

**REGULATION OF THE COMPETITION COMMISSION ON FOREIGN
INVESTMENT COMBINATION AGREEMENTS WITH SPECIAL REFERENCE
TO VODAFONE CASE**

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INTRODUCTION

According to the World Investment Report 2020, India stands in the status as 9th largest Foreign Direct Investment (FDI) holder in 2019, with 51 billion dollars of FDI inflows in this year.³ India's embrace of the free-market paradigm in 1991 considerably expanded the economic policymaking autonomy of subnational governments.⁴ The rich resources of India attract many foreign investors to pour investment in India. India is also in need of FDI for the fulfilment of investment, technology, managerial skills and market access.⁵ Foreign investment bringing in goods and services helps not only in the increase of GDP rate but it is also accused of anti-competitive impacts on domestic companies.⁶ In 1999, the conservative and restrictive Foreign Exchange Regulation Act (FERA) of 1973 was repealed and replaced with the flexible Foreign Exchange Management Act (FEMA) of 1999.⁷ Competition is the life force of markets that create the best incentives for businesses to increase efficiency, drive their productivity and fuels innovation.⁸ The Competition Commission of India (CCI) safeguards the corporate market from anti-competitive impacts. This paper analyses the regulations of the Competition Commission on FDI combination agreements through its anti-competitive impacts for understanding its consequences on the consumers' adhesion agreements and impacts on crowding in or out of domestic investors. The main objective is to

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³ World Investment Report, 2020, *CHAPTER I GLOBAL INVESTMENT TRENDS AND PROSPECTS*, 12
<https://unctad.org/system/file>

⁴ Loraine Kennedy, *The Politics of Economic Restructuring in India: Economic Governance and State Spatial Rescaling*, 20 (Routledge, 2nd ed. 2013)

⁵ FDI India, (Jul., 25, 2020, 03:00PM), <https://fdiindia.in/about-us>,

⁶ Badri Narayan Rath and Debi Prasad Bal, *Do FDI and public investment crowd in or crowd out private domestic investment in India*, 48 *J Dev. Areas*, 269, 269 (2014)

⁷ Chanchal Kumar Sharma, *Federalism and Foreign Direct Investment: How Political Affiliation Determines the Spatial Distribution of FDI—Evidence from India* 1-7 (GIGA Working Papers No. 307, 2017)

⁸ CCI Annual Report (2018-19), (Nov. 22, 2020, 9:00PM),

<https://www.cci.gov.in/sites/default/files/annual%20reports/>

study on the indispensable need of Foreign Direct Investment flow in India and to make a study on the monitoring role of the Competition Commission in the approval of FDI Combination agreement.

FOREIGN DIRECT INVESTMENT

Foreign Direct Investment (FDI) means investment by non-resident entity/person residing outside India in the capital of the Indian company under Schedule 1 of FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations 2000.⁹ In the Foreign investment process, the resident of the home country acquires assets to control the activities of the firm in the host country.¹⁰ Trade Liberalization as a result of GATT-WTO agreements and Competition policy share the common objective of eliminating the barriers of foreign investment in trade and commerce.¹¹ FDI benefits the host country if the domestic firms avail similar sophisticated technologies.¹² On April 17, 2020, the Department for Promotion of Industry and Internal Trade (DPIIT), India altered its Foreign Investment policy to protect Indian companies from "opportunistic takeovers/acquisitions of Indian companies due to the current COVID-19 Pandemic".¹³

TYPES OF COMBINATIONS

The Foreign Direct Investment can be made by Horizontal, Vertical and Conglomerate Combination agreements executed between investors and acceptors. According to Section 5 of the Competition Act, 2002, the Combination of Enterprises is defined as the acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises.¹⁴ Horizontal merger or Combination related to FDI refers to the merger of foreign and

⁹ Department of Industrial Policy and Promotion (DIPP) Ministry of Commerce and Industry Government of India, Circular Consolidated FDI Policy, 2015, *Dipp manual definition* Chapter 2-1-12, p.4, (Nov 05, 2020, 9:00AM), <https://dipp.gov.in/sites/default/files/FD>

