



MERGERS, ACQUISITIONS, AND MARKET DOMINANCE: LEGAL APPROACHES TO PREVENT ANTI-COMPETITIVE BEHAVIOUR

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ABSTRACT

World over, with the advent of Globalization, Deregulation and growing technological advancements have led to a super surge in Mergers & Acquisitions. Enormous literature is available in various sources for M & As in the developed and advanced economies. But for that in India, the case is different. There exists very little information on the subject in the domestic context. Where on the one side M & A ensures and promotes growth and expansion of the domestic enterprises to even foreign markets, the competition in the market economy can in no way be ignored.

Competition restores the consumers wider access to services at the most competitive prices. The Competition Policies were framed with the fundamental aim of preserving and promoting competition as a means of ensuring efficient allocation of resources in an economy and proper effective regulation of M & As (combinations). This study attempts to understand the impact and trends of M&As in India. Further, it explores the role played by combination law in regulating M&As activity. The current study thus ontologically bases its findings on objective epistemology and employs a 'Positive Paradigm' Approach (including both positivism and interpretivism). In light of this, the paper has been categorized into various chapters and sub-chapters which take up the topics individually and in detail.

Keywords: Competition, Globalization, Mergers & Acquisitions

1. INTRODUCTION

1.1. Mergers & Acquisition

Before 1990, Indian enterprises operated under stringent regulatory controls, leading to disorganized and fragmented economic growth, particularly in the corporate sector. However, with the introduction of economic reforms in 1991, the Indian government encouraged businesses to adopt various strategies for expansion and growth. Among these, mergers and acquisitions (M&As) emerged as a key approach, widely embraced by enterprises. Although the concept of M&As is

not new to India, companies have increasingly utilized them over the years to enhance their core competencies, expand market share, improve global competitiveness, and consolidate operations. This trend accelerated with the rise of foreign competition, driving restructuring efforts aimed at strengthening market presence and refining business focus.

Mergers and acquisitions (M&As) refer to corporate consolidation, involving the integration of two or more companies to form a larger entity. While the terms are often used interchangeably, they have distinct meanings. A merger occurs when two companies unite to create a new entity, whereas an acquisition involves one company taking over another,



resulting in the absorbed entity ceasing to exist independently. Under Section 2(a) of the Competition Act, 2002, an acquisition is defined as the direct or indirect acquisition of shares, voting rights, or assets of an enterprise, or gaining control over its management or operations.

M&As play a crucial role in corporate finance and strategic management, facilitating the buying, selling, and combining of companies to achieve financial growth and industry dominance⁴⁰⁵. These transactions allow businesses to expand rapidly without establishing new entities, enabling them to maintain a competitive edge in dynamic markets. The Competition Act also categorizes "combinations" under its regulatory framework, encompassing mergers, acquisitions, and amalgamations that exceed specified asset or turnover thresholds, both within and outside India.

As defined under Section 5 of the Act

"Acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises".

1.2. Literature Review

The review of existing literature aims to provide a comprehensive understanding of the concept, impact, and trends of mergers and acquisitions (M&As), which form the core subject of this research paper. Various scholarly works and studies by different authors have been analysed to gain deeper insights into the topic and to understand diverse perspectives on M&A activities and their effects on market competition. This section discusses both Indian and global studies on M&As and their influence on competition.

According to **Dr. Geeta Gouri**⁴⁰⁶, *"M&As in India are dynamic, with strategies primarily focused on strengthening core competencies to face competitive challenges. She emphasizes that Indian M&A activities are strategic in nature, driven by motives such as business growth, expansion, access to high-quality human resources, a strong brand presence, and global leadership"*. Similarly, **Verma A.**⁴⁰⁷ (2018) highlights *"the increasing significance of corporate restructuring through M&As, noting that legal and regulatory provisions governing such transactions have gained prominence in Indian jurisprudence"*.

Paliwal M.⁴⁰⁸ (2016) asserts that businesses worldwide are restructuring through various consolidation strategies, including mergers and acquisitions, in response to globalization and the growing integration of national and international markets. **Kumar and Rajib** (2007) point out that *"India was a late entrant in the M&A landscape due to restrictive laws and regulations. Their research indicates that, before economic liberalization, mergers were more common than acquisitions; however, post-liberalization, acquisitions have become the dominant trend."*

Carline, Linn, and Yadav⁴⁰⁹ (2003) contribute to this discourse by finding that *"mergers are often associated with improved operational efficiency and positive market revaluation for both acquiring and target firms. Their study also suggests that the extent of performance enhancement depends on whether the merger was executed in a friendly or hostile manner"*.

