REGULATORY FRAMEWORK OF MERGER CONTROL IN INDIA AND EU: A COMPARATIVE ANALYSIS

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Abstract

India being the mixed economy has stretched its branches both in the social and market economy. However, ever since liberalisation, globalisation and privatisation have been introduced in the 1990s, Adam Smith's invisible hand, i.e., self-interest and competition driving the market, is playing a major role. Every corporate entity across the globe is striving for acquiring control over the majority of market shares and expanding their operation in different markets, which makes combinations encompassing acquisition, take over and merger so common in the present corporate world. To ensure that the competitive standards are met, such combinations are made subject to regulation. Merger Control in India as well as EU are designed as an ex ante control, i.e., preventing the merging undertaking that could enable them to be a dominant power in the market. However, despite having the same approach, both the regulatory framework differs in a number of ways. The present study attempts to analyse the merger regulations in both Indian and EU regimes and outlines the differences between the regulatory approach of both the regimes.

Introduction

With liberalization being introduced in the global economic order, the competition regime has also undergone a major shift. The liberalization opened doors for foreign companies, the domestic companies had been thrown to challenges of reorganizing their enterprise in order to survive and compete in a new environment, one such reorganizing being merger.[1]

Before delving into merger control in competition law, it is important to understand what constitutes a merger. Merger can be simply defined as "the absorption of one company (especially a corporation) that ceases to exist into another that retains its own name and identity and acquires the assets and liabilities of the former".[2] Many competition laws and

[1]T. RAMAPPA, COMPETITION LAW IN INDIA, 207-08 (3rd ed, Oxford, 2014).
[2]BLACK'S LAW DICTIONARY, 1002 (7th ed, 1999).

regulations, including the two around which the present study revolves, do not actually use the term "merger" alone to specify the transactions that fall under the purview of merger control laws. Instead, they use 'composite' words like 'combinations' (in India) or 'concentrations' (in the European Union).

With competition concerns evolving every single day and multitude of mergers taking place, it is posing a challenge to the CCI to maintain a balance between competition and industrial growth. The most recent is the case of Sony-Zee merger, where the initial review of the Commission revealed the same to be hurting the competition.[3]

The backdrop of merger control in India can be found even in MRTP Act, where the merger control was found on the premise of concentration of economic power The regulation of activities of undertakings (also referred as MRTP Companies) falling within a certain jurisdictional threshold was laid down under Chap III. MRTP Companies were duty bound to obtain clearance from the government before expanding their operation in any manner including merger. However, the same was omitted by the 1991 Amendment.[4] Finally, the merger regulation received legal backing in 2011 by the virtue of Competition Act, 2002 and the Combination Regulations.[5]

The European Economic Community derives its validity from the Treaty of Rome, which has been recognized as a European Community since the Maastricht treaty of 1992. Initially, there was no specific regulation governing mergers, rather, it was dealt through the application Art. 101 and 102 of TFEU. However, the same was not sufficient to govern merger, which paved the way for the enforcement of EC Merger Regulation.[6]

With globalization taking all over, both the regime shares similar concerns to the competition in the market and thus regulations framed are to an extent similar, however, there also lies a lot of difference in their procedure, jurisdiction and various other aspects. An attempt has been made in the present research to study the procedures of the merger regulation under both Indian and EU framework and compare the two regulatory regimes.

[3] *Sony-Zee merger can hurt competition, more scrutiny needed, says Competition Commission of India*, THE HINDU (Sept. 1, 2022 01:32 pm), https://www.thehindu.com/sport/sony-zee-merger-can-hurt-competition-more-scrutiny-needed-india-watchdog-finds/article65835458.ece.
[4] TARUN MATHUR, MERGER CONTROL IN INDIA: LAW AND PRACTICE, 10 (1st ed., EBC, 2018).
[5] Procedure in regard to the transaction of Business relating to Combinations) Regulations, 2011, Gazette of India, pt. III sec. 4 (May. 11, 2011).
[6] SANDRA MARCO, COMPETITION LAW OF THE EU AND UK, 427-31 (8th ed., Oxford University Press, 2019)

Scope

The scope of the present study is limited to the analysis of the regulations in two jurisdictions, namely India and EU. Further, the study only focuses on regulations of merger out of all the combinations and on the framework followed in the present time.