¹⁰ B.K. Loksha, and D.S. Leelavathy, *Determinants of Foreign Direct Investment: A Macro Perspective*, 47(3) *IJR* 459, 460 (2012)

¹¹ UNCTAD, Report by UNCTAD Secretariat, UN Conference on Trade & Development, (Empirical Evidence of the Benefits from applying Competition Law and Policy Principles to Economic Development to attain greater efficiency in International Trade & Development (TD/B/COM.2/EM/10).) pp.1-22, (1998)

¹² Christian Fons-Rosen et al., *Foreign investment and domestic productivity: Identifying knowledge spill overs and competition effects*, 2 (National Bureau of Economic Research, 2017), w23643.pdf (nber.org),

¹³ FDI Policy Section Press Note No. 3(2020 Series) Government of India Ministry of Commerce & Industry Department for Promotion of Industry and Internal Trade, ch5.2.27.3 Para3.1.1

¹⁴ The Competition Act, 2002, Act No.12 of 2003, Ministry of Law and Justice, §5.

domestic companies at the same level of production or distribution in the relevant market. In the acquisition of Monsanto by Bayer¹⁵, the Commission recognised that, as both the parties were active in the downstream market for commercialization of Bt. Cotton seeds in India, it resulted in horizontal merger. The global acquisition by the German chemical and pharma major Bayer AG on US-based biotech major Monsanto of \$63million was justified on the grounds of innovation in the agricultural field.¹⁶ A Vertical Merger is a combination of a firm in the upstream market with a firm in the downstream market.¹⁷ According to the SVS Raghavan Committee, the horizontal merger proves to be anti-competitive than vertical mergers.¹⁸ However, the Vertical mergers can be anti-competitive if it results in foreclosure or enhanced co-ordination.¹⁹ The Conglomerate merger is a merger between businesses that operate in different product markets happening between diversified companies. According to the SVS Raghavan Committee the Conglomerate Mergers do not prove to be anticompetitive. The Corporate mergers and acquisitions are aimed at enhancing competitive advantage and amplifying efficiency of firms.²⁰

FDI'S IMPACT ON CONSUMERS AND DOMESTIC INVESTORS

The Indian consumer market creates major opportunities and challenges for both the Indian and multinational companies in a similar way.²¹ The Foreign investment occupies from Energy sectors to Retail sectors and the Government invest or investigate to invest only for improving its image in global competition. The advent of foreign investment in Retail sectors

¹⁵Competition Commission of India, Combination Registration No. C-2017/08/523 dated June 14,2018 Order_14.06.2018.pdf (cci.gov.in)

¹⁶PTI. Leverkusen, *Bayer completes acquisition of Monsanto*, The Hindu Business Line.com, June 07, 2018, <https://www.thehindubusinessline.com/> (Lastly Visited Dec.2, 2020).

¹⁷Steven C. Salop, & Daniel. P. Culley, *Potential Competitive Effects of Vertical Merger, A How-To Guide for Practitioners*,4(2014) <https://scholarship.law.georgetown.edu/cgi/>

¹⁸Justice SVS Raghavan, High-Level Committee of Competition Law, (May 22,2000)_Government of India, Report of the High-Level Committee on Competition Policy and Law (May 2000), https://theindiancompetitionlaw.files.wordpress.com/2013/02/report_of_high_level_committee_on_competition_policy_law_svs_raghavan_committee.pdf.

¹⁹Jeffrey Church, *Vertical Mergers, Issues in Competition Law and Policy*, 2 AA Section of Antitrust Law, 1455,1461-63 (2008)

²⁰Onyanko Mark Omondi, *Effect of Merger and Acquisition Strategy on Competitive Advantage of ICEA and Lion Group, Kenya*,1,53-55 (Research project submitted to School of Business, the University of Nairobi,2016) <https://pdfs.semanticscholar.org>

²¹Jonathan Ablett, Aadarsh Baijal, Eric Beinhocker, Anupam Bose, Diana Farrell, Ulrich Gersch, Ezra Greenberg, Shishir Gupta, and Sumit Gupta, 'The Bird of Gold - The Rise of India's Consumer Market', McKinsey and Company, (2007).

such as Wal-Mart displays altogether numerous products in single and convenient locations, thereby decreasing the transactions costs of consumers.²² It has been found that Wal-Mart is largely responsible for the demise of small discount retailers.²³ The elevated competitive pressures by foreign investors through logistics discounts on the competitive products may pave way for the exit of some marginally profitable domestic firms out of the corporate market absolutely.²⁴ These consequences may lead to the monopoly establishment of foreign investors and may prove to be anti-competitive. In these circumstances, the monitoring role of CCI may prove to be indispensable to maintain the competitive efficiency of India.

