant Product Market:**<sup>20</sup> To extend the concept of Relevant Market for purpose of checking appreciable adverse effect on competition, relevant product market has been defined in *Section 2(t) of the Competition Act 2002*. Relevant Product Market comprising all those products or services, which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use. The commission shall while determining the “relevant product market “has due regard to all or any of the following factors as per *Section 19(7) of the competition Act 2002*, namely: -

- (a) physical characteristics or end-use of goods
- (b) place of goods or service
- (c) consumer preferences
- (d) exclusion of in house production

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<sup>19</sup> (ibid)

<sup>20</sup> (ibid)

- (e) existence of specialized producers
- (f) classification of industrial products.

**“Goods”:**<sup>21</sup> To check the relevant market and adverse appreciable effect on competition, the goods are defined in *section 2(i)* and “Goods” means goods as defined in *sales of goods act, 1930* (8 of 1930) and includes-

- (A) Products manufactured, processed or mined;
- (B) Debentures, stocks and shares after allotment

(C) In relation to goods supplied, distributed or controlled in India goods imported into India.

**“Service”:**<sup>22</sup> -To check the appreciable effect on Competition in relevant market, the concept of relevant service as a product is defined in *section 2(u) of competition act 2002* and according to “service” means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising.

**Orders of Commission on certain combinations:**<sup>23</sup> – **Section 31 of the Competition Act 2002 provides:-**

1. *Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of Section 6.*
2. *Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.*
3. *Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable*

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<sup>21</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021), 5, Gurgaon, Haryana

<sup>22</sup> (ibid)

<sup>23</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021), Gurgaon, Haryana.

*modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination.*

*4. The parties, who accept the modification proposed by the Commission under sub-section (3), shall carry out such modification within the period specified by the Commission.*

*5. If the parties to the combination, who have accepted the modification under sub-section (4), fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act.*

*6. If the parties to the combination do not accept the modification proposed by the Commission under sub-section (3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under that sub-section.*

*7. If the Commission agrees with the amendment submitted by the parties under sub-section (6), it shall, by order, approve the combination.*

*8. If the Commission does not accept the amendment submitted under sub-section (6), then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under sub-section (3).*

*9. If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act.*

*10. Where the Commission has directed under sub-section (2) that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-section (9), then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that-*

*a. The acquisition referred to in clause (a) of section 5; or*

*b. The acquiring of control referred to in clause (b) of section 5; or*

*c. The merger or amalgamation referred to in clause (c) of section 5, shall not be given effect to: Provided that the Commission may, if it considers appropriate, frame a scheme to implement its order under this sub-section.*

11. *If the Commission does not, on the expiry of a period of ninety working days from the date of publication referred to in sub-section (2) of section 29, pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission. Explanation. -For the purposes of determining the period of ninety working days specified in this sub-section, the period of thirty working days specified in sub-section (6) and a further period of thirty working days specified in sub-section (8) shall be excluded.*

12. *Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties.*

13. *Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.*

14. *Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.*

**Power to impose penalty by CCI in case of combinations; Section 43A and Section 44:**<sup>24</sup> The Commission has power to impose penalty under *section 43A* which may extend to one percent of the total turnover or the assets, whichever is higher, of such combination., if any person or enterprise who fails to give notice to the commission under *sub section (2) of section 6*.

Commission shall impose penalty not less than Rs. Fifty Lakh but which may extend to Rs. One Crore, as may be determined by the Commission, If any person, being a party to a combination makes false statement or omits to furnish material information as per *44 (a) i.e makes a statement which is false in any material particular, or knowing it to be false; or 44(b) i.e omits to state any material particular knowing it to be material.*

**Appeals:** Under the relevant provisions of the Act, an appeal to NCLAT may be filed within 60 days of receipt of the order /direction/ decision of the Commission.

