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EVALUATING THE EFFICACY OF REMEDIAL MEASURES UNDER THE COMPETITION ACT: A CRITICAL STUDY

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ABSTRACT

The Competition Commission of India (CCI) plays a crucial role in evaluating and regulating mergers, acquisitions, and amalgamations that may have an adverse effect on competition. The CCI has reviewed over 1,000 filings since 2011, requiring modifications in approximately 40 cases to mitigate competition concerns. These modifications range from structural remedies like divestitures to behavioral commitments addressing issues such as access, discriminatory practices, and information sharing. The CCI follows distinct procedures during Phase I and Phase II reviews. In Phase I, parties propose voluntary modifications, which the CCI assesses. There is also an intermediary period for modifications before Phase II. During Phase II, the CCI can suggest and negotiate modifications, which parties must implement within a specified timeframe to secure approval. The CCI adopts a flexible, case-by-case approach when crafting remedies tailored to address specific competition issues. Structural remedies like divestitures are preferred for significant horizontal overlaps, while behavioral remedies tackle vertical concerns. The CCI engages extensively with parties to ensure effective mitigation of competitive harm. Aligning with global best practices, the CCI collaborates with international regulators on cross-border mergers. However, it maintains a strong focus on India-specific impacts. Parties are advised to propose timely, proportionate remedies, ideally in Phase I, and maintain contingency plans.

INTRODUCTION

The Competition Act, of 2002 is the regulatory framework for competition law in India, which mandates the notification of mergers, acquisitions, and amalgamations that meet certain asset or turnover benchmarks to the CCI. The Procedure with Regard to the Transaction of Business Relating to Combinations Regulations, established in 2011 and last revised in November 2020, include additional regulations for certain types of transactions. An AAEC is defined as a combination that has the potential to substantially reduce competition in the Indian market; as a result, Section 6 of the Act outlaws such combinations. Combinations found to cause AAEC are declared void. Since June 2011, the CCI has reviewed over 1,000 filings, with modifications required in approximately 40 instances to mitigate competition concerns and grant approval. A notable proportion of these modifications involved divestitures, particularly addressing issues of horizontal overlap in certain mergers. A range of non-structural remedies have been used to tackle various competitive constraints, including access issues, spillover effects, discriminatory practices, concerns arising from common ownership, and the flow of competitively sensitive

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information. Several of these combinations under review had global implications, being subject to simultaneous scrutiny in multiple jurisdictions. The CCI anticipates that the parties will keep it apprised of events in other jurisdictions and actively takes international practices into account when formulating remedies. It often demands exemptions from the parties in order to enable conversations with foreign competition authorities.[1]

PROCEDURES

A clear distinction exists between the approaches taken during the initial review (Phase I) and the subsequent review (Phase II) concerning mergers and acquisitions. In Phase I, it is solely the responsibility of the merging parties to propose any modifications to the CCI. In contrast, during Phase II, the CCI assumes a proactive role in suggesting necessary amendments. Nonetheless, there exists an intermediary period post-Phase I and pre-Phase II investigation where the merging entities still retain the opportunity to propose modifications. Furthermore, in June 2017, the Indian government amended the regulations concerning the notification of combinations by abolishing the obligation to notify such combinations within 30 days following the occurrence of the triggering event. This regulatory adjustment facilitates a more deliberate preparation and submission of potential modifications by the involved parties. It also assists in synchronizing strategies when multiple jurisdictional filings are necessary.[2]

PHASE I REVIEW

During the initial phase of review, known as Phase I, parties involved in a transaction have the option to propose voluntary modifications to circumvent the progression to a more detailed Phase II investigation. The CCI will assess these modifications and may mandate the parties to implement certain changes as necessary. Typically, this process involves negotiations between the involved parties and the CCI to finalize the acceptance of these modifications. It is important to note that an additional period of up to 15 days, which the CCI may require to assess these modifications, does not count towards the standard 30-working-day timeframe for Phase I or the maximum allowed 210 days for the CCI to decide on a transaction.[3]

Under the recently enacted Competition Amendment Act 2023, which has yet to be officially implemented, some provisions further facilitate these preemptive modifications. These provisions permit parties to suggest modifications before the CCI has even established a preliminary view on the matter. Furthermore, the amendment empowers the CCI to recommend changes before forming its initial assessment. This legislative enhancement aims to streamline the review process and potentially avoid more extensive investigations.