The entry of foreign investors to an existing industry may provide sizeable impact on the structure and level of competition by giving valuable innovative updated knowledge to domestic firms thereby increasing export propensity paving way for economic development.²⁵ According to ASSOCHAM report 2012, the investment of FDI in Automobile, Telecommunication and IT has brought them global market recognition. According to ICRIER (Indian Council for Research on International Economic Relations) survey on FDI retailing in India, mostly 85% of consumer durables manufacturers favoured for FDI in retailing in India.²⁶ Hence, foreign investment has both pros and cons which has to be balanced for economic development. The two main types of efficiency promoted by competition are “static efficiency” (optimum utilization of existing resources at least cost) and dynamic efficiency (optimal introduction of new products).²⁷ The competition in market is necessary to maintain both efficiencies. The Role of Competition Commission's broad tent approach is imperative and indispensable to balance the efficient foreign direct investment and also the protection of consumers and domestic investors.

²² Leonardo Iacovone, Beata Javorcik, Wolfgang Keller & James Tybout *Walmart in Mexico: The impact of FDI on innovation and industry productivity*, 1,14-17 (The University of Colorado,2009)

²³ Panle Jia, *What Happens when Wal-Mart comes to Town? An Empirical Analysis of the Discount Retailing Industry*, 76(6) *Econometrica* 1263,1302(2008).

²⁴ E.A.S. Sarma, *Need for caution in retail FDI*, 40(46) *Economic and Political Weekly*, 4795,4798 (2005).

²⁵ P.Enderwick, *Attracting desirable FDI: theory and evidence*,14(2)*Transnational Corporations*,93,106 (2005)

²⁶ M.Arпита &P. Nitisha, *FDI in retail sector, India*. 104 (Academic Foundation in association with ICRIER and Department of Consumer Affairs, New Delhi, 2005)

²⁷ UNCTAD, Report by UNCTAD Secretariat, UN Conference on Trade & Development, (Empirical Evidence of the Benefits from applying Competition Law and Policy Principles to Economic Development to attain greater efficiency in International Trade & Development((TD/B/COM.2/EM/10).) pp.1,6(1998)

CCI's CONTROL ON FDI BEFORE COMBINATION

The CCI's control on FDI before Combination can be analysed based upon the Combination thresholds, CCI approval procedure, CCI analysis on main clauses of Combination agreements and factors on CCI approval of Combinations.

COMBINATION THRESHOLDS IN INDIA

The Competition Act, presently in the transitional stage is fairly recent legislation vital to the economic growth of the country.²⁸ According to Section 5 of the Competition Act,2002, the foreign investors have to get CCI approval for the Combinations with domestic investors based on the thresholds on the value of assets and turnover for Enterprises or Group Level. The Competition Commission also provides the De Minimus exemption for boosting FDI investments. The De Minimis Exemption is provided to the enterprises with control, shares, voting rights or assets of value not exceeding Rs. 350 Crore in India or turnover not greater than Rs. 1000 crore in India from the application of Section 5 of the Competition Act for a duration of 5 years and for the group exercising less than 50% voting power, an extension of the exemption for further five years is granted.²⁹ The Competition Commission regulates foreign investment through combination thresholds with De Minimis relaxation.