This literature review provides a solid foundation for understanding the evolution, motivations,

⁴⁰⁵ Frederiksen, Mergers & Acquisition as part of Growth Strategy; Available at: <https://hingemarketing.com/blog/story/mergers-and-acquisitions-as-part-of-your-growth-strategy> [Accessed on 1st April, 2025]

⁴⁰⁶ Dr. Geeta Gouri, Member, CCI., Competition Act; Available at: <https://www.cci.gov.in/sites/default/files/speeches/CAM.pdf?download=1>

⁴⁰⁷ Verma A; Most Critical M&A Deals in India 2020; Available at: <https://blog.ipleaders.in/critical-ma-deals-india-2020/>

⁴⁰⁸ Paliwal m., Mergers and Acquisitions in India: A Trend Analysis and Future Forecasting; Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2759676

⁴⁰⁹ Carline & Ors., Can the Stock Market Systematically Make Use of Firm-and Deal-Specific Factors When Initially Capitalizing the Real Gains from Mergers and Acquisitions; Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=567110 [Accessed on 1st April, 2025]



and regulatory considerations surrounding M&As, particularly in the Indian context.

1.3. Scope & Objective

Following an extensive review of literature and analytical research, the study is structured around three primary objectives:

- 1) To examine the impact of Mergers and Acquisitions (Combinations) on competition policies and regulatory frameworks in India.
- 2) To evaluate the necessity of competition analysis in the context of emerging Mergers and Acquisitions within the Indian market.
- 3) To gain insights into the surge of Mergers and Acquisitions activities in India from the 1990s to the present.

The scope of this research paper has been tailored to ensure completion within a reasonable timeframe and given the constraints of available resources. The study is confined to exploring the trends, effects, and regulatory mechanisms governing Mergers and Acquisitions in India. Additionally, the paper delves into the various anti-competitive ramifications of mergers, supported by relevant case laws and an analysis of notable M&A transactions in India from the year 2020.

1.4. Hypothesis

Based on the analysis above, the hypothesis for this study is framed as follows:

"Amid evolving economic conditions, Mergers & Acquisitions (M&As) are increasingly becoming a strategic necessity for corporate enterprises to sustain themselves and remain competitive on a global scale. However, this surge in M&A activities has also led to a significant rise in their adverse impact on competition policies within the Indian market."

2. Mergers & Acquisitions and Competition Law

"Competition law is fundamentally rooted in economics and economic behaviour", as emphasized by Fali S. Nariman.

From a global perspective, competition law is broadly categorized into three key aspects:

- 1) Prohibiting Anti-Competitive Agreements & Appreciable Adverse Effect on Competition (AAEC)
- 2) Preventing Abuse of Dominance
- 3) Regulating Combinations (Mergers & Acquisitions)

The Competition Act, 2002, as a modern economic legislation, incorporates all these elements. While anti-competitive practices and abuse of dominance are typically addressed through regulatory orders, mergers and acquisitions are specifically scrutinized and regulated.⁴¹⁰

Mergers and acquisitions contribute to economic growth by expanding corporate opportunities and enhancing market competitiveness on a global scale. However, when such M&A transactions lead to anti-competitive combinations, they can disrupt market dynamics and negatively impact consumer interests.

In a rapidly expanding economy, mergers, acquisitions, and corporate takeovers have become routine, intensifying market competition. While companies pursue M&As to strengthen their market position and reduce competition, these strategies sometimes result in monopolization and restrictive business practices, including predatory pricing, anti-competitive agreements, and abuse of dominance. Such consequences create market distortions, making competition laws crucial in regulating market forces.

Given this, competition laws and M&A regulations are closely intertwined, as every

⁴¹⁰ Chaudhuri M., Mergers & Acquisitions under the Indian Competition Law – a critical legal view; Available at: https://www.jftc.go.jp/eacpf/01/india_mergers0706.pdf [Accessed on 2nd April, 2025]



merger or acquisition must undergo scrutiny by the Competition Commission of India (CCI) to ensure compliance with the Competition Act and other relevant regulations before forming a consolidated entity.

2.1. Need for Regulation

A merger between two or more firms, or even the acquisition of a business sector, is classified as a 'combination' under the Competition Act. The primary objective of government regulation over mergers and acquisitions is to foster competition while ensuring that smaller enterprises are not overshadowed or dominated by larger, well-established companies in the market. When large corporations merge, they not only reduce market competition but also hinder the growth and profitability of smaller businesses. This concentration of wealth and economic power in specific sectors could lead to significant economic and social disparities within the country.⁴¹¹

Regulating and scrutinizing mergers or acquisition deals is essential to assess their potential impact on existing market competition. Such combinations may enable the newly formed entity to manipulate or fix prices in a specific sector, raising concerns that post-M&A, the dominant company could eliminate competition in its favour while gaining control over pricing in the relevant market. The regulation of mergers and acquisitions serves both economic and political purposes, as unchecked combinations could result in 'Appreciable Adverse Effects on Competition (AAEC)', leading to distortions in the market and negatively impacting competition law.⁴¹²

In light of these regulatory requirements, no combination transaction is legally valid or

finalized unless it has been approved by the Competition Commission of India (CCI) or until the statutory review period of 210 days, as stipulated under the Competition Act, expires—whichever occurs earlier. The CCI holds the authority to approve, reject, or suggest modifications to a proposed transaction under Section 31 of the Competition Act, a provision further examined in Chapter 3 of this study.