Research Objectives

- To study the regulatory framework of merger control in India
- To study the merger control regime of European Union
- To compare the regulatory framework
- To analyse the power and jurisdiction of concerned Commissions in both the regime

Research Questions

- What is the outline of Merger Regulations in India?
- How is the merger regulated in EU Merger policy?
- How are procedures under both the regimes different?
- What are the different aspects where the difference lies?

Research Methodology & Source of Data

The present study employs doctrinal, comparative and analytical methods of research. The Doctrinal method has helped the researcher to get a better understanding of the procedures followed by both the merger regulations, India and EU. Analytical method has helped the researcher to analyse the text with great precision and comparative method to compare the two regulatory frameworks.

The source of data for the present study has been both primary and secondary source. Primary sources include Competition Act, 2002, EU Merger Regulation and cases on the concerned subject. The secondary sources of data such as books, journals, articles, websites, reports, etc. have been instrumental in constructing the firm standing of the research.

Literature Review

The "Merger Control Regime under the Competition Law in India"[7] explains the entire review process of merger, evolution of merger regulation jurisdiction threshold, exemptions, gunjumping, etc., which have been very helpful in getting a better understanding of the subject. However, the textbook lacks in analysing with reference to foreign jurisdiction.

Another textbook "Competition law in India and Interface with Sectoral Regulators"[8] deals with the merger control in several jurisdictions like the U.S., U.K., Singapore, Germany, India, etc. It discusses the procedures laid down by regulations prevalent in each jurisdiction, powers and authorities of the respective enforcement authorities, jurisdictional threshold, interpretation of adverse effect on the competition, etc. However, the textbook lacks in showing how the CCI functioning differs from others.

An article titled "Merger under the Regime of Competition Law: Comparative Study of Indian Legal Framework with EC and UK"[9] analyses several aspects such as classification of merger, threshold limit and local nexus provisions, notification or review, substantive assessment of merger, etc. of the merger control in India with that of EU and UK, which has aided the researcher in comparatively analysing the subject-matter in a better manner. However, it is unable to include relevant Commissions rulings to put up an example.

Another article titled, "Merger Control in India: Is There a Long Road Ahead" analyses the evolution of merger regulation in India, outlines the structure of the regulations and challenges to be countered by CCI. However, it misses out on certain areas where the CCI still has an edge over enforcement authority agencies.[10]

Another book titled "Competition Law in India" lays down the procedures, gives historical backdrop, and explains other relevant aspects of the merger regulation in four key jurisdictions, namely India, U.S., U.K. and EU, however, it is unable to show clear comparison between the four jurisdictions.[11]

[7] Vinod Dhall, *Merger Control Regime under the Competition Law in India*, IN COMPETITION LAW TODAY, 603 (2nd ed., Oxford Univ. Press, 2019).
[8] SOUVIKCHATTERJI, COMPETITION LAW IN INDIA AND INTERFACE WITH SECTORAL REGULATORS, 127 (1st ed, Thomson Reuters, 2019).
[9] Neeraj Tiwari, *Merger under the Regime of Competition Law: Comparative Study of Indian Legal Framework with EC and UK*, 23 BOND L. REV. (2011).
[10] Gauri Chhabra & Suhail Nathani, *Merger Control in India: Is There a Long Road Ahead*, 38(2), World Competition 281 (2015).
[11] *Supra* note 1.

Another book titled "Indian Competition Law" by Versha Vahini[12] has, apart from the procedural aspect, the textbook, helped the researcher understand the gist of SSNIP test and its application, however, other than the analysis of the tool, the textbook has not given comparison of any other aspect between any jurisdiction.