THE 'GREY ZONE'

[1] Bhardwaj, Nitisha. "Voluntary Remedy Proposals-Remedy To Combination Under Competition Act 2002." *Asia Pacific Law & Policy Review* 8 (2022): 107-118.
[2] Dhall, Vinod. "Competition Law in India." *Antitrust* 21 (2006): 73.
[3] Roy, Abir. *Competition Law in India: A Practical Guide*. Kluwer Law International BV, 2024.

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In its complex middle phase, the CCI decides whether to launch a formal inquiry after first suspecting that a certain merger could have an AAEC. Section 29(1) of the Competition Act states that the CCI must notify the relevant parties by sending a "show cause" notice, which asks why an investigation should not be initiated.

Despite the lack of clear guidelines in the Combination Regulations concerning the inclusion of proposed amendments by the parties in their replies to the 'show cause' notice, the CCI has traditionally approved such adjustments prior to October 2018. Combinations involving companies like China National Agrochemical Corporation, Nippon Yusen Kabushiki, and Mumbai International Airport were able to go forward without a full investigation because the parties involved came up with reasonable solutions that addressed the CCI's initial concerns.

Similarly, in the case of PVR, the commitments proposed in response to the 'show cause' notice were partially accepted by the CCI in its concluding decision. This approach was formalized in the amendments to the Combination Regulations in October 2018, which now explicitly allow parties to propose modifications in their response to the 'show cause' notice.

Currently, there is a discernible inclination within the CCI to endorse remedies swiftly, aiming to resolve issues without moving to a more extensive Phase II investigation. This is reflected in recent decisions such as ZF Friedrichshafen, Canary/Intas, Metso/Outotec, Sony/Zee, and AGI Greenpac/HNG. Furthermore, the CCI permits an additional grace period of up to 15 days, beyond the statutory timelines, to thoroughly assess any modifications suggested by the parties. This adjustment aims to facilitate a more efficient regulatory review process, ensuring that potential competition concerns are addressed promptly and effectively, without necessarily prolonging the investigation phases.

PHASE II REVIEW

Upon receiving responses from parties to a ‘show cause’ notice, the CCI has the authority to suggest changes to address any apprehensions about an AAEC. The CCI holds significant influence in these negotiations and may adopt a firm stance, essentially presenting the modifications as non-negotiable.[4]

Historically, the CCI has customized these remedies to the particularities of each case, usually after extensive deliberation about the proposed modifications during the Phase II investigation process. The Competition Act outlines several potential scenarios following the CCI's intervention:

1. Parties may agree to implement the modifications suggested by the CCI. Upon acceptance, they are obligated to enact these changes within a specified timeframe. Non-compliance results in the transaction being presumed to cause an AAEC, and it is then processed under the provisions of the Act. This course of action has been followed in notable instances such as the Dow/DuPont and Linde/Praxair mergers.

[4] Gupta, Karn. "Appreciable Adverse Effect on Competition: Determining the Contours Specifically in an Indian Context." *IUP Law Review* 11, no. 2 (2021).

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2. Should the parties reject the proposed modifications and fail to offer any alternative solutions within 30 working days, the transaction is presumed to adversely affect competition, necessitating further action as specified in the Act. To date, this outcome has yet to occur.

3. Alternatively, if the initial modification is rejected, the parties have 30 working days to propose their amendments. If these amendments meet the CCI's approval, the merger is sanctioned. This was the resolution in the mergers of Sun/Ranbaxy, Holcim/Lafarge, PVR, Bayer/Monsanto, and Schneider Electric.