2.2. Competition Related Issues

According to the **International Competition Network (ICN)** in its *Recommended Practices for Merger Analysis*, "the fundamental goal of competition law in merger evaluations is to identify and address only those mergers that pose a significant threat to market competition."

This section of the paper explores the competitive concerns that frequently arise from Mergers & Acquisitions (M&As). The primary focus of the Competition Commission when assessing a proposed combination is to determine whether it results in anti-competitive effects in the relevant market.

2.2.1. Anti-Competitive Agreements & AAEC

Mergers and combinations between companies are not inherently unlawful. These activities are often driven by the need for cost-efficient product and service development, market expansion, and enhanced competitive strength. However, it is crucial to assess whether a merger could lead to anti-competitive consequences, such as the newly formed entity gaining dominant market power, which may hinder competition. A merger that substantially reduces competition or impedes market dynamics can negatively impact consumers by limiting choices and raising prices.

There are two primary anti-competitive effects of mergers:

1. **Unilateral Effects** – This occurs when the merged entity, by ensuring sufficient sales volume, can profitably and unilaterally increase prices. López &

⁴¹¹ Kumbhaj N., Regulation of Combinations; Available at: [http://www.legalserviceindia.com/legal/article-3255-regulations-ofcompetitions.html#:~:text=of%20the%20Act,Regulation%20of%20Combinations,long%20form%20application\)%20as%20applicable.](http://www.legalserviceindia.com/legal/article-3255-regulations-ofcompetitions.html#:~:text=of%20the%20Act,Regulation%20of%20Combinations,long%20form%20application)%20as%20applicable.) [Accessed on 2nd April 2025]

⁴¹² Jain A. & Singh U., Effect of Competition Law on Mergers and Acquisitions in India; Available at: <http://aegaeum.com/gallery/agm.j2714.127-f.pdf> [Accessed on 1st April 2025]



Vives (2018) suggest that “mergers can lead to unilateral effects not only on pricing but also on investments in research and development (R&D), which can ultimately reduce innovation”.⁴¹³

- 2. Coordinated Effects** – When businesses and their competitors collude to engage in anti-competitive behaviour such as collectively raising prices or restricting market competition. it results in coordinated effects. A merger may facilitate and stabilize such coordination, particularly among firms that were already engaging in anti-competitive practices before the merger.⁴¹⁴

Beyond these effects, combinations are also regulated to prevent an Appreciable Adverse Effect on Competition (AAEC) in the market. The Competition Act, 2002, empowers the Competition Commission of India (CCI) to regulate such mergers. The criteria for evaluating AAEC are outlined in Section 20(4) of the Act, while Section 3 of the Act prohibits agreements including cartels that:

- Directly or indirectly fix prices for purchases or sales.
- Restrict or control production, supply, markets, technical development, or investments.
- Lead to bid rigging or collusive bidding, which unfairly manipulates competition.

In the case of **Builders Association of India v. Cement Manufacturers Association**,⁴¹⁵ the CCI ruled that anti-competitive agreements can be inferred from parties' intentions, conduct, and supporting circumstantial evidence.

Regarding **Mergers & Acquisitions**, agreements involving combinations are scrutinized based on their potential to create anti-competitive

effects. As per Regulation 25 of the Combination Regulations, if the CCI forms a prima facie opinion that a combination may cause AAEC, it can propose modifications to the merger. If the concerned parties accept these changes, the CCI may approve the combination accordingly.⁴¹⁶

2.2.2. Abuse of Dominance

Section 4 of the Competition Act, 2002, defines dominant position as the market power held by an enterprise, allowing it to operate independently of competitive forces or influence competitors, consumers, and the market in its favour. Abuse of dominance includes:

- Imposing unfair or discriminatory conditions or prices in the sale or purchase of goods and services.
- Restricting or limiting the production of goods and services.
- Engaging in practices that deny market access.
- Conditioning contract conclusions on the acceptance of additional terms.
- Leveraging dominance in one market to gain control over another.

In **Shri Shamsher Kataria v. Honda Sael Cars India Ltd & Ors**⁴¹⁷, the Competition Commission of India (CCI) ruled that forcing customers to buy spare parts and diagnostic tools only from the car manufacturer or its authorized dealers constituted an abuse of dominance by automobile companies.

