

## **EVOLUTION OF COMPETITION LAW REGIME - PROSPECTS AND IMPLICATIONS IN THE REALM OF MERGERS AND ACQUISITIONS**

*Siddharth Kawadia\**

*Khushi Bansal\*\**

### **ABSTRACT**

***“Mergers and acquisitions are not just about combining companies, it is about bringing together cultures, visions and aspirations.”***

*One of the most important aspects pertaining to Mergers and Acquisitions in India, is the advancement and diversification of Competition Law. These arrangements and combinations allow the companies that are coming together, to build sustainability and increase economic stability.*

*There have been several amendments in this field that have significantly contributed in enhancing the transparency of the Mergers and Acquisitions taking place in the commercial world. One of the notable shifts in this arena involves the implementation of the 'Green Channel Mechanism, an automated approval system wherein, post a self-assessment by the entities involved, the combination can come into effect. Approval of the Competition Commission of India, herein, is not mandatory for the combination to function in the market.*

*Furthermore, there has been an amendment to the value of the threshold, beyond which, deals with a transaction value of more than Rs. 2,000 crores and having 'Substantial Business Operations' in India, will require prior approval of the Commission.*

*This research paper aims to comprehensively analyse several amendments that have taken place in realm of 'Mergers and Acquisitions' in order to promote transparency and ensure that arrangements between two or more entities is not delayed due to the extensive procedure established by the legal framework. Substantially, it analyses the effect of 'Green Channel Mechanism' from its induction to implementation into the commercial space.*

**Keywords:** Green Channel, Deal Value, Substantial Business Operations, Combination.

---

\*Student, B.B.A.LL.B., Fifth Year, Symbiosis Law School, NOIDA; affiliated to Symbiosis International (Deemed University), Pune.

\*\*Student, B.B.A.LL.B., Fourth Year, Symbiosis Law School, NOIDA; affiliated to Symbiosis International (Deemed University), Pune.



## **INTRODUCTION**

Mergers and Acquisitions form a part of the greater aspect ‘Combinations’ under the Competition Act, 2002. This essentially implies, the coming together of two or more business entities for the purpose of fulfilling those aims which could not be achieved single-handedly. Section 5 of the Competition Act, 2002<sup>1</sup> and subsequently, the Competition (Amendment) Act, 2023<sup>2</sup> provides for the regulation and approval of combinations taking effect into the market.

In order to achieve efficacy and transparency in this arena, several alterations have been introduced by the Hon’ble Competition Commission of India. The foremost and the most significant of these is the introduction of the ‘Green Channel Mechanism.’<sup>3</sup> This provides for an automated approval system, wherein, if the entities coming together are certain as to there being no horizontal, vertical or complimentary overlaps, can notify the commission and the said combination can automatically come into effect from the said date.

The amendment act of 2023 provides that any deal pertaining to mergers, acquisitions, or amalgamations, beyond the amount of Rs. 2000 Crores must be mandatorily disclosed to the Commission, if the entity has ‘Substantial Business Operations’ in India as outlined by the specific regulation.<sup>4</sup>

There is also a provision which is astonishing and remarkable to some extent. This amendment provision is with respect to filing of an appeal. For an appeal to be considered before the National Company Law Appellate Tribunal, it has been prescribed that 25% of the amount imposed by the order of Competition Commission of India have to be mandatorily deposited for the appeal to be entertained.<sup>5</sup>

Consequently, there have been a substantial number of amendments addressing the evolution of Mergers and Acquisitions in India. While some of these changes have been positively embraced, others contain shortcomings that, if addressed, could lead to productive outcomes.

---

<sup>1</sup> The Competition Act, 2002 (Act 12 of 2003), s. 5.

<sup>2</sup> The Competition (Amendment) Act, 2023 (Act 9 of 2023).

<sup>3</sup> Competition Commission of India, “Green Channel” available at: <https://www.cci.gov.in/combination/green-channel-view> (last visited on May 28, 2024).