4. If the CCI rejects the parties' amendments, there is an additional period of 30 working days for the parties to agree to the originally proposed modifications. Failure to agree within this extended timeframe again results in the transaction being presumed to have an AAEC. This scenario has also not occurred to date.

Importantly, Agrium/PotashCorp went to the NCLAT to complain about the CCI's decision not to extend the 30-working-day deadline for considering modification proposals. A six-week extension was granted by the NCLAT. After more talks, the CCI filed and approved a new proposal that was very similar to their previous modification proposal.

The Amendment Act revises the CCI's procedure during a Phase II review. If, after considering the parties' responses to the show cause notice and additional pertinent data, the CCI still believes the merger could result in an AAEC, it will state objections. This document is akin to those issued by the European Commission, and it requires the parties to justify within 25 days why their merger should be permitted. If the CCI finds the parties' proposed modifications insufficient to mitigate AAEC concerns, it will detail its reasons and request revised proposals within 12 days, mirroring the revised Phase I procedure whereby the CCI can propose modifications itself.

MARKET TESTING REMEDIES

In India, unlike the European Union, there is no established procedure for market testing remedial measures. Nonetheless, the CCI is authorized to solicit information from any enterprise during its investigation to determine if a merger or acquisition could result or is likely to result in an AAEC. This approach has been commonly utilized during the preliminary Phase I assessments. When progressing to Phase II, the involved parties are mandated to publicly disclose the details of the proposed combination. Moreover, the CCI invites submissions of written objections from any stakeholders affected by the combination. Although such objections are often received during Phase II assessments, there is no indication in the CCI's published decisions that it conducts formal market tests for any suggested remedies. However, in the case involving PVR cinemas, the CCI notably requested insights from real estate developers regarding their potential entry into the multiplex cinema market, and these inputs were considered when defining the extent of the necessary remedial actions.[5]

DIVESTITURE CASES

[5] Garg, Neeraj Kumar. "A Study of Legal Implications of Cartels and Their Adverse Effect on the Competition in India." *Issue 4 Indian JL & Legal Rsch.* 4 (2022): 1.

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In several instances, the CCI has adopted or suggested structural remedies in response to mergers that could potentially result in high market shares and significantly increased market concentration. Notably, the CCI's approach is not uniform but is customized based on the specifics of each case. Remedies such as divestitures might include the sale of entire product lines, businesses, or equity stakes. Other structural remedies could involve commitments to exit certain markets or pledges against re-entry.

Several merger cases have been addressed in the initial Phase I review. For example, in the ZF Friedrichshafen case, where market shares in different segments of the steering systems markets were significant, the acquiring company agreed to sell its stake in a joint venture, considerably reducing its market presence. In the matter concerning Abbott Laboratories, where the merging entities had a combined market share of 90 to 100% in certain medical device markets, the CCI flagged the increased market power, leading to the divestment of the target's business globally in the overlapping market segments.

The FMC case followed a commitment in the Dow/DuPont merger to divest specific crop protection businesses. The CCI noted the enhancement of market power due to significant market shares and approved the divestiture as a solution. In the China National Agrochemical Corporation case, the merging parties were directed to divest products in overlapping fungicide and pesticide markets to mitigate anti-competitive concerns due to high market shares and entry barriers.[6]

In the Sony/Zee merger, the CCI was concerned about the combined entity becoming the dominant broadcaster in India with potential adverse effects on prices in the broadcasting market. The merger was conditionally approved with the divestment of three channels as a structural remedy.