A recent case, **Harshita Chawla v. WhatsApp & Facebook Inc.**⁴¹⁸, examined allegations against WhatsApp and its parent company, Facebook, for potential abuse of dominance. It was argued that WhatsApp used its dominance in the instant messaging sector to push its digital

⁴¹³ Anti-Competitive Mergers & Acquisitions ; Available at :<https://asean-competition.org/about-cpl-anti-competitive-mergers-and-acquisitions> [Accessed on 1st April, 2025]

⁴¹⁴ Coordinated Effects; Available at: <https://www.concurrences.com/en/dictionary/coordinated-effects> [Accessed on 1st April, 2025]

⁴¹⁵ COMPETITION COMMISSION OF INDIA, Case No. 29 of 2010

⁴¹⁶ Vyas V., Factors Considered by CCI to Accept/Reject Acquisition; Available at: <https://mnacritique.mergersindia.com/cpi-factorsadverse-effects-competition-merger-acquisition/> [Accessed on 1st April, 2025]

⁴¹⁷ Case No. 03/2011

⁴¹⁸ Case No. 15 of 2020



payments service, WhatsApp Pay, through bundling. WhatsApp was accused of leveraging its vast user base by integrating WhatsApp Pay directly into its messaging app, thus gaining an unfair advantage in the Unified Payments Interface (UPI) market.

The CCI assessed the dominance of WhatsApp based on factors outlined in **Section 19(4) of the Act**, including:

- 1) Market share.
- 2) Enterprise size and resources.
- 3) Competitive landscape and market entry barriers.
- 4) Consumer dependence on WhatsApp.

The alleged bundling was examined under **Section 4(2)(d)** of the Act, which prohibits coercive tying of products. The four conditions for tying are:

- 1) The tying and tied products must be separate.
- 2) The firm in question must be dominant in the tying product's market.
- 3) Consumers must lack the choice to obtain only the tying product without the tied product.
- 4) The tying must restrict or eliminate competition in the tied product market.

While the first two conditions were met, the third and fourth were not, as consumers could still choose whether to use WhatsApp Pay. Consequently, the CCI found no prima facie case of abuse of dominance and dismissed the complaint under **Section 26(2) of the Act**.

Additionally, the determination of abuse of dominance hinges on defining both the relevant product market and the relevant geographic market.

Section 6 of the Competition Act plays a critical role in regulating mergers and acquisitions

(M&As). This provision prohibits combinations that result in market dominance, preventing companies from using their strengthened position to distort competition or harm consumer interests.⁴¹⁹

2.3. Impact of Mergers & Acquisitions on Competition

The present chapter, Impact of Mergers & Acquisitions on Competition, examines different types of mergers—**Horizontal, Vertical, and Conglomerate** and their individual effects on market competition.

2.3.1. Horizontal Mergers & Their Impact on Competition

A **horizontal merger** occurs when two or more companies operating at the same level of production or distribution within a market combine. Such mergers are primarily pursued to achieve economies of scale, enhance market power, and leverage cost and revenue-based synergies. However, they can also have negative consequences, such as reducing competition by eliminating market players and creating conditions that enable price coordination, output restriction, and other anti-competitive practices.

A well-known example of a horizontal merger was Vodafone's acquisition of Hutch in 2007⁴²⁰. These types of mergers can result in unilateral anti-competitive effects, where the merged entity raises prices, reduces output, or decreases competition, while non-merging competitors maintain their existing strategies.⁴²¹

2.3.2. Vertical Mergers & Their Impact on Competition

A **vertical merger** occurs when companies at different levels of the supply chain merge,

⁴¹⁹ Anti-Competitive Mergers & Acquisitions ; Available at :<https://asean-competition.org/about-cpl-anti-competitive-mergers-and-acquisitions> [Accessed on 1st April, 2025]

⁴²⁰ Competition Commission of India: Merger Control; Available at :<https://algoallegal.in/1818-2/> [Accessed on 2nd April, 2025]

⁴²¹ Werden & Froeb, Unilateral Competitive Effects of Horizontal Mergers; Available at :https://www.researchgate.net/publication/228293682_Unilateral_Competitive_Effects_of_Horizontal_Mergers [Accessed on 1st April, 2025]



typically between firms operating at complementary stages of production for the same end product. While vertical mergers can enhance efficiency, they also pose risks of collusion and market foreclosure, where the merged entity restricts access to key inputs or distribution channels for competitors⁴²².

A notable example of a vertical merger was Reliance Group's acquisition of FLAG Telecom in 2004 for USD 207 million. Such mergers can lead to anti-competitive effects by limiting market access for third-party competitors.⁴²³

2.3.3. Conglomerate Mergers & Their Impact on Competition

A **conglomerate merger** involves the combination of companies operating in entirely different product markets, often with the objective of diversification. These mergers rarely result in anti-competitive behaviour but may eliminate future competitors and delay price competition.⁴²⁴

Notably, the United States Merger Review Guidelines do not extensively regulate conglomerate mergers. Examples include the 1995 merger of Walt Disney and the American Broadcasting Company and Amazon's acquisition of Whole Foods in 2017. While these mergers may enable bundling, tying, reduced innovation incentives, and coordinated effects, they are only considered anti-competitive in rare cases, particularly when they involve reciprocal dealings and predatory pricing.