<sup>4</sup> The Competition (Amendment) Act, 2023 (Act 9 of 2023), s. 6 (B)(d).

<sup>5</sup> The Competition (Amendment) Act, 2023 (Act 9 of 2023), s 39.

## **NOTABLE AMENDMENTS IN THE ARENA OF ‘MERGERS AND ACQUISITIONS’**

### **a. Impact of the implementation of ‘Green Channel Mechanism’ on mergers and acquisitions**

In order to amend the rules relating to the merger control in India, the Competition Commission of India introduced the ‘Green Channel Mechanism’ in the year 2019. Before the amendment, there was a specific period prescribed under Section 5 of the Competition Act, 2002<sup>6</sup> wherein, the parties entering into combinations were required to notify about the same to the Competition Commission of India and thereafter, the commission would have the period of 210 days to scrutinize the same<sup>7</sup>. This implies that the parties will have to wait for the approval of the Commission to give effect to the combination.

This was causing a huge amount of inconvenience to the parties since this would sometimes hamper their freedom to carry on their business with ease. The ‘Green Channel,’ a one-of its kind mechanism amends Rule 5A of the Combination Regulations, 2011<sup>8</sup> in which there was a statutory requirement for the parties entering into mergers to wait for the aforesaid period until the commission approves of the efficacy of the combination in the market and gives it a green flag. Justice Sikri also observed that, *“It sets ‘rules of the game’ that protect the competition process itself, rather than competitors in the market. In this way, the pursuit of fair and effective competition can contribute to improvements in economic efficiency, economic growth and development of consumer welfare.”*<sup>9</sup>

Through the implementation of this mechanism, this statutory limit is now waived off. Now, the parties entering into the combination can scrutinize and self-evaluate the combination and once they are certain about it, can notify to the competition commission. It is pertinent to note that the notification, and acknowledgement thereof, in itself will lead to the combination coming into effect. It should be noted that in the case of *Sumitomo Mitsui v. Competition Commission of India*<sup>10</sup>, it was held that there is a requirement upon the parties to notify about the competition and subsequently, reveal all the relevant details about that combination.

---

<sup>6</sup> The Competition Act, 2002 (Act 12 of 2003), s. 5.

<sup>7</sup> The Competition Act, 2002 (Act 12 of 2003), s. 6.

<sup>8</sup> The Competition Act, 2002 (Act 12 of 2003), rule 5A.

<sup>9</sup> *Excel Crop Care Ltd. v. Competition Commission of India*, AIR 2017 SC 2734.

<sup>10</sup> Combination Registration No. C-2014/12/235.

This self-assessment criteria includes the combination not causing any appreciable adverse effect on the competition in the market and further, there are no horizontal, vertical or complimentary overlaps; then, the combination is the one which can come into effect by the way of green channel.<sup>11</sup>

Horizontal overlaps, herein refers to the products of the two entities that are similar or identical to one another, vertical means that the businesses being in the same line of production chain and complimentary means that the good produced by one company is incomplete without the presence of other. For instance, car and petrol is an example of complimentary goods as they both, will not be able to serve their potential without the presence of the other.

Entities seeking approval through the green channel are obligated to submit a declaration form, affirming that the upcoming proposed combination will not result in any significant detrimental impact on competition in the Indian market. It is crucial to establish this lack of appreciable adverse effects because, under Section 3 of the Competition Act, 2002, any combination that does have such effects would be void.<sup>12</sup> Thereafter, if the Competition Commission is of the opinion that the transaction falls within the scope of green channel mechanism, the acknowledgement given by the commission will be treated as approval of the combination.