In AGI Greenpac/HNG, where the combination led to substantial market concentration in the container glass market, divestiture of one manufacturing plant was deemed an appropriate remedy by the CCI considering the market dynamics and financial status of the involved entities.[7]

During the Phase II investigation, more complex cases such as Sun/Ranbaxy required divestitures in markets where the merger threatened a significant reduction in competition, aiming to ensure the viability of a new, independent competitor.[8]

HYBRID REMEDY: COMBINING BEHAVIORAL REMEDIES WITH ASSET CARVE-OUTS IN PVR

The case in question examines the proposed acquisition by PVR of the film exhibition operations owned by DLF Utilities Limited. The CCI identified potential AAEC in specific geographic areas including South Delhi, Noida, and Gurgaon, in addition to concerns related to cooperation and non-compete clauses between the entities involved.[9]

[6] Rajpal, Aryan, and JIBESH KUMAR PADHIARY. "The Competition (Amendment) Bill, 2022: Legislative Comment." *DME Journal of Law* 3, no. 01 (2022).
[7] C-2022/11/983 AGI Greenpac/HNG (15 March 2023).
[8] Cases C-2014/05/170 Sun/Ranbaxy
[9] Case C-2015/07/288 *PVR* (4 May 2016).

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For Noida and Gurgaon, both located adjacent to Delhi, the CCI's analysis revealed a market with high concentration, noting a marked increase in market dominance post-acquisition. The competitors present did not pose a substantial competitive threat; the claimed efficiencies were not specific to the merger; and the acquiring entity, PVR, displayed minimal motivation for innovation. The CCI concluded there was a substantial risk that the merging parties could raise prices or profit margins significantly and sustainably. To address these issues, PVR committed to ceasing a developmental agreement concerning a new multiplex with the seller in each city. It was agreed that no further expansion or acquisitions affecting the other party would occur for three and five years respectively, mitigating concerns about the timing of new market entries.

In the case of South Delhi, the findings were similarly troubling. The CCI noted that the market was significantly concentrated, and the merger would eliminate a key competitor. The lack of competitive constraints, limited possibilities for market entry, non-specific efficiencies, weak buyer power, and low incentive for innovation by PVR suggested a high potential for market power abuse post-merger. PVR's initial remedy proposal, which included price caps among other behavioural commitments, was rejected by the majority of the CCI panel, who judged these measures insufficient to mimic a competitive market environment and challenging to enforce effectively. Instead, the CCI recommended the divestiture of specific assets in South Delhi. Subsequently, PVR revised its proposal to exclude a smaller set of assets, which was accepted by the CCI as it effectively reduced PVR's post-merger market share and overall market concentration. Additionally, PVR consented to a five-year freeze on any expansion and refrained from acquiring any stake or influence over the specified assets. The seller also ensured that these assets would remain competitive for five years.[10]

Moreover, the CCI evaluated a proposed cooperation agreement related to managing and operating multiplex spaces within malls developed by the seller, determining it was neither essential nor integral to the merger. The CCI expressed concerns that this agreement could lead to exclusive dealings and erect barriers against PVR's competitors. Consequently, PVR agreed to abandon this cooperation agreement.

BEHAVIOURAL REMEDIES IN BAYER/MONSANTO

In the case of the Bayer/Monsanto merger, the CCI approved a comprehensive set of behavioural remedies to mitigate concerns across multiple dimensions, including horizontal overlaps, vertical integrations, innovation suppression, and portfolio effects.

In particular, the CCI found that the merger had negative effects on three main markets. A major worldwide rival of Monsanto's was Bayer in the licencing industry for herbicide-tolerant trait innovations. Merging with Bayer may reduce competitive forces, which might reduce Monsanto's drive to develop. The second point is that Monsanto's monopoly on the Indian market for licencing Bt cotton characteristics was brought to light. Even though Bayer wasn't already involved in this category in India, the merger would eliminate a major competitive factor: its potential

[10] Bhardwaj, Nitisha. "Voluntary Remedy Proposals-Remedy To Combination Under Competition Act 2002." *Asia Pacific Law & Policy Review* 8 (2022): 107-118.