According to **Backman (1970)**, reciprocity and predatory pricing which involve unfair pricing strategies to drive out competition are considered poor business practices.

3. Regulatory Framework for Merger Control

⁴²² Competition Commission of India: Merger Control; Available at: <https://algoallegal.in/1818-2/> [Accessed on 2nd April, 2025]

⁴²³ Economic Times, Reliance to Acquire FLAG Telecom for \$ 207mn; Available at: <https://m.economictimes.com/wealthmakers-theambanis/anil-dhirubhai-ambani-enterprises/reliance-infocomm/reliance-to-acquire-flag-telecom-for-207-mn/articleshow/934046.cms> [Accessed at 3rd April, 2025]

⁴²⁴ Economic Times, Reliance to Acquire FLAG Telecom for \$ 207mn; Available at: <https://m.economictimes.com/wealthmakers-theambanis/anil-dhirubhai-ambani-enterprises/reliance-infocomm/reliance-to-acquire-flag-telecom-for-207-mn/articleshow/934046.cms> [Accessed at 3rd April, 2025]

India's competition laws are deeply rooted in the principles of social and economic justice, as enshrined in Part IV of the Constitution, which outlines the Directive Principles of State Policy. The **Monopolies and Restrictive Trade Practices (MRTP) Act**, India's first competition law, did not explicitly recognize or regulate combinations (mergers and acquisitions). Despite multiple amendments, the MRTP Act failed to keep pace with the evolving economy, ultimately leading to its repeal and the introduction of a more comprehensive framework—the **Competition Act, 2002**.

Unlike its predecessor, the Competition Act, 2002, incorporates combination control and is supplemented by detailed guidelines. In addition to regulating anti-competitive behaviour, the Act also prohibits mergers and acquisitions that could lead to an Appreciable Adverse Effect on Competition (AAEC) in the market.⁴²⁵

A structured regulatory framework enables competition authorities to assess and regulate market changes, especially when companies seek to merge, consolidate, or combine businesses. The Competition Act, 2002, establishes threshold limits for mergers and acquisitions, beyond which companies must notify the Competition Commission of India (CCI). The 2012 Amendment Bill proposed the insertion of **Section 5A**, empowering the Central Government, in consultation with the **CCI**, to modify the threshold limits as needed.⁴²⁶

3.1 Regulatory Process for Mergers & Acquisitions

Enterprises meeting the threshold limit under **Section 5** are required to notify the CCI before entering into a merger or acquisition. As per **Section 6** of the Act, this notification must be accompanied by binding documents (as

⁴²⁵ Conglomerate effects of Mergers; Available at: <http://www.oecd.org/daf/competition/conglomerate-effects-of-mergers.htm#:~:text=However%2C%20there%20can%20also%20be,%2C%20and%20co%2Dordinated%20effects.> [Accessed at 3rd April, 2025]

⁴²⁶ Kumar J. & Roy A., Competition Law in India, Eastern Law House 2nd Edn.



outlined in Regulation 5(8) of the Combination Regulations) and the prescribed fees.

In the case of *Pantaloons Retail India Ltd.*'s acquisition by *Aditya Birla Nuvo Ltd.*⁴²⁷, the CCI held that a Memorandum of Understanding (MoU) was merely a preliminary agreement and did not qualify as a binding document, leading to the rejection of the notice for non-compliance with **Section 5**. The CCI clarified that binding documents must include formal agreements or decisions to acquire control, shares, voting rights, or assets, such as a term sheet executed by the parties.

The Combination Regulations, introduced in 2011 and amended in 2012, aim to determine whether a combination is likely to cause AAEC in the relevant market. The CCI has 30 days from receiving the notice to assess the merger. The Competition Act, 2002, and its subsequent amendments also grant extraterritorial jurisdiction to the CCI, allowing it to investigate and prohibit practices that have an AAEC in India, even if they originate outside the country.⁴²⁸

If, after reviewing the notice and binding documents, the CCI finds that a proposed combination may cause AAEC, it issues a show-cause notice asking the involved parties to justify why an investigation should not be conducted. If the response is unsatisfactory, the Director General (DG) is tasked with preparing a detailed report on the proposed merger. Additionally, the parties must publish information about the merger, allowing the public and affected stakeholders to be informed.

Under Section 20 of the Act, the CCI has the authority to investigate a combination suo motu (on its own) or based on information received to determine whether the merger has or may cause AAEC in the market. Further,

Section 6(2A) states that no combination can be implemented until either 210 days have passed from the date of notification to the CCI or the CCI has issued an order. If additional information is required, the CCI can request it under Section 29(4) of the Act.