The primary objective of the Competition Commission behind introducing the green channel route is to promote and sustain competition in the market.<sup>13</sup> It would also reduce the excessive time of the combination being coming into effect, thereby, ensuring that there is a speedy and transparent process of the combinations taking effect.<sup>14</sup>

Further, the ease of doing business is a major reason for the introduction of the green channel mechanism into the Combination Rules. This is also envisaged in the Indian Constitution under Article 19(1)(g)<sup>15</sup> i.e., Right to freedom of trade and carry on business. In the case of *Mithilesh Garg v. Union of India*<sup>16</sup>, it was held that, “Every person has the right to carry on their business.” Now, it is pertinent to understand that the effect of combinations coming into effect in a rather speedy manner ensures the fulfilment of the above-mentioned fundamental right.<sup>17</sup>

---

<sup>11</sup> The Competition Act, 2002 (Act 12 of 2003), form 1.

<sup>12</sup> The Competition Act, 2002 (Act 12 of 2003), s. 3.

<sup>13</sup> Competition Commission of India, “Green Channel” available at: <https://www.cci.gov.in/combination/green-channel-view> (last visited on May 28, 2024).

<sup>14</sup> Dr. Jayendra Kasture, “Review of the CCI ‘Green Channel- Automatic approval route for certain combinations”, Vol. 4, Issue 2, *International Journal of Law Management & Humanities*, pg. 2615-2620 (2021).

<sup>15</sup> The Constitution of India, art. 19(1)(g).

<sup>16</sup> [1992] AIR 443.

<sup>17</sup> *Supra* note 8.

Recently, the Adani Group acquired GVK Airport Developers. The acquisition was approved by the way of Green Channel since the commission did not find any vertical, horizontal or complimentary overlaps upon the events taking place in India.<sup>18</sup> Similarly, in the case of *Ultra tech cement Limited v. Competition Commission of India*<sup>19</sup>, a notice was sent to the entities after the approval of combination by the Commission to inquire into certain other factors relating to the transaction.

As a part of Corporate Insolvency Resolution Process (CIRP), the competitor or the larger firm can acquire their insolvent competitor. This is a principle established under Chapter II of the Insolvency and Bankruptcy Code, 2016<sup>20</sup>; wherein one competitor acquires the other insolvent competitor to support their business. The larger firm feels that it is incumbent upon them to help the insolvent competitors.

Though, the Insolvency and Bankruptcy driven firms are not expressly barred by this automatic approval system, this via green channel route can only be approved, if it meets a certain threshold which has been prescribed and further, there are no vertical, horizontal and complimentary overlaps. It is rather discouraging to know that none of the seventeen transactions in this area have been able to come into effect via the green channel mechanism.<sup>21</sup>

It has been time and again contested that the Competition Commission of India will not be able to inquire into any combination after passage of one year according to Section 20(1)<sup>22</sup> of the Competition Act, 2002. But it is interesting to understand that there is no such prescribed statutory limit under Rule 5A<sup>23</sup> of the act and hence, the commission can take cognizance of the same post the passage of this period if it is of the opinion that the combination is causing an appreciable adverse effect on competition in the market.

Additionally, there have been various instances wherein the commission has taken cognizance of the combination even after lapse of the one-year period and has imposed penalty also, wherever required. The Commission recently fined Global Infrastructure Partners Private Limited (GIP) 3 million Indian rupees, equivalent to approximately \$36,837, due to their failure to notify an acquisition that had been completed and finalized more than four years prior.<sup>24</sup>

---

<sup>18</sup> The Press Trust of India, “Adani-GVK Airport deal gets CCI nod” *The Hindu*, Sept. 24, 2020.

<sup>19</sup> (2018) 16 SCC 762.

<sup>20</sup> Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), ch. II.

<sup>21</sup> Jai Sanyal, “Green Channel approval for IBC-driven acquisitions” *IRCCL* (2020).

<sup>22</sup> The Competition Act, 2002 (Act 12 of 2003), s. 20(1).

<sup>23</sup> The Competition Act, 2002 (Act 12 of 2003), rule 5A.

<sup>24</sup> Competition Commission of India, “Proceedings against Global Infrastructure Partners India Private Limited under Section 43A of the Competition Act, 2002” (August 2022).