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to enter the market. Thirdly, the CCI anticipated a market consolidation including the licencing of maize seed parental lines or hybrids, which would result in a reduction in competition by combining the strengths of two big firms.[11]

To alleviate these concerns, Bayer committed to adopting a policy of non-exclusive, broad-based licensing on a "fair, reasonable, and non-discriminatory" (FRAND) basis. This commitment was set to last for seven years post-merger closure and applied to all traits currently commercialized or planned for future release in India.[12]

Further, the CCI addressed concerns related to potential bundling practices in closely related markets, which might lead to exclusionary effects against competitors. Bayer agreed not to bundle products in a manner that could potentially exclude competitors. Additionally, Bayer pledged to maintain a policy of FRAND-based non-exclusive licensing for non-selective herbicides and their active ingredients, should they introduce traits in India that necessitate the use of specific non-selective herbicides exclusively supplied by the merger entities.

Concerns regarding market exclusivity in distribution channels were also resolved through Bayer's assurance that it would avoid any commercial practices that could lead to exclusivity in these channels.

Regarding the burgeoning digital farming sector, the CCI was apprehensive about the merged entity monopolizing this innovative field. To counter this, Bayer was mandated to provide access, for seven years, to its digital farming platforms and related agroclimatic data in India under FRAND terms. Furthermore, Bayer is required to offer free access to existing Indian agroclimatic data to governmental bodies, promoting public good benefits.

Lastly, the consolidation of the parties' research and development activities was a significant concern for the CCI, as it could potentially decelerate the pace of innovation globally and within the Indian market, particularly in the development and introduction of new seed products. The broad commitments by Bayer to license traits on a FRAND basis were designed to ensure that Indian suppliers could continue to innovate and introduce new products, thereby maintaining effective competitive constraints on the merged entity and safeguarding the interests of Indian farmers.

SPILLOVER EFFECTS

In the case of Nippon Yusen Kabushiki, which involved the formation of a joint venture to sustain operations in container shipping and terminal services, the Competition Commission of India raised concerns about potential adverse effects on the parties' other business activities. To mitigate these concerns, the parties agreed to implement a 'rule of information control.' This rule forbids the sharing of information concerning their separate businesses and establishes penalties for violations, thereby safeguarding competitive practices.[13]

[11] Stucke, Maurice E., and Allen P. Grunes. "An Updated Antitrust Review of the Bayer-Monsanto Merger." *The Konkurrenz Group* 6 (2018).
[12] Ali, Feroz. "The paradox of relief: Reconciling remedies in patent law and competition law for FRAND cases in India." In *SEPs, SSOs and FRAND*, pp. 281-300. Routledge, 2019.
[13] Alkon, Meir. "Do special economic zones induce developmental spillovers? Evidence from India's states." *World Development* 107 (2018): 396-409.

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In the matter of Northern TK Venture, where the transaction entailed the integration of competing healthcare service providers, an affiliate of the acquiring company was involved in a joint venture with another competitor. To address fears that this joint venture might serve as a conduit for anticompetitive coordination between the new unified entity and the third-party competitor, the acquiring entity proffered voluntary commitments. These commitments assured that the joint venture and the newly formed entity would remain distinct, autonomous, and competitive. Measures included a prohibition against the exchange of sensitive information, imposition of sanctions for any infringement, and restrictions ensuring no shared directorates between the boards of the joint venture and the combined entity. Additionally, directors were required to commit formally to not disclosing sensitive business information.[14]

IMPACT ON CONSUMERS

In the case concerning the merger of Dish TV and Videocon, which involved direct-to-home broadcasting services, the regulatory concerns regarding potential costs imposed on consumers due to necessary technical adjustments were addressed. The merged entity committed to absorbing all expenses related to such technical realignments, thereby protecting consumers from any additional financial burden.