Following its assessment, the CCI may approve, reject, or suggest modifications to the merger under Section 31 of the Act.

3.2 Regulatory Approvals Under the Companies Act, 2013

Beyond the Competition Act, the Companies Act, 2013, requires third-party regulatory approvals for mergers. Companies must send notices and submit documents (including the scheme of merger and valuation reports) to relevant regulators such as:

- 1) Ministry of Corporate Affairs (MCA)
- 2) Reserve Bank of India (for mergers involving foreign investors)
- 3) Securities and Exchange Board of India (SEBI) & Stock Exchanges (for listed companies)

Regulators have 30 days to review and provide representations on the merger.

3.3 Recent Developments - Competition Amendment Bill, 2020

The Competition Amendment Bill, 2020, introduces sector-specific thresholds for merger notifications by the CCI and the Central Government. This amendment seeks to enhance regulatory oversight and ensure that mergers align with public interest and fair competition.

4. Trends of Mergers & Acquisition in India

Over the last three decades, India's Mergers & Acquisitions (M&A) sector has witnessed significant growth. The number of M&A deals reached an all-time high of 409 transactions in 2016, marking a historic rise in deal-making activity (IMPA Insights, 2016). The liberalization of

⁴²⁷ C 2012/07/69

⁴²⁸ Sanyal T. & Chatterjee S., COMBINATION CONTROL: STRENGTHENING THE REGULATORY FRAMEWORK OF COMPETITION LAW IN INDIA?; Available at: <http://docs.manupatra.in/newsline/articles/Upload/931502F5-8DDB-4C22-AAE901890981BBF4.pdf> [Accessed at 3rd April, 2025]



the Monopolies and Restrictive Trade Practices (MRTP) Act played a crucial role in this growth, making M&As a preferred strategy for financial synergy and business expansion.⁴²⁹

Key industries that have led M&A activity in the past five to six years include:

- Energy, Mining & Utilities
- Telecommunications
- Consumer Durables
- Pharmaceuticals

A historical analysis of M&A trends in India reveals three distinct phases:

1. Pre-1990 to 1995 – The Era of Consolidation
2. 1995 to 2002 – The Period of Foreign Acquisitions
3. 2002 to 2009 – The Phase of Venturing Abroad

4.1. Phase I: M&A Trends Before 2002

The introduction of M&A practices in India post-World War II transformed the Indian industrial sector. This period saw an upsurge in M&A transactions, driven by post-war economic and political factors, including high inflation, which allowed many Indian businesses to generate high profits, dividends, and even accumulate black money (Kothari, 1967).

After India gained independence, M&A activity remained widespread, particularly in industries like:

- Jute
- Cotton textiles
- Banking
- Electricity

However, during the 1960s and 1970s, government policies and stringent regulations curtailed M&A growth. Despite this, the Indian government actively encouraged M&As in certain cases, particularly for reviving struggling businesses.

Key examples include:

- Nationalization of the life insurance sector in 1956, leading to the formation of the Life Insurance Corporation of India (LIC), which acquired 243 insurance companies.
- The National Textile Corporation (NTC) taking over several ailing textile units.

While these policies led to a concentration of economic power, they also stifled private-sector M&A activity.

4.1.1. Impact of Economic Reforms (Post-1991 Liberalization & Globalization)

The landscape of Indian M&As changed drastically post-1991 with the introduction of economic liberalization and globalization policies. These reforms fostered increased competition and opened India's economy to cross-border mergers. Factors such as:

- Privatization
- Trade liberalization
- Foreign investments
- Technological advancements

Created an environment conducive to global M&A transactions in India.

During this period, key laws that shaped India's M&A framework included:

- Companies Act, 1956 (Sections 390-395)
- Income Tax Act, 1961 (Section 2(1B))
- MRTP Act, 1969
- SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 1994 & 1997 (Regulation 11(1))

⁴²⁹ 5 Sanyal T. & Chatterjee S., COMBINATION CONTROL: STRENGTHENING THE REGULATORY FRAMEWORK OF COMPETITION LAW IN INDIA?; Available at: <http://docs.manupatra.in/newsline/articles/Upload/931502F5-8DDB-4C22-AAE901890981BBF4.pdf> [Accessed at 3rd April, 2025]



These regulations provided the legal framework for domestic and foreign M&A activity, facilitating the entry of multinational corporations (MNCs) into the Indian market.

Phase 2: 1990–1999 – The Era of Global Expansion

The 1990s witnessed a threefold increase in M&A activity worldwide. India saw a surge in intra-group mergers, where firms within the same business conglomerates combined operations. This period also marked the fifth global takeover wave, particularly in the U.S. and Europe.

