



FACULTY OF JURIDICAL SCIENCES

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

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SUBJECT: COMPETITION LAW

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LECTURE 26

TOPIC: REGULATION OF COMBINATIONS

Regulation of Combinations

A merger or a combination can be held valid under the purview of the Competition Act 2002 and its regulation policies only if the newly acquired or merged enterprise passes the threshold pertaining to the assets and the turnover mentioned in the Act. If not confined to the criteria then the attractancy of the new enterprise will be nil as far as the provisions of the Competition Act are concerned. Sections 5 and 6 of the Competition Act covers the definition and regulation of combinations.

The Procedural Aspects

Step 1: To Notify

Once the threshold is met the next step is to non-optionally notify the Competition Commission of India (CCI) on the merger or combination as prescribed in section 6 (2) of the Competition Act. This is for the purposes 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 while regarding factors like the actual and potential level of competition through imports in the market; extent of barriers to entry into the market; level of combination in the market; degree of countervailing power in the market etc.

The CCI has been amended on the 8th of January 2016 bringing in key changes closing in to complete ease of doing business in India and also in the regulation of combinations through the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulation, 2016. Any new enterprise to be considered by the CCI will have to abide by the section 6(2) of the Competition Act read with Regulation 5 and Regulation 8 of the Combination Regulation (2016).

Step 2

Inspection of the Notice: The CCI is to scrutinize the notice for defects or incompleteness on the premises of Regulation 14 of the CCI Amendment Regulation , 2016. After the process the parties to the merger are asked to remove the defects if any.

Step 3: Prima Facie Opinion

The Commission has to form a prima facie opinion under sub-section 1 of section 29 of the Act within thirty days of the receipt of said notice. The procedure related to forming a prima facie view is contained in Regulation 19. As per sub regulation 2 of Regulation 19, the Commission may, if considered necessary, require the parties to the combination to file additional information.

Further the parties are asked to publish the details of the combination as per section 29 (2) which creates an open invitation to the public to come forth with objections within fifteen working days from the publishing under section 29(3) , which are to be pacified by the CCI accordingly. The CCI may call upon the parties for additional information pertaining to the merger under section 29(4) read with section 29(5).

Step 4

Proceeding to the Final Order: After receiving the additional information the Commission decides as to whether or not the merger or combination will have unfavorable effects on the current competition market as per under section 31. If the commission has concluded after careful scrutiny that the combination at hand will not have harmful effects on the competition market then the Commission shall approve of the transaction under section 31(1) of the Act. On the other hand, if the Commission has concluded negative on the transaction due to its adverse effect on the market, it shall hold the transaction null under Section 31(2) of the Act. In a third scenario the Commission can provide the parties with modifications to be made in the transaction to rinse out the provisions likely to be inharmonious to the competition market [Section 31(3)].

Exercise:

1. What will be a lawful combination, this concept is specifically dealt under which section of Competition Act, 2002?
 - a) 8
 - b) 5
 - c) 6
 - d) 10

2. 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

3. No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition with relevant market in India and such a combination shall be void
 - a) Section 40 of Competition Act
 - b) Section 5 of Competition Act
 - c) Section 6 of Competition Act
 - d) Section 7 of Competition Act

4. In terms of newly inserted subsection _____ of Section _____ of Competition Act, no combination shall come into effect if 210 days expired from the day on which notice has been given to CCI

- a) 2/4
- b) 2A/4
- c) 2A/6
- d) 3A/7

5. Inquiry into combination by commission has been provided under chapter _____ of Competition Act, 2002

- a) 9th
- b) 6th
- c) 4th
- d) 3rd