Brief Overview of Merger Control in India

The Merger Regulation in India is dealt in accordance with Sec 5 & 6 of the Competition Act, 2002. Sec 5 of the Act manifests on the regulation of combination and lays down threshold limits of the values of the assets or turnover post-mergers in order to exercise control.[13]

Appreciable and adverse effect on competition

Sec 6 prescribes the procedures for the regulation of "such a combination which is likely to cause an appreciable and adversable effect on competition within the relevant market across the country". However, the same has been left to the determined in every case depending on the factors such as structure of the market, barriers to entry, level of combination in the market, the possibility of reduction of the competition in the market, potential to increase prices or profit margins, possibility of a failing business, benefits likely to offset against the adverse impact of the merger, etc.[14] Apart from these, the CCI has also made reliance on certain economic techniques such as Herfindahl Hirschman Index test to determine if the merger would inhibit the competition in the market as it did in Holcin Ltd/Lafarge S.A.[15]

However, it is noteworthy that while determining the effects of the combination on the competition of the market, concerns should be directly related to proposed combination rather than merely pre-existing conditions not directly related to the potential adverse impact resulting from the combination was iterated in In Re: Wal-Mart International Holdings, Inc. The findings of the Commission were such as, in the light of facts on records, Flipkart's discounting practices and preferences for retailers are not exclusive to the proposed combination having been existent regardless of the same.[16]

[12] VERSHA VAHINI, INDIAN COMPETITION LAW (1st ed., Lexis Nexis, 2016)
[13] Competition Act, No. 12 of 2002, § 20(3), INDIA CODE (1993).
[14] Competition Act, No. 12 of 2002, § 20(4), INDIA CODE (1993)
[15] In Re: Holcim Limited and Ors, C-2014/07/190 (30.03.2015 - CCI) (India).
[16] In Re: Wal-Mart International Holdings, Inc., C-2018/05/571 (08.08.2018 - CCI) (India).

Mandatory Notice

In India, the process of the regulation is initiated in two ways- by the Commission itself on its own knowledge or information or by enquiry on the receipt of a notice of combination under Sec 6(2). The Amendment of 2007 has made the said notice mandatory, by virtue of which, it is no longer the discretion of the parties to serve notice when a combination under Sec 5 is entered. The aforesaid notice is to be filed before the expiry of 30 days from the date on which the proposal for the merger was approved, in compliance of the prescribed Forms along with the payment receipt of the requisite fee. The procedure for filing notice has been laid by Regulation 13 of the Combination Regulation, 2011. Failure to file such notice would make the Commission suo moto to initiate the process imposing certain penalty or prosecution and directing the parties to file notice in Form II within 30 days of the receipt of such communication.[17] However, in 2017, CCI eased down the deadline of 30 days from the date of triggered document by removing the penalty to promote ease of doing business as the party was reluctant in filing notification too early jeopardising the clearance of the Proposed Combination on the grounds of it being premature or incomplete. Notably, that does not do away with the mandatory requirement of filing the notice as breach of the same would still lead to the violation of gun-jumping period under Sec 43A of the Act and it would attract the penalty for the same.[18]

Investigation

After the notice is filed, the procedure as laid under Sec 29 and 30 of the Competition Act would follow. Under Sec 29, parties are served a show cause notice to defend their position as to why an investigation should not be conducted against them, the response to which are required to submit within 30 days.[19] However, in certain cases, extension might be granted by the Commission at its discretion. One such example is the Bayer/Monsanto merger case of 2018, where the extension of 10 days was granted to file response of the show-cause notice. The CCI, though, made it clear that such extension period would be excluded from the

[17] V.K. Agarwal, Competition Act, 2002 (Principles and Practices), (1st ed., Bharat Law House, 2011).
[18] Nisha Kaur, *How 2017 shaped competition law in India*, BUSINESS TODAY (Dec 31, 2017, 11:09 AM IST), https://www.businesstoday.in/opinion/columns/story/how-2017-shaped-competition-law-in-india-86935-2017-12-31.
[19] Competition Act, No. 12 of 2002, § 29(1), INDIA CODE (1993).