CCI's APPROVAL ON FDI COMBINATION

According to Section 6³⁰ in the Competition Act, 2002, the combination which causes or likely to cause an appreciable adverse effect on competition are held to be void. The CCI approval can be obtained through the Green channel procedure or Normal procedure. The combinations that are not likely to have an Appreciable Adverse Effect on competition in India are exempted from filing of an application with the Competition Commission through Green Channel Approval. Green Channel procedure automatically approves the mergers reducing transaction costs. If the declaration is found to be deceptive, approval will be

²⁸ T. RAMAPPA, (2014) *Competition Law in India, Policy, Issues and Development*, 30 (3rd ed., Oxford University Press, Oxford.2014)

²⁹ Central Government Notification, *Revised Thresh holds in Section 5 of the Competition Act,2002*, Ministry of Corporate Affairs MCA through Notification No. S.O. 674(E) & 673(E) dated March 04, 2016, Notification | Competition Commission of India, Government of India (cci.gov.in) SO 673(E)-674(E)-675(E).pdf (cci.gov.in)

³⁰ The Competition Act,2002, Act No.12 of 2003, Ministry of Law and Justice, at 6.

declared void-ab-initio after a reasonable opportunity to the companies.³¹ Out of the total of 33 filings received from 1st January 2020 to June 2020, eight (8) filings are under the green channel as not likely to cause adverse impacts in competition. The reducing of approval stand still period of 210 days by Green Channel Procedure improves the foreign investment in India.³² The normal approval procedure involves the inquiry or cooling period of 210 days after notification and regulation 19(2) provides for approval after modification by parties of the combination agreements.³³ Thus, CCI has every right to revoke combination approval orders if the combination results in anti-competitive effects.

CCI's ANALYSIS ON MAIN CLAUSES IN COMBINATION AGREEMENTS

The Competition Commission analyses the clauses in Combination agreements on deciding the approval of Mergers and Acquisitions. As per the Material Adverse Event clause, the risk of loss on events has to be borne by any one of the parties if it incurs in the interim period between the signing and execution of merger agreements.³⁴ These clauses empower the acquirer, investor or buyer to terminate the transaction on occurring of any material adverse change.³⁵ The non-competition clause imposes restrictions on both buyer and seller. As non-compete clauses create an artificial barrier to trade, they also fall outside the basic principles of free trade.³⁶ In³⁷notice under Section 6(2) for the proposed combination of Advent International Corporation and MacRitchie Investments Limited, Singapore incorporated company (acquirer), CCI directed for modification u/s 31(1) for the reduction of non-compete clause period from 5 to 3 years. The Competition Commission also permitted Rescue mergers as failing firm defence to prevent the closure of companies in Covid-19 situation. Hence, CCI

³¹ M.P. Ram Mohan, and R. Vishaka, *Merger control for IRPs: Do acquisitions of distressed firms warrant competition scrutiny?* 2,4(Indian Institute of Management Ahmedabad, WP No.2020-05 2020)

³² CCI, *Fair Play*, 33 The Quarterly Newsletter of Competition, 10 (2020).

³³ CCI (Procedure regarding the transaction of business relating to combinations) Amendment Regulations, 2018 (October 9, 2018)

³⁴ R.T. Miller, *The Economics of Deal Risk: Allocating Risk through Mac Clauses in Business Combination* 50 Wm. & Mary L. Rev. 4 (2008) <https://www.osborneclarke.com/insights/mac-clauses-in-ma-agreements/>

³⁵ R.J. Gilson & A. Schwartz. *Understanding MACs: Moral hazard in acquisitions*,21(2) J.L. Econ. & Org. 330,331 (2005)

³⁶ N. Hanni, *Exclusive Distribution and Non-Compete Clause in Trade: Transnational Agreements in the European Union and the United States*,3(2) Udayana Journal of Law and Culture 141,145(2019)

³⁷ Competition Commission of India, *Combination of Advent International Corporation and MacRitchie Investments Limited*, Combination of Registration No. C-2015/05/270 (June 12, 2015), Order under Section 31(1) of the Competition Act, 2002. C-2015-05-270_0.pdf (cci.gov.in)

also proposed to omit Non-compete restrictions in paragraph 5.7 in Form-I of Combination agreements for Foreign Investments flexibility. The Umbrella Clause commonly refers to the parties abiding by the obligations of state and giving additional protection to investors concerning the contractual obligations in the provisions of the state.³⁸ The domination of parties through any of these clauses can be scrutinised by Competition Commission and the agreements may be approved after the inclusion of suggested modifications and rectifications.