Similarly, in the acquisition involving Jio's acquisition of shares in two firms offering cable television and additional services, assurances were provided to mitigate concerns about consumer impact. The acquiring parties pledged to prevent any technical adjustments that would necessitate changes to the equipment at customer locations. Should any such adjustments become necessary, the costs would be entirely covered by the acquiring entity. Furthermore, they guaranteed that post-merger, customers would retain the autonomy to select from a variety of service options or packages, including broadband, cable television, and telephone services, offered by the entities involved in the merger.

NON-COMPETE PROVISIONS

The CCI has allowed non-compete agreements in sixteen separate cases. Such non-compete restrictions should be fairly restricted in length, relevant business activities, geographic areas, and the parties they bind, as the CCI highlighted in the Orchid Chemicals case. The CCI has previously approved changes that shortened non-compete agreements from eight, six, or five years to four years. The duration of certain modifications has been shortened from seven to three years, while others have been shortened from five years. The CCI has committed to limiting non-compete provisions in industries like chemicals and pharmaceuticals to items that are either already in production or are in the research and development phases.

The parties in the Torrent Pharmaceuticals case reached an agreement to narrow the non-compete's scope by excluding goods unrelated to the transferred firm and by removing a general phrase that may have broadened the

[14] Arora, Nitin, and Preeti Lohani. "Does foreign direct investment spillover total factor productivity growth? A study of Indian drugs and pharmaceutical industry." *Benchmarking: An International Journal* 24, no. 7 (2017): 1937-1955.

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non-compete's reach. The CCI also approved commitments that narrowed the non-compete to simply the regions where the target business had operations, thereby limiting the agreements' geographic reach.

In scenarios involving private equity investments, the promoters of the target company agreed to non-compete until they or the acquirer had less than 10% of the company's shares. The CCI endorsed commitments that increased the acquirer's shareholding requirement to 10%. There was a case where the restriction prohibiting promoters from holding executive positions in competitive companies was loosened to only apply in cases where the other firm was a direct rival. The agreement was revised in the Black River Food 2 case to remove a provision that required promoters to guarantee that the target firm and its subsidiaries were involved in the manufacturing of a wide variety of consumer goods and food products. [15]

The removal of the need to provide specific information on non-compete clauses (such as their purpose, length, and justification) in the notification forms submitted to the CCI was one of the major regulatory changes that took place in November 2020 with the amendments to the Combination Regulations. Even while this change makes reporting easier and fits better with how deals are actually negotiated, it still requires parties to check their non-compete agreements for compliance with competition laws on their own.

IMPLEMENTING THE REMEDY: THE DIVESTITURE CASES

In numerous divestiture proceedings, the CCI has meticulously delineated the requisite components of mandated divestitures. Although a comprehensive analysis exceeds the scope of this discussion, the principal elements may be succinctly enumerated as follows:

1. **Definition of Divestment Business**: The order specifies essential elements of the business subject to divestment, potentially including critical personnel.
2. **Initial Divestiture Phase**: Generally, divestment should occur within six months following the approval, as evidenced by cases like Agrium/PotashCorp, where it is extended to 18 months. This timeframe might remain confidential within the order, and extensions can be granted by the CCI on a case-by-case basis, as seen in ZF Friedrichshafen.
3. **Maintenance of Business Viability**: Actions must be taken to maintain the divested business's economic viability, marketability, and competitive stature.
4. **Segregation Duties**: If the divested entity is part of a larger enterprise, it should be operationally distinct, and managed by a designated hold separate manager. Share divestments should come with suspended voting rights for divesting shareholders from the decision date.
5. **Confidentiality Safeguards**: There must be no exchange of sensitive information between the divesting and divested entities.