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<sup>24</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021), 37, Gurgaon, Haryana

**Conclusion:** In case of those Combinations touching or exceeding the thresholds as per *Section 5 of Competition Act, 2002*, Notice to CCI has to be given under section 6(2) and Commission will presume that the combination has Appreciable Adverse Effect on Competition, regulation of combination will have to be in accordance with provisions of *section 6 of Competition act*. CCI may conduct Inquiry under *section 20* of the act. The Commission shall have due regard to the factors as enumerated in *section 20(4)* for the purpose of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market. Factors enumerated in *section 19(6)* and *section 19(7)* will be considered for determining the relevant market.

Commission than will follow the provisions of Section 30 to examine notice under *Section 6(2)* and form prima facie opinion as per *29 (1)*, in case, where commission is of the prima facie opinion that a combination is likely to cause or has caused an appreciable adverse effect on competition within the relevant market in India under the Competition Act, 2002, It will order for investigation and initiate actions as per relevant provisions under section 29. In case of receipt of notice under *section 6(2)*, it will follow the procedure as per *section 29(1)*. After conducting inquiry under *Section 20* and investigation under *Section 29*, and after the receipt of inquiry, investigation, reports and information of the parties, the Commission, as per provisions of *section 31*, may either approve, disapprove, approve with certain modification, / certain conditions / certain directions / amendments for the combination under consideration and issue the orders accordingly. Failure to comply with the provisions of Combination as stated above, commission shall impose penalty as per the provisions of *Section 43(A) and Section 44*.

## **Scholar/Researcher Index**

- <sup>1</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021)5, Gurgaon, Haryana
- <sup>1</sup> Competition Commission of India, [https://www.cci.gov.in/sites/default/files/advocacy\\_booklet\\_document/combination.pdf](https://www.cci.gov.in/sites/default/files/advocacy_booklet_document/combination.pdf) (last visited 22 July, 2021)
- <sup>1</sup> Section 8 of the Competition act, 2002
- <sup>1</sup> Section 5 of Competition Act, 2002
- <sup>1</sup> Supra 3
- <sup>1</sup> Explanation (b) to section 5 of the Competition Act, 2002
- <sup>1</sup> Tax Guru-Corporate Law, <https://taxguru.in/corporate-law/provision-relating-to-combination-under-competition-act-2002.html> (last visited 22 July, 2021)
- <sup>1</sup> Supra 3 and Competition act 2002, Bare act, by Universal LexisNexis, (2021)5, Gurgaon, Haryana and
- <sup>1</sup> Sub section (3) of section 20 of the Competition Act 2002.
- <sup>1</sup> Prof.Nishank Bibhu,Class Tutorials of Galgotias University
- <sup>1</sup> Section 19(3) of Competition Act 2002 (2021), Universal LexisNexis, Gurgaon Haryana
- <sup>1</sup> Chapter IX Miscellaneous, Competition Act 2002, (2021), Universal LexisNexis, Gurgaon Haryana
- <sup>1</sup> Section 4. categories of transactions not likely to have appreciable adverse effect on competition, the Competition Commission of India (procedure in regard to the transaction of business relating to combinations) regulations,2011 (2021),164, Universal LexisNexis, Gurgaon Haryana
- <sup>1</sup> Vide Notification Bo.1.1/Combination regulations/2011-12/CD/CCI, dated 11<sup>th</sup> May,2011, published in the Gazette of India, Extra., Pt-III, Section 4.
- <sup>1</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021)5, Gurgaon, Haryana
- <sup>1</sup> Supra 3 and Competition act 2002, Bare act, by Universal LexisNexis, (2021), Gurgaon, Haryana.
- <sup>1</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021), 21, Gurgaon, Haryana
- <sup>1</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021), 6, Gurgaon, Haryana
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- <sup>1</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021), 5, Gurgaon, Haryana
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- <sup>1</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021), Gurgaon, Haryana.
- <sup>1</sup> Competition act 2002, Bare act, by Universal LexisNexis, (2021), 37, Gurgaon, Haryana