overall time period of 210 days.[20] Sec 29 also confers the power to the Commission to require the parties to publish details of the combination to make the stakeholders and whoever is having interest informed and allow them file a written objection within 15 working days from the said publishing date. The Commission can also seek for a report from the Director General with the virtue of the 2007 Amendment.[21] Sec 30 provides for enquiry into the disclosure made by the company, to the effect of its correctness and likelihood of having "appreciable adversable effect on the competition". After taking all this into consideration, the Commission would deal with the matter as per Sec 31.

Sec 31 enables the Commission to prevent the parties to enter into a merger if it is likely to have "an appreciable adverse effect on competition". However, the parties might be asked to carry out certain modifications within the stipulated time period in order to get the Commission's approval. If the parties do not agree with the said modification, they are given the option to come up with certain amendments in the modification within 30 working days, which if agreed by the Commission would approve the Combination, otherwise the parties would be given another 30 working days to accept the modification proposed by the Combination, the failure of acceptance would lead to the Combination being unapproved.[22]

A proactive approach by the CCI has been taken with the merging parties to alleviate any competitive concerns that may exist in the market. The Commission aims to find a solution that addresses its concerns while being as 'least restricting' as possible. One such example is Dish TV/Videocon merger, which received a nod from CCI in 2017. In this case, the CCI had observed a horizontal lap between the parties at the time of assessment of notice, but the Commission gave clearance by not letting the concerns that could be addressed by the regulatory landscape to come in the way and thereby holding the Combination to be not having an appreciable adverse effect on the Competition.[23]

[20] In Re: Notice under sub-section (2) of Section 6 of Competition Act, 2002 given by Bayer AG, C-2017/08/523 (14.06.2018 - CCI) (India).
[21] Competition Act, No. 12 of 2002, § 29(2), INDIA CODE (1993).
[22] Competition Act, No. 12 of 2002, § 31, INDIA CODE (1993).
[23] Notice under sub-section (2) of Section 6 of the Competition Act, 2002 jointly given by Dish TV India Limited & Videocon D2h Limited, C-2016/12/463 (4.05.2017- CCI) (India).

Merger Regulation in EU Jurisdiction

The merger control in the EU is regulated by EC Merger Regulation. Art. 3 defines the term 'concentration' which includes "merger of two or more previously independent undertakings or part of undertakings"[24]

The numerical threshold to establish jurisdiction has been put forth by Art. 1 of ECMR while Art. 5 lays down the method to calculate the same.[25] However, the regulation does not require either the undertakings or the transaction to take place within the EU to establish jurisdiction.[26]

Phase I investigation

The process is initiated by the pre-merger notification, which is mandatory in nature like India. A merger without obtaining clearance from the Commission is regarded unlawful. Following which, the details of such a merger is published on the EC competition website or the EU Official Journal to render an opportunity to the interested parties to approach the Commission and submit comments on the concerned merger. The Commission subsequently starts its Phase I investigation, in which it analyses the deal within 25 working days. This Phase may involve requesting the merging parties or any third party to furnish certain information, seeking views of the competitors or consumers regarding the merger with the help of questionnaires, etc. The parties are kept on loop during the review. The result of the Phase I investigation is announced to the parties by holding a "state-of-play meeting". The companies can offer remedies if such mergers are prejudicial to the competition in the market, due to which the deadline would get extended by another 10 working days.[27]

Phase II investigation

At the end of the Phase I investigation, either the companies would get the clearance, subject to accepted remedies or otherwise; or the process would advance into Phase II investigation if