Furthermore, the rule also empowers Competition Commission to undertake any action under the act, if the party is in violation of the conditions under Green Channel.

In the case of acquisition of 5% shares of UPL Sustainable Agri Solutions by Platinum, the green channel was revoked by the commission on the pretext of incorrect information filed by platinum in merger control regime. It led to imposition of a fine of 5.5 million rupees and revocation of the deal in its entirety. The deal was later approved by the CCI after it had reviewed the updated details.<sup>25</sup> This instance highlights how important it is to disclose information accurately in green channel alerts because even minor overlaps can affect eligibility.

In our opinion, the green channel mechanism will ensure that this will reduce the cost and time of the combinations in a significant manner. However, this has not in any way stopped the Competition Commission of India in negating the combinations that are creating an appreciable adverse effect on competition in the market. This means that even after a combination is coming into effect through green channel, the Commission is of the opinion that the combination is causing detrimental effects in the market, the combination can be held as void by the statutory body.

#### **b. Alteration to the thresholds and incorporation of ‘Substantial Business Operations’**

The Amendment Act has made changes to Section 5<sup>26</sup> of the previous act by adding the concept of a deal value threshold, in addition to the existing criteria based on assets and turnover as outlined in Section 6 of the Competition (Amendment) Act, 2023.<sup>27</sup>

This alteration has expanded the extent of evaluation conducted by the Competition Commission of India. In the past, an arrangement needed to be communicated to the commission only if the share, voting rights, control, or assets went beyond the designated threshold specified in the Act. However, under the provisions of the Amendment Act in 2023, any transaction relating to an arrangement that exceeds Rs. 2000 Crores must be disclosed to the commission, provided the entity possesses “substantial business operations in India”<sup>28</sup>, as outlined by applicable regulations.

---

<sup>25</sup> Anisha Chand, Pranjali Prateek, Soham Banerjee and Nilav Banerjee, “India: Overhaul of regime set to reshape competition landscape” *GCR* (2024).

<sup>26</sup> The Competition Act, 2002 (Act 12 of 2003), s. 5.

<sup>27</sup> The Competition (Amendment) Act, 2023 (Act 9 of 2023), s. 6.

<sup>28</sup> The Competition (Amendment) Act, 2023 (Act 9 of 2023), s. 6 (B) (d).

Understanding the meaning of "substantial business operations" becomes pivotal. Notably, Section 35 of Germany's Bundeskartellamt's<sup>29</sup> also uses similar terminology, referring to 'substantial operations' for regulating concentrations. In Germany, firms can be deemed dominant based on their notable paramount significance. Therefore, while evaluating substantial operations, one must also consider whether the firm's activities carry significant paramount importance, and if substantial importance is established, that entity shall be deemed to have dominance in the territory.

The ambiguity surrounding the requirement for "substantial business operations" in India from either the target or the acquirer has been resolved in the final Bill. It is now clarified that the target entity and the acquirer must possess such operations in India. For India's regulatory authority to implement a qualitative criterion like "substantial business operation," it is essential for the Competition Commission of India to establish regulations ensuring effective provision application in the territory.

The implementation of a deal value threshold for combinations is expected to encompass "killer acquisitions," an event commonly observed in digital markets, such as Facebook's acquisition of WhatsApp. In the instance of WhatsApp, the acquisition took place at an approximate amount of US \$ 19 billion in the United States. However, since a transaction fell below the asset and turnover criteria enshrined under the Act during that period and the acquisition wasn't scrutinized by the Competition Commission of India. Despite this, the acquisition significantly influenced the digital market landscape.

It is pertinent to understand that the notion of introducing additional criteria, which emerged from the Competition Law Review Committee's Report<sup>30</sup>, where the Committee noted that the existing benchmarks might not always accurately reflect the impact of a transaction on competition. Transactions involving emerging competitors often fail to meet the thresholds prescribed under Section 5 of the Act, allowing them to avoid anti-trust evaluation<sup>31</sup>.

