RAMA UNIVERSITY

www.ramauniversity.ac.in

FACULTY OF JURIDICAL SCIENCES

COURSE: B.B.A.LL.B. IX th Semester

SUBJECT: COMPETITION LAW

SUBJECT CODE: BBL 901

Name of Faculty: Dr. Aijaj Ahmed Raj

LECTURE 25

TOPIC: REGULATION OF COMBINATIONS

What are Combinations?

Section 5 of the Competition Act explains combination as:

'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'.

Combination within the Competition Law is the merger between two or more enterprises or firms or the business sector acquisitions (such as companies or firms) by other business enterprises. The Government controls combinations or mergers and acquisitions within the country to promote competition and thereby seeing to that small-scale establishments are not overshadowed and swallowed by more reputed industries. This is because the merger of big shot companies not only reduce competition but also make it difficult and almost impossible for smaller firms to grow or profit from their business. The accumulation of wealth in certain sectors of business and the consumer concerns can lead to major economic and social discrepancies within the nation.

Types of Combinations

Horizontal Combinations

Horizontal Combinations involve the merging of enterprises or firms with identical level of production process, with substitute goods and are competitors. The horizontal combination is primarily a friendly merger between companies, although it can be a takeout of one by the other. Of course, the synergy formed by this combination enhances the business performance, financial gains and shareholder value in the long run. The cost efficiency with the staff cut-offs leads to the increased margins of the company. However, this tends to pave way for reduced competition as a monopolist agenda emerges from the combinations of powerful enterprises, along with the unemployment that follows which has a very drastic and adverse effect on the economy of the country. It is also bad for the consumers as the reduced competition gives the companies a “higher pricing power.” Therefore, these merges are the chief focus and are often scrutinized by the Competition Law Authority for the above given reasons.

Non-Horizontal Combinations

The non-horizontal combinations are of two types: Vertical and Conglomerate combinations.

Vertical Combinations

Vertical merging is “combining of business firms engaged in different phases of the manufacture and distribution of a product into an interacting whole”. This leads to increased competitiveness, a greater process control, wider market share, a better supply chain co-ordination and decline in cost as this sort of integration is the structuring of supply chain of companies under a particular company.

Conglomerate Combinations

Conglomerate combinations involve firms or enterprises in unrelated business fields. Such combination happens when two companies that provide different services and goods or are integrated into varying sectors of business merge together. This sort of merger happens when the companies achieve a stronger stand in the market both in products and services and profit management unlike when they are individual enterprises.

Conglomerate merges can lead to an ascend in “market share, synergy and cross selling”. Here diversification takes a major roll and thereby reduces the “risk exposure” factor. The cons of this particular combination can be the monopolization of a company over a certain market and the over expansion of the conglomerate can seriously affect the quality of functioning of the company and result in the collapse of the system. Such coalescence can be detrimental as it restricts business options for newly formed enterprises in the market. However, it is to be note that Non-Horizontal Conglomerations do not promote loss of direct competition and are therefore not anti-competitive within an overall framework.

Exercise:

1. If after satisfaction on a prima facie basis, CCI issue a notice to show cause to parties to combination, such combination being likely to cause, or has caused an appreciable adverse effect on competition within relevant market in India, calling upon them to respond within ________ of the receipt of notice, as to why investigation in respect of such combination should not be conducted

a) Ten days
b) Twelve days
c) Thirty days
d) Fifteen days

2. The Commission (CCI) may invite any person or member of the public, affected or likely to be affected by a combination having adverse effect on competition, to file his written objections, if any, before commission within _______ working days from the date on which the details of the combination were published

a) Ten days
b) Twelve days
c) Fifteen days
d) Thirty days

3. If the Competition Commission prima facie found that combination in question have an appreciable adverse effect on competition, it shall within ______ working days from date of receipt of response reply of the parties to combination or the

receipt of the report from DG, Commission will direct the parties to combination to publish details of combination in question within _______ working days of such direction

a) 7/10
b) 5/7
c) 15/30
d) 30/45

4. The Competition Act has bestowed following responsibilities on the CCI

a) to prohibit anti-competitive agreements
b) to prohibit abuse of dominant position
c) to regulate combinations
d) all of these

5. Which section of Competition Act, 2002 defines combinations?

a) 4
b) 5
c) 6
d) 8