[24] On the control of concentrations between undertakings (the EC Merger Regulation), Art. 3, Jan. 20, 2004, No 139/2004.
[25] *Id.*, Art. 1 & 5.
[26] Richard Whish & David Bailey, Competition Law, 9th ed., Oxford University Press, 2018, 848-922
[27] *Competition: Merger control procedures*, EUROPEAN COMMISSION, (July, 2013), http://ec.europa.eu/competition/publications.

the competition concerns are still not resolved. However, majority of the matters gets cleared during the 1st review itself. Taking a look at the types of remedies offered by the companies, it includes the companies proposing for modifications ensuring continued competition in the market. The Commission examines the modification in order to check the viability of the same to eliminate the competition concerns. The remedies become binding on the approval of the Commission, which then appoint an independent trustee to oversee if such remedies are being properly implemented or not.[28]

The next step, if the merger doesn't get clearance, is the Phase II investigation, which is a bit of a lengthy process. It includes in-depth analysis of the impact of the merger on the competition, i.e., extensive information gathering, extensive economic data, questionnaire to seek views of market participants in greater detail and site visits. In this phase, the benefits of the merger likely to outweigh the "adverse effect on competition" would also be taken into account. However, the same requires fulfilment of certain strict conditions and the onus falls on the companies to prove the same.[29]

The remedies can be proposed by the Companies in this stage too. If the Commission, on the basis of its preliminary conclusion, is of the opinion that the merger would lead to market competition going for a toss, it would send a Statement of objections to the parties seeking their response in writing within the specified time frame. The companies would have a right to seek the case file prepared by the Commission and an oral pleading, which would be conducted independently by the Competition Hearing Officer. The Phase II investigation is supposed to be completed within 90 working days. However, extension might be given for another 15 days, if the parties propose remedies after the 55th day of the original time period. Additionally, another 20 days might be given on the request or agreement of the parties. The deadline will exclude such a period of time where the asked information was not furnished by the parties. Like Phase I, the Phase II investigation would also conclude with either approving the merger unconditionally or on satisfying the remedies. If the parties fail to propose remedies to the competition concerns, the Commission can invoke its power to prohibit such mergers.[30]

[28] SOUVIK CHATTERJI, COMPETITION LAW IN INDIA AND INTERFACE WITH SECTORAL REGULATORS, 127 (1st ed, Thomson Reuters, 2019).
[29] ALSION JONES & BRENDA SUFRIN, EU COMPETITION LAW, 1104-05 (7th ed., Oxford Univ. Press, 2019).
[30] *Supra* note 27.

A key feature of the Regulation is one-stop merger control, which makes the EC the sole investigator in the case of concentration having a Union dimension under Art. 21 of the ECMR. This is beneficial to prevent multiple investigations leading to inefficiency, delay, high cost, uncertainty, conflict in the verdict, etc. The said provision also makes the Regulation the exclusive legislation to govern such matters not allowing the parties to apply their national legislation in the concentration.[31]

Comparative Analysis between the Merger Regulation of the Indian and EU Jurisdiction

Jurisdiction

To begin with jurisdiction, the Indian regime is pretty much clear with CCI having jurisdiction of any combination taking place either in India or outside having a local nexus and AAEC in India. To establish local nexus, the presence of either of the parties is required and threshold to be exceeding de minimus target exemption and of worldwide jurisdiction as laid by CCI in TCL/Wyoming I.[32] The same has been observed further in Tetra Laval/Alfa Laval[33] and Nestle/Pfizer,[34] where the CCI has examined the combination taken place outside India on the account of the fulfilment of abovesaid conditions.