There is a gap in enforcement when it comes to evaluating the competitive implications of deals in the digital realm. Snapdeal acquired Freecharge for \$400 million. The arrangement should have undergone scrutiny by the Competition Commission of India due to its significant competitive effects in the digital domain. Despite the deal's value being Rs. 2400 crores, it

---

<sup>29</sup> German Competition Act, 1958, s. 35.

<sup>30</sup> Ministry of Corporate Affairs, "Report of Competition Law Review Committee" (July 2019).

<sup>31</sup> John M Yun, "Potential Competition and Nascent Competitors" 4 *The Criterion Journal on Innovation* 625, 629 (2019).



managed to bypass the Hon'ble Commission's approval due to the limitations imposed by the previous thresholds related to assets and turnover.

If such a deal would have to take place today, the parties to the deal would have to first sought approval by the Hon'ble Commission, since the deal value is Rs. 2400 crores, which is higher than the prescribed statutory threshold of Rs. 2000 Crores.

In the digital market, many companies prioritize growth over immediate revenue generation, leading to extended periods of limited income and potentially diffident asset holdings. In these instances, traditional measures like turnover and asset thresholds prove inadequate in gauging the competitive impact of a deal.

According to the Amendment Act, it is important to highlight that even if a 'de minimis exemption' is applicable, a transaction might still need to be reported to the Competition Commission, if it meets the aforesaid deal value threshold. For the purpose of this provision, the transaction's value should encompass all forms of valuable considerations, whether they are direct or indirect, including deferred considerations.

Recently, In Zomato's acquisition of Blinkit, turnover of Blinkit was below Rs. 1,000 crores and thus they utilized the de minimis exemption as it was below the threshold. Nevertheless, transaction's deal value amounted to 4,447 crores. This acquisition has the potential to have appreciable adverse effects in the market, as Zomato could potentially exploit its dominant position against competitors like Swiggy and Zepto, due to them being giants in their respective relevant markets. Hence, such kinds of deals need systematic and in-time monitoring by a statutory authority so that the detrimental effects can be waived off.

Although, the this is a relatively newer concept in the Indian regime, it has already been established in several other foreign jurisdictions.<sup>32</sup> In the European Union, companies with significant market influence are termed 'gatekeepers,' as they are key entry points for many users. Comparably, in the UK, a business that is well-established in the industry and has strategic significance is regarded as a key participant that has a big influence on market dynamics.<sup>33</sup> The company's position as a significant influencer in its separate markets is reflected in this phrase.

---

<sup>32</sup> Ananya Tewari, "Exploring Deal Value Threshold: Understanding Significant Business Operations in Different Contexts" *RGNUL Student Research Review* (2023).

<sup>33</sup> Digital Markets, Competition and Consumers Bill 2024, UK, available at: <https://publications.parliament.uk/pa/bills/cbill/58-03/0294/220294.pdf> (last visited on July 13, 2024).

Therefore, any transaction taking effect in the Indian market with a deal value exceeding Rs. 2000 crores, and wherein the entities have ‘Substantial Business Operations’ in India will no longer qualify for exemptions and will be subject to a notice and the transaction is applicable for scrutiny by the Hon’ble Competition Commission of India.<sup>34</sup> This modification is enthusiastically embraced as it empowers the regulatory body to examine transactions of larger magnitudes.

### **c. Substantial Reduction in Review Timelines and Imposition of Costs for Appeals**

The 2023 Amendment Act has reduced the duration for reviewing a proposed combination from 210 days to 150 days. Additionally, it mandates that the Competition Commission must form its initial assessment of a transaction within 30 calendar days, as opposed to the previous timeline of 30 working days.<sup>35</sup>

The amendment is anticipated to greatly decrease the waiting period required for combination approvals. The amendment will aim to serve the similar purpose as that of the green channel mechanism since this amendment will help to promote ease of doing business in a rather speedy and efficient manner. It is pertinent to note that, though, the Competition Law Committee report had stated in its recommendation that there should not be a strict mechanism for the entities bringing into combinations in place which can hamper their productivity in the market.<sup>36</sup>

Nonetheless, a circumstance could arise wherein the Competition Commission of India encounters difficulty in shaping an initial standpoint concerning the implementation of the combination. In such an event, prior to embarking on an exhaustive inquiry, the Commission requests input from the involved parties on reasons why the investigation should not be initiated. If the Commission finds contentment in the parties' explanations, it grants immediate approval for the combination. Conversely, if contentment is lacking, it mandates a formal Phase II investigation into the purported combination.