[15] C-2016/01/371 *Black River Food*

6. **Restrictions on Employee Poaching**: Post-divestiture, there should be limitations on the employment of key transferred personnel by the original parties.
7. **Transparency in Due Diligence**: Adequate information must be furnished to potential buyers to facilitate thorough due diligence.
8. **Ongoing Reporting**: The parties are obligated to continuously update the monitoring agency about the divestment's progress and prospective buyers.
9. **Prohibition of Influence**: Post-closure, the parties must avoid gaining direct or indirect control over the divested entity for a designated period.
10. **Criteria for Purchaser Eligibility**: The purchaser must be an independent and capable market participant, as verified by the CCI.
11. **Transaction Approvals**: The CCI must approve both the purchaser and the terms of the sale agreement. Except in specific cases like Sun/Pharma, the primary transaction may proceed before finalizing the divestment.
12. **Appointment of a Nodal Officer**: A nodal officer may be designated by the CCI to act as a central communication link concerning the divestment's implementation.
13. **Engagement of a Monitoring Agency**: Typically, an independent agency is tasked with overseeing the execution of the required modifications.
14. **Secondary Divestiture Phase**: Should initial efforts fail, a subsequent phase may be directed by the CCI, during which alternative products may be divested under the supervision of an appointed agency, without a floor price.
15. **Cooperative Mandates**: Parties are expected to cooperate fully with the monitoring and, if applicable, divestment agencies, furnishing any information deemed necessary for effective order implementation.
16. **Provisions for Adjudicating Challenges**: The CCI reserves the right to intervene or provide guidance through orders or directions to rectify any implementation challenges or unforeseen complications as they arise.

SECURING COMPLIANCE

To date, the CCI has not identified any instances of non-compliance regarding modifications stipulated in merger approvals. Under the relevant statutes and the Combination Regulations, there are specific measures concerning adherence to such modifications during both preliminary and comprehensive assessment phases.

Upon granting conditional approval for a merger, the CCI explicitly delineates the requisite actions, conditions, and the timeline necessary for implementing the approved transaction in its order. Should the involved parties fail to

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execute the agreed modifications within the prescribed period, the CCI is empowered to issue necessary directives to enforce compliance.[16]

Additionally, compensation can be pursued by any party who suffers loss or damage resulting from an entity's failure to comply with the CCI's directives, or from an entity's unjustifiable contravention of any CCI decision, order, or condition. This also extends to instances where there is a delay in executing the CCI's directives.

The CCI has also specifically addressed compliance issues in its orders, with further elaboration provided in the legal provisions applicable to Phase II assessments.

PHASE I

In earlier precedents involving non-compete clauses, the concerned entities were typically mandated to implement the agreed modifications. However, the CCI has exhibited varied responses in its enforcement actions. For instance, in the cases of Dish TV/Videocon and Jio, the involved parties were required to submit annual compliance reports over five years. In the instance of Mumbai International Airport, adherence to commitments was mandated, with the explicit warning that non-compliance would result in the revocation of the order, a stance similarly adopted in the cases of "Northern TK Venture, Nippon Yusen Kabushiki, and Sony/Zee." In 2019, concerning TRIL Urban Transport,[17] the CCI necessitated the submission of a compliance report and affidavit within 60 days of post-order receipt, along with displaying the modification on the respective websites of the acquiring and target companies, linked to the CCI's order.[18]

The Sony/Zee merger is one example of a more recent order that mandates regular written reports on the structural remedies' status. The AGI Greenpac/HNG lawsuit required the corporation to report to a monitoring authority within a certain deadline about the divestiture process. In the case of Abbot Laboratories, the decision of the CCI was conditional on the execution of certain modifications. Notification was required at the time of modification completion, combination finalisation, or any amendments made to the modification.

The most definitive guidance came in the case of China National Agrochemical Corporation, where approval was conditional upon compliance with divestiture commitments outlined in the remedy proposal, with non-compliance leading to the presumption of causing an AAEC in India—a stance echoed in subsequent cases. The case of FMC underscored the need for prior notification to the CCI at least 30 days before any corporate structure changes that might impact compliance. In the Hyundai and Kia case, the CCI emphasized the necessity of purposive interpretation of voluntary modifications for compliance, reserving the right to issue further directives under unforeseen circumstances.