However, on the other hand, the jurisdiction of ECMR has been controversial as even substantial transactions are likely to fall outside its jurisdiction on account of its two-third rule where two undertakings belong to a common Member-state. To illustrate, the merger of Lloyds TSB plc/HBOS plc in 2008 fell outside the jurisdiction of the EU due to two-third rule and the same was approved by the UK Govt.[35] A Report in 2009 revealed that the said rule is creating competition concerns as national law is giving them clearance on 'public interest' grounds.[36]

Procedural Aspects

[31] *Supra* note 23 at 864.
[32] TCL/Wyoming, C-2011/12/12, (28.12.2011- CCI) (India) .
[33] CCI v. Tetra Laval B.V., C-2012/02/40 (12.04.2012 -CCI) (India).
[34] Nestle SA/Pfizer Inc., C-2012/05/57 (01.08.2012- CCI) (India).
[35] Lloyds TSB plc / HBOS plc, ME/3862/08.
[36] COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, REPORT ON THE FUNCTIONING OF REGULATION NO. 139/2004, COM (2009).

Now moving to the procedural aspect, pre-merger notification is a mandate in both the regimes. In India, initially it was voluntary to notify the competition authorities about the merger but with the virtue of 2007 amendment, the same has been made mandatory. However, failure of complying with the same attracts a penalty extending to 1% of the higher of worldwide turnover or assets of the combination[37] whereas in the EU framework, the penalty is upto 10% aggregate group worldwide turnover in the last financial year.[38] Further, Indian regulation includes a gun-jumping period within which if no order is passed by CCI, the merger would have been deemed to get clearance is 210 calendar days,[39] however, there is no such provision in the EU Regulation.

Further, the joint venture is covered under the ambit of definition of combination in ECMR, however, the position is somewhat ambiguous in Indian regulation not having specific reference of the same in Sec 5. In the latter, it is left for the CCI to interpret whether a particular joint venture falls within the purview of combination.[40]

The ECMR explicitly sets out certain exceptions and exemption under Art. 3, by virtue of which certain transactions are not subject to notification requirements, however, it is not in case with Competition Act, 2002. The Act only made the deadline of notifying varied in certain cases, i.e., 7 days instead of 30 days.[41]

In India, the central enforcement authority lies with the CCI, which is responsible to oversee the merger regulation, the decision of which is appealable before NCLAT, followed by the Hon'ble SC where orders of NCLAT can be challenged further.[42] Whereas, in the EU, the General Court and, subsequently, the Court of Justice have the authority to examine any judgments and actions taken by the Commission. An appeal may lie by the aggrieved party within two months of the ruling of the enforcement authority. This assures impartial judicial scrutiny and that all legal remedies of defence open to the parties are recognized. Thus, in both the frameworks, the Commission's ruling is followed by a two-stage remedial mechanism where judicial interference is allowed.[43]

[37] *Supra* note 7.
[38] *Supra* note 26 at 876.
[39] Competition Act, No. 12 of 2002, § 6(2A), INDIA CODE (1993).
[40] *Supra* note 9 at 124.
[41] Competition Act, No. 12 of 2002, § 6(5), INDIA CODE (1993).
[42] On the control of concentrations between undertakings (the EC Merger Regulation), Art. 3, Jan. 20, 2004, No 139/2004.
[43] *Supra* note 29 at 468.

Substantive assessment of merger

If adverse impact of a particular merger on the competition is to be determined, major emphasis is to be laid on the "relevant market". The expression "relevant market" encompasses two components, namely, "geographic market" and the "product market". The term "product market" refers to the portion of the "relevant market" that corresponds to a firm's particular product by determining all technically acceptable alternatives to the product and by deciding whether the alternatives limit the firm's capacity to change prices. A geographic market, on the contrary, is the portion of the relevant market that indicates the areas where a firm might compete.[44] Though the definition provided under the Indian legislation has great resemblance with that of EU, the former in addition sets out specific factors like physical characteristics, price, consumer, preference, etc. for product market and regulatory trade barriers, transport cost, language, adequate distribution facilities, etc. for geographical market for CCI's consideration while demarcating the product or geographical market.[45] On the other hand, the EU, owing to the sequential procedure it follows, makes the relevant market restricted to a very narrow approach. The product market infers to their qualities, costs, and intended uses which enable the products on the market to be used interchangeably or substituted.[46] On the other hand, the "geographic market" refers to the regions where the competition is sufficiently uniform and can be recognised from nearby regions since they have significantly distinct competition.[47]