During 2021-22, the Commission approved 93 proposed combinations in various sectors, wherein, the average duration taken by the commission for processing and resolving these cases was mere 17 working days.<sup>37</sup> This, prima facie, is a testament to the relentless efforts being

---

<sup>34</sup> The Competition (Amendment) Act, 2023 (Act 9 of 2023), s. 6; 6 (B) (d).

<sup>35</sup> The Competition (Amendment) Act, 2023 (Act 9 of 2023), s. 7 (b).

<sup>36</sup> Ministry of Corporate Affairs, “Report of Competition Law Review Committee” (July 2019).

<sup>37</sup> Competition Commission of India, “Annual Report 2021-22” (2022).

undertaken by the Commission to promote ease of carrying out business, thereby, aiding in ensuring sustainability in the corporate world.

It is interesting to note that the Amended Competition Act exempts those combinations from the waiting period, which involves an open offer or acquisition of shares, taking place through a series of transactions on a regulated stock exchange.<sup>38</sup> The primary reason for this exemption is to allow the combinations in stock exchanges to take place in a time-bound manner. However, it is crucial to emphasize that initially, these combinations only result in the acquisition of shares. Actual ownership or voting rights will be established following approval granted by the Hon'ble Commission.

Furthermore, a requirement has also been laid down in a rather precise and strict formula with respect to the appeals of orders to National Company Law Appellate Tribunal. According to this criterion, in order to initiate an appeal against a direction or order pronounced by the Commission, it will be obligatory for the party appealing to submit a deposit amounting of 25% of the sum specified in the commission's order.<sup>39</sup> If this deposit amount is not provided, the appeal will not undergo consideration by the National Company Law Appellate Tribunal.

Such measures taken by the Commission aims to discourage appeals lacking substantial merit and enhance the effectiveness of the appellate procedure by promoting appeals in cases with legitimate grounds. This measure could be labelled as a significant transformation shaping the landscape of competition law in India.

Companies would use the strategy of submitting appeals against the orders given by the Competition Commission to intentionally delay and gain an advantage within the designated timeframe. However, with the introduction of the deposit requirement, companies will have to carefully assess the consequences of pursuing an appeal, as they will be obligated to provide a substantial upfront monetary deposit.

It is noteworthy that between 2019 and 2022, the Commission imposed fines of Rs. 1788 crores, but only 130 crores were actually realized<sup>40</sup>. This figure clearly indicates that a significant number of Competition Commission of India's orders have been contested in courts through appeals.

---

<sup>38</sup> The Competition (Amendment) Act, 2023 (Act 9 of 2023), s. 6A.

<sup>39</sup> The Competition (Amendment) Act, 2023 (Act 9 of 2023), s. 39.

<sup>40</sup> Competition Commission of India, "Annual Report 2021-22" (2022).

The Supreme Court of India, in the case of *Bajaj Auto Limited v. Director General and Another* instructed the commission to exercise great caution prior to issuing notices to parties, as such actions carry serious implications for the reputation and credibility of those involved.<sup>41</sup> Baseless notices give rise to prolonged and unnecessary legal battles across different platforms. Following the amendment, with the substantial deposit requirement now imposed for the commission's orders, precision in issuing notices becomes even more vital as it places significant pressure on SMEs and start-ups, as it is challenging for them to maintain a substantial reserve of funds to address unexpected contingencies when considering an appeal against an order of the Competition Commission of India.