4.1.2. India's M&A Waves (1990–1999)

- **1990–1995: Era of Consolidation** – Domestic firms strengthened their positions against multinational corporations (MNCs) entering the Indian market following economic liberalization.
- **1995–2000: Phase of Foreign Acquisitions** – International companies actively sought Indian firms to gain a foothold in India's expanding economy. Indian businesses, in turn, prepared to compete with foreign firms.
- **1997–1999: Period of Accelerated M&A Growth** – A significant rise in M&A deals was observed, though India still lagged behind advanced economies like the U.S. and Europe, as well as emerging nations such as Malaysia and Singapore.

Despite this, India's M&A landscape evolved rapidly, laying the groundwork for further growth in the 21st century.

4.2. Post year 2000

4.2.1 Phase 3: 2000–2009 – The Era of Venturing Abroad

The period from 2000 to 2009 marked a significant transformation in India's Mergers & Acquisitions (M&A) landscape, as Indian corporations actively expanded their presence globally. This era saw Indian companies targeting major foreign acquisitions in

industrialized nations, thereby establishing India as a key player in global industrial development.

Key Trends & Statistics (2000–2009)

➤ **Leading Sectors for M&A Deals:**

- Finance
- Real Estate
- Pharmaceuticals
- Capital Goods
- IT
- Textiles
- Hotels & Restaurants
- Consumer Durables

➤ **M&A Growth Over the Decades:**

- **1980–1990:** 268 deals
- **1990–2000:** 1,034 deals
- **2000–2009:** 2,656 deals (a significant jump)
- **Peak Year (2006):** 927 M&A deals completed
- **Other major years:**
 - **2005:** 427 deals
 - **2007:** 517 deals

➤ **Sector-Wise Growth (2000–2010):**

- 77% of M&A activity was concentrated in the manufacturing sector.
- More than 80% of deals took place in the financial services sector.

4.2.2. Shifting Trends in Mergers

- 1) Until 2000, mergers were typically focused on consolidating within similar product lines.
- 2) Post-2000, the objective shifted towards:



- Diversification
- Market entry into new regions
- Business expansion
- Strategic restructuring

4.2.3. Post-2014: A New Era of Aggressive M&A Strategies

With the arrival of a new government in 2014, revitalizing India's economy became a key focus. This led to a favourable business climate, encouraging Indian companies to be more aggressive in global acquisitions.

Major Indian Acquisitions (2007-2017)

- Tata Steel (Corus acquisition)
- Hindalco Industries (Novelis deal)
- Adani Group (global infrastructure deals)
- Bharti Airtel (expansion into Africa)
- Vodafone-Idea merger
- Walmart's acquisition of Flipkart

During this time, India emerged as one of the leading nations in global M&A activity.

4.2.4. Recent M&A Developments (2018-2019 & beyond)

- 2018 was the second-best year for M&A in India, witnessing a surge in deals and investments.
- 2019 saw a slight slowdown, but public M&A transactions increased significantly, contrasting with previous years where private mergers dominated.
- Infrastructure sector deals and private equity investments in M&A are expected to rise in the coming years.

Overall, India's M&A trajectory has evolved from domestic consolidations to global expansions, positioning Indian firms as strong players in the international market.

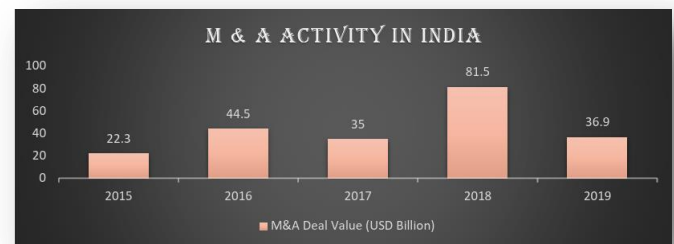


Fig: M&A Deal Value and Amount in

India⁴³⁰

4.3. In Modern India (2020)

Despite the economic downturn caused by the COVID-19 pandemic, 2020 saw several noteworthy and impactful Mergers & Acquisitions (M&A) transactions. These deals not only influenced the business landscape but also significantly affected market competition.

4.3.1. Zomato's Acquisition of Uber Eats

➤ **Deal Value:** \$350 million

➤ **Transaction Details:**

- Uber received a 9.99% stake in Zomato in exchange for transferring its entire Uber Eats business to the latter.
- Zomato did not absorb Uber Eats' employees, leading to uncertainty regarding their future employment.
- Employees were left with the option of either joining Uber

⁴³⁰ Deals in India: Annual Review and Outlook for 2020; Available at: <https://www.pwc.in/assets/pdfs/services/deals/deals-in-indiaannual-review-and-outlook-for-2020.pdf> [Accessed on 3rd April, 2025]



India's operations or facing layoffs.

➤ **Background & Rationale:**

- Uber Eats had struggled since its inception, facing stiff competition from dominant players like Swiggy and Zomato.
- Uber had been attempting to exit the Indian food delivery market since 2019 and had previously explored a deal with Swiggy, which did not materialize.