The ECMR prioritises consumer welfare during the merger consideration process that requires the Commission to consider intermediate and final consumer interests as well as the advancement of technical and economic progression, subject to the fact that consumer is getting benefitted from the same and it is not posing any barrier to the competition. Whereas, the legal framework in India cites the perks of the combination as well as the type and degree of innovation among the considerations to be evaluated in merger regulation. Although the law does not specifically address consumer interest, it is highly probable that consumers'

[44] BLACK LAW DICTIONARY, 983 (7th ed, 1999).
[45] Competition Act, No. 12 of 2002, § 19, INDIA CODE (1993).
[46] European Commission on the definition of relevant market for the purposes of Community competition law, 1997 O.J. (C 372), 3 ¶ 7.
[47] *Supra* note 45 at ¶ 8.

interests would be taken into consideration when analysing the advantages of the combination or its consequences.[48]

The EC lay emphasis on increased ability and incentive of the merger at hand in eliminating "actual and potential competition" from third parties and the same carries significance during the investigation of the Commission from both inside and outside the communities as was iterated by EC in Telia/Telenor case.[49] On the other hand, in India, the Commission take into account the actual or potential competition as mentioned above in the form of taking imports into consideration. Additionally, a market's effectiveness of competition, which is likely to be sustained, is also listed in the Indian framework.[50]

Further, use of SSNIP, an econometric analysis tool to assess competitive interactions between two distinguished products have been shown faith upon by CCI,[51] however, EC has advised actions on the applicability of the SSNIP test for ascertaining the "market definition".[52]

Conclusion & Suggestions

Despite the fact that mergers are a common and accepted practice in the market, there are a plethora of grounds as to why the government, market players, shareholders, and even people could be opposing mergers. Governments may oppose mergers if they are thought to be inconsistent with domestic or foreign policy, or if they might result in the production of a certain commodity in an illegal amount or quality. Market participants could challenge a merger transaction because it might result in monopoly, impose barriers to entry, or have other anti-competitive consequences.

A mandatory and suspensory merger control regime is in place in both India and EU, which requires pre-notification to the CCI and EC respectively for all transactions that meet jurisdictional thresholds unless otherwise exempted. It is mandatory to notify the Competition Commission if either jurisdictional threshold (based on assets or turnover values) is met when a transaction is subject to the regulating body. Though by casting a wide net, the jurisdictional thresholds aim to catch most transactions in both the regimes, but at the same

[48] *Supra* note 9 at 139.
[49] Telia/Telenor, COMP/M. 1439 [2001] 4 CMLR 1226 (India).
[50] *Supra* note 1 at 209.
[51] MCX Stock Exchange Ltd v National Stock Exchange of India, [2011] 109 SCL 109 (India).
[52] *Supra* note 4.

time, it is ensured that exemptions sufficiently filter out those that are unlikely to raise any concerns about competition for making the review process balanced. The phases of investigation in both the regimes and the approach of the enforcement authority towards preventing the merger with anti-competitive implications in the market are quite similar. However, there are various parameters in which both the regulations vary, such as enforcement, priorities during the merger consideration process, considerations while determining the actual and potential, the interpretation of 'relevant market' in both the regimes, etc. Overall, both the frameworks have been tackling more nuanced merger-control related issues. However, based on the research, the researcher has come up with the following suggestions:

1. Phase II investigation is to be completed within 210 calendar days excluding extensions while the same in EU is just 90 days. The legislature should consider reducing this time-period taking into account the interest of the parties involved.
2. EC needs to make its jurisdiction rule stricter as there have been cases where the parties have found an escaping route through their national government allowing the merger despite in the name of national interest its anti-competitive implications, thereby jeopardising the enforcement efficiency of the Commission.

Merger Regulation is one of the key components of the Competition Act, thereby the legislature needs to ensure that it is upto date and no loopholes are left to be misused.