The fact that there are a large number of appeals does not necessarily mean that they are without merit. Dishonest entities might find incentive in submitting unfounded appeals to prolong the legal process, creating a situation where the innocent is required to place the penalty sum as a condition for exercising their right to appeal. This scenario represents a significant injustice. Therefore, it is essential for our Hon'ble commission to maintain vigilant oversight and adopt necessary measures when implementing such legal changes so that the competition in the market is sustained.

#### **d. Settlement And Commitment**

The Amendment Act of 2023 has provided for a nuanced system of resolution of disputes which takes place between the enterprises accused of violation of Section 3(4) and Section 4 of the Competition Act and the Hon'ble Commission. It is pertinent to note that 'Commitment' comes at an earlier stage whereas, 'Settlement' comes at a later stage. Settlement happens when the commission starts an investigation and the Director General's report is given to the party.<sup>42</sup> From this time till the final order is passed, a negotiation can be initiated by the parties on the measures that the party shall take to ensure healthy completion and pray for a reduced penalty. In India, a flat settlement discount shall be applied, instead of a stipulated variable discount of 15%.<sup>43</sup>

Commitment, on the other hand can take place by the parties even without agreeing to their guilt. It happens even before an investigation is undertaken by the Director General; but happens after an inquiry is undertaken by the commission. This provision grants authority to

---

<sup>41</sup> (2008) 12 SCC 122.

<sup>42</sup> Competition Commission of India, "Competition (Amendment) Act, 2023 Salient Features" (2023).

<sup>43</sup> The Competition Commission of India (Settlement) Regulations, 2024.

the commission to accept commitments according to the terms and procedures for implementation and monitoring as outlined by regulations. These two provisions are strictly non-appealable, which means that after the negotiations the case is finally settled.

In European Union, settlement procedure applies to cartels as well albeit with a stipulated condition. Herein, any party which admits to formation of cartels, their penalty will be reduced by 10% of the total penalty amount which was to be levied by the commission. Even in the United Kingdom, both of these resolutions are available and in both of these mature jurisdictions these systems have made the entire process streamlines and rather expedient.<sup>44</sup>

### **LAPSES AND WAY FORWARD**

Although, there are various advantages of the green channel mechanism, there are certain grey areas which needs to be addressed at the earliest so that the process of the combinations taking effect would be much efficient. Having discussed about the pros and advantages of this automated system, this mechanism has not been able to completely fulfil the objectives and goals with which it was introduced under the act.

Certain requisites lead to ambiguity of the green channel mechanism. This is precisely because one of the requirements is that there should be no complimentary overlaps between the entities of the combination coming into effect. Now, the problem is that the term ‘Complimentary’ has not been defined under the entire statute, which creates problems. It has also not been defined by the Competition Commission of India.

It is only through the ordinary business meaning and few precedents that we understand of this concept. In the case *Unilever Plc. v. Golden Assam Tea Depot*<sup>45</sup>, it was held that complimentary goods are those wherein demand for one product or service leads into the demand for another. In yet another case of *Harish Motichand Sariya v. Ajanta India Limited*<sup>46</sup>, it was laid down that toothbrush and toothpaste are complimentary or cognate goods, since they are sold together. This shows that there have been fragmented approaches related to the concept of complimentary good under the green channel regime.

In our opinion, to resolve this, an all-encompassing meaning and concrete definition should be explicitly provided by the Hon’ble Competition Commission of India in order to get rid of the

---

<sup>44</sup> AZB & Parners, *The need for settlements and commitments under the Competition Act, 2019*, available at <<https://www.azbpartners.com/bank/the-need-for-settlements-and-commitments-under-the-competition-act/>>.

<sup>45</sup> (2018) SCC Bom 17083.

<sup>46</sup> 2003 (6) BomCR 178.

confusions, so that it becomes easier for the parties to evaluate and find out whether they can fit into the criteria of bringing their combination into effect through green channel mechanism.