➤ **Impact:**

- With Uber Eats' exit, the Indian online food delivery market became a duopoly, with Zomato and Swiggy as the two major players.
- Both companies continued to develop unique strategies to cater to the growing demand for online food delivery, especially during the pandemic.

4.3.2. Reliance's Acquisition of Urban Ladder

➤ **Deal Value:** ₹182.12 crore

➤ **Transaction Details:**

- Reliance Industries Ltd. (RIL) acquired a 96% stake in Urban Ladder, an established online furniture retailer.

- The company planned to purchase the remaining 4% stake by 2023.

➤ **Background & Rationale:**

- Urban Ladder had been experiencing financial difficulties for two years, largely due to intense competition from Pepperfry.

- The acquisition provided Reliance an opportunity to expand into the online home decor sector.

➤ **Impact:**

- The deal strengthened Reliance's position in the e-commerce furniture market, putting it in direct competition with Pepperfry, Amazon, and Flipkart.
- This move aligned with Reliance's broader strategy of expanding its presence in the online retail space.

4.3.3. Reliance Jio-Facebook Partnership

➤ **Deal Value:** ₹43,574 crore

➤ **Transaction Details:**

- Facebook acquired a 9.99% stake in Jio Platforms, becoming its largest minority shareholder.

➤ **Background & Rationale:**

- Both Facebook's WhatsApp and Reliance Jio had a user base of approximately 400 million in India.

- The partnership was expected to enhance JioMart's reach and enable Facebook to strengthen its foothold in India's digital ecosystem.

➤ **Impact:**

- The collaboration enhanced Reliance's position in India's digital and e-commerce sector.
- Facebook gained increased access to the Indian market, leveraging its existing WhatsApp user base.
- Mukesh Ambani described the deal as a key contributor to



India's Digital Transformation initiative.

4.3.4. Reliance's Acquisition of Future Group (2020)

Another significant acquisition by Reliance in 2020 was its takeover of Future Group's retail business, a deal that was recently approved by the Competition Commission of India (CCI).

- **Deal Value:** ₹24,713 crore
- **Transaction Details:**
 - The acquisition aimed to strengthen Reliance's position as India's largest organized retail player.
 - All separately listed subsidiaries of Future Group including its apparel, supply chain, and grocery businesses were first merged into Future Enterprises Ltd. (FEL).
 - Following this merger, Reliance Industries Ltd. (RIL) acquired FEL, effectively taking control of Future Group's retail assets.

Impact & Strategic Importance

Dominance in India's Retail Market – This acquisition further solidified Reliance's leadership, making it the most dominant player in organized retail.

Competitive Edge–Reliance's market position strengthened, surpassing competitors like Amazon, Walmart-owned Flipkart, and other retail chains.

Expansion of Retail Portfolio – By integrating Future Group's assets, Reliance gained greater control over India's fast-growing retail sector, reinforcing its e-commerce and offline retail strategy.

This deal marked a crucial step in Reliance's retail expansion, further consolidating its hold over India's retail and supply chain industry.

5. CONCLUSION

Mergers and Acquisitions (M&As) have become a cornerstone of economic growth in India, driven by technological advancements, evolving market dynamics, and favourable regulatory reforms. However, like a double-edged sword, M&As not only enhance business expansion and competitiveness but also pose significant competition and antitrust challenges. If not effectively regulated, these challenges can hinder fair market competition and compromise economic and consumer welfare.

This study, based on secondary data analysis, highlights the evolution of M&A trends in India—from the post-independence era to the modern economy. The dynamic nature of M&As has reshaped market structures and business strategies over time. A key consequence of the increasing M&A activity has been the rise of dominant market players engaging in restrictive practices, leading to an Appreciable Adverse Effect on Competition (AAEC).

The research supports the hypothesis that M&As have become essential for businesses to survive and compete globally. However, concerns regarding their adverse impact on competition policies in India remain valid. Despite these concerns, India's Competition Law provides sufficient safeguards to regulate such risks.

One critical gap in the regulatory framework is the absence of a pre-combination consultation mechanism. The Competition Commission of India (CCI) determines effective control on a case-by-case basis, but the lack of structured pre-merger consultations makes the process more complex and time-consuming. Implementing the pre-combination consultation mechanism, as proposed in the 2011 draft Combination Regulations, could:

- Expedite regulatory approvals
- Enhance transparency in competition assessments
- Ensure a more predictable M&A evaluation process



In conclusion, while M&As continue to play a pivotal role in India's economic landscape, it is crucial to strike a balance between business growth and competition regulation. Strengthening policy frameworks, particularly by integrating pre-merger consultations, would enhance the efficiency and effectiveness of competition law enforcement, ensuring that M&As contribute positively to India's economic progress without undermining market fairness.