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[16] Aik, Nai Chiek, M. Kabir Hassan, Taufiq Hassan, and Shamsher Mohamed. "Productivity and Spillover effect of merger and acquisitions in Malaysia." *Management Research Review* 38, no. 3 (2015): 320-344.
[17] C-2019/07/676
[18] Jain, Sankalp. "Law of Compensation under Indian Competition/Antitrust Laws: Evolution, Legislative Framework and Scope." *Antitrust Laws: Evolution, Legislative Framework and Scope (July 20, 2020)* (2020).

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PHASE II

Under Section 31(5) of the Competition Act, if parties accept a modification suggested by the CCI but fail to implement it within the designated timeframe, the combination is deemed to result in an AAEC, and the CCI will address this under the Act's provisions. In Dow/DuPont,[19] the proposed combination received CCI's approval contingent on the implementation of the agreed modification. The Combination Regulations specify that if modifications proposed by the CCI are accepted by the parties, as per Sections 31(3), 31(7), and 31(8) of the Act, these must be executed within the specified period, affirmed through an affidavit.

For example, in Sun/Ranbaxy and Holcim/Lafarge, the approval was granted under Section 31(7) on condition of modification implementation. Similarly, in Agrium/PotashCorp, the combination was approved contingent on modifications validated by the NCLAT. In instances like Bayer/Monsanto, Linde/Praxair, and ZF Friedrichshafen, failure to adhere to modifications could imply an AAEC in India, exposing the parties to potential legal actions under the Act.

In the Schneider Electric case, the CCI clarified that remedial modifications should be interpreted to effectuate the intended objectives. The company and its affiliates were barred from any actions that could undermine the efficacy of these modifications, with potential legal ramifications under Section 4 (abuse of dominant position) of the Act. Moreover, the CCI required the filing of annual compliance reports, detailing the efficacy of the remedies and competitive conditions in the market.

CONCLUSION

In conclusion, the CCI has demonstrated a proactive and flexible approach to managing transactions that may result in an AAEC. Rather than outright blocking such transactions, the CCI extensively explores various remedial measures to allow transactions to proceed. This is evidenced by the CCI's detailed investigation into the specific operations of entities involved in mergers, such as the site inspections performed in the Metso/Outotec case. The CCI's preference is inclined towards structural remedies, especially when substantial horizontal overlaps exist between merging entities. However, the Commission is also open to implementing or approving quasi-structural remedies to address competition concerns, as seen in the same Metso/Outotec merger. [20] Each case is treated distinctly, with remedies crafted based on the unique facts and issues at hand, moving away from a generic one-size-fits-all strategy. The CCI engages in thorough discussions with the merging parties to ensure that any remedies imposed are effective in mitigating identified competition harms.

As a participant in the ICN, the CCI both contributes to and benefits from the collective wisdom of global best practices, as demonstrated by the reflections of the ICN's 2016 Merger Remedies Guide in its decisions. In handling the Indian aspects of global mergers, the CCI collaborates with international antitrust bodies to align on suitable remedies applicable within India. Despite this collaboration, the CCI places significant emphasis on addressing

[19] Case C-2016/05/400
[20] Case C-2020/03/735

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competitive impacts specific to the Indian market, evident from its independent requirement for remedies in the Metso/Outotec case where India was the only jurisdiction needing intervention. Parties involved in mergers that could raise AAEC concerns must plan strategically and consider proposing timely and proportionate remedies. Ideally, such proposals should be presented during Phase I of the review process, although some may choose to withhold them until Phase II. Delaying beyond this can strengthen the CCI's position. A well-prepared alternative plan (Plan B) is crucial for discussions with the CCI.

Finally, it is important to note that certain aspects of the Amendment Act related to the regulation of combinations are still pending notification and enactment. It is anticipated that the Indian merger control regime and the approach to remedies will continue to evolve, reflecting the dynamic nature of both the market and regulatory insights.

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