The next in line shortcoming pertains to the fulfilment of all the possible market scenarios. For a merger to take effect by the way of green channel mechanism, it is necessary that the parties themselves analyse all possible transactions which might take effect between them. Consequently, ensuring the precise fulfilment of each of these conditions becomes a challenging endeavour, leading to certain combinations being unable to come into effect. To resolve this problem, a standard mechanism should be provided for the companies to fulfil the conditions so that the combination can take place in a smooth manner.

Another pertinent problem arises with respect to the requirements of meeting the prescribed deal value and having substantial business operations in the Indian territory. It is pertinent to note that no lucid meaning has been provided to the phrase 'Substantial Business Operations' which becomes a ground for ambiguity and leads to confusion. Hypothetically, if a company is centred in India, but majority of its dealings are taking place in a foreign country; whether this would constitute as having 'Substantial Business Operations' in the Indian territory is a matter of contention.

Further, what constitutes deal value in a merger or acquisition has also not been specially elucidated in the Amended Competition Act. Therefore, it holds significance for the commission to furnish a comprehensive compilation of the variables, factors, and components that constitute the "transaction value," with specific attention to non-monetary considerations.

In our opinion, the Hon'ble Commission should come up with standard requirements for an entity to be called as the one having substantial business operations in the territory of India. It is the need of the era to have a prescribed criterion in place to address the above-mentioned concern.

The result of the appeal, only being allowed to be entertained after payment of 25% amount<sup>47</sup> can also have detrimental effects. While this change is aimed at discouraging baseless appeals and enhancing efficiency by promoting valid ones, it could potentially impose a burden on large businesses involved in acquisitions, as their financial resources may get tied up. Additionally, it might dissuade legitimate parties who may not have the means to submit the required deposit for filing an appeal.

---

<sup>47</sup> The Competition (Amendment) Act, 2023 (Act 9 of 2023), s. 39.

Rather than having a fixed deposit amount, it would have been more prudent for the Competition Commission of India to determine the deposit on a case-by-case basis. This would have been more reasonable since; different entities or companies have different turnovers and the same percentage amount cannot be levied to all the entities.

## **CONCLUSION**

Mergers and Acquisitions form the backbone of the commercial world. It helps the business entities to achieve the goals that they would not have achieved, had they not come together with another corporate entity. Parties forming combinations, come together with the aim of making one plus one as eleven and not two.

Green channel was brought into being to effectuate the process of mergers coming into the market. Now, there is no statutory need to wait for a stipulated time period before a combination can take effect. The parties, forming a combination, can by themselves evaluate the market scenarios and if no adverse impact or overlaps, whatsoever are being caused to competition in the market, then, the same can be notified to the Hon'ble Commission after which that combination immediately comes into effect.

The statutory limitation to pay twenty-five per cent of the appeal amount will aid the Competition Commission get rid of the frivolous appeals, thereby, reducing the burden of cases on the commission. The deal value threshold limitation is yet another step in the positive direction, since, it will bring those deals into scrutiny which had escaped from the eyes of the commission earlier, possibly resulting in causing a detrimental effect in the market. *Thereby ensuring, the breakdown of bad business practices to give fair competition, a fighting chance.*

Having said that, there is no denial of certain shortcomings with respect to the aforesaid amendments in relation to defining 'Substantial Business Operations', 'Deal Value Threshold' and 'Complementary Overlaps'. However, if the steps suggested above, are comprehensively analysed and subsequently implemented, it will ensure that the purpose with which these amendments were brought are fulfilled.

To conclude, the green channel mechanism and the other amendments introduced by the Hon'ble Commission, if implemented in a diligent manner will ensure flourishing of competition in the market and allowing entities to come together, without there being prolonged procedures to adhere to, resulting in uncondoned delay.

*“Mergers and Acquisitions, at large is the passport to accelerate sustainability, thereby, allowing business practices to flourish responsibly; Green channel mechanism being a catalyst in this regard.”*