FACTORS IN CCI APPROVAL

As two sides of a coin, the performance of FDI has been impressive on some fronts, satisfactory on several other fronts, and inadequate in certain respects.³⁹ According to Section 20(4) of the Competition Act, 2002,

- i) Adverse factors are barriers to new entrants and increase in price
- ii) Determining factors are sustainability and elimination of competition based on market share and alternatives.
- iii) Defence factors are Combinations outweighing adverse impacts and Economic development.

To meet the demands of the competitive market forces, Mergers and Acquisitions are crucial growth catalysts to sustain in the business world.⁴⁰ The CCI's analysis and determination of appreciable adverse effect can be explained through Vodafone-Idea merger case.⁴¹ On 17.04.2017, Vodafone India Limited (VIL) the Indian subsidiary of UK-based Vodafone Group, Vodafone Mobile Services Limited and Idea Cellular jointly filed a Notice under Section 6(2) of the Competition Act, 2002 for merger and amalgamation of telecommunication business of VIL. The Commission analysed the following factors under Section 20(4) of the Competition Act, 2002. The analysed factors are;

³⁸ OECD, *Interpretation of the Umbrella Clause in Investment Agreements*, International Investment Law: Understanding Concepts and Tracking Innovations: A Companion Volume to International Investment Perspectives, OECD Publishing, Paris, <https://doi.org/10.1787/9789264042032-3-en>.(2008)

³⁹ S. Chandrachud & N. Gajalakshmi, *The economic impact of FDI in India*, 2(2) Int. J. Humanit. Soc. Sci. Inv., .47,52 (2013)

⁴⁰ A. Mishra, A. Pradhan, & O. Bisht, *The impact of trust on leadership during mergers and acquisitions: case studies from the Indian telecom sector*. 4(2) People: Int.J. of Soc.Sci., 1035,1036(2018)

⁴¹ Vodafone-Idea Merger Approval, Combination Registration No. C-2017/04/502 (CCI, Oct 03, 2017) Order_C-2017-04-502.pdf (cci.gov.in)

- a) Concentration Analysis⁴²- As the Vodafone Idea Ltd. holds 25% of the assigned spectrum and 50% of specific band spectrum exceeding 50% share the Commission observed that the Proposed Combination is likely to result in significant market shares and change in concentration in 14 telecom circles
- b) Competitive constraints post the Proposed Combination- On deciding closeness of competition, out of 14 telecom circles, the Parties appear to be close competitors in 10 telecom circles namely Andhra Pradesh, Mumbai, Punjab, Uttar Pradesh (East), Uttar Pradesh (W), West Bengal, Gujarat, Haryana, Kerala and Maharashtra.
- c) Buyer Power⁴³- As per Mobile Number Portability Regulations, 2009, Telecommunications Service Priority, the near-zero switching cost ensures that there is price competition amongst the TSPs (Telecom Service Providers) to retain customers.
- d) Competition Extent after the Proposed Combination⁴⁴-The Commission on examining the potential of the competitors like Bharti Airtel, RCOM and Aircel, Jio, Tata and BSNL/MTNL opined that they are in a position to exercise adequate competitive constraints on the Merged Entity and to eliminate any likelihood of adverse effect on competition resulting from the Proposed Combination.
- e) Level of combination in the market- The increase in the number of subscribers requires significant investments by operators to build coverage, data capacities and quality. The Commission analysed that out of 220 countries 213 countries have 4 or fewer operators, 6 countries have 5 TSPs and only India will have more than 5 TSPs. Hence, the Commission is of the opinion that a reduction in the number of competitors at this stage is not likely to have any adverse effect on competition in mobile telephony markets. After analysing these adverse and determining factors, CCI approved the Vodafone-Idea merger as it does not result in adverse impacts on competition. The analysis of the factors affecting competition in corporate sectors before and after the Combination helps to maintain a healthy competition for economic elevation. On analysing with Michael Porter's five forces model, the reasons for the merger is given to be Threat of entrants & substitutes, bargaining powers of buyers &

⁴² Id. At 4-6

⁴³Vodafone-Idea Merger Approval, Combination Registration No. C-2017/04/502 (CCI, Oct 03, 2017) Order_C-2017-04-502.pdf (cci.gov.in) at p.7

⁴⁴ Id At 8-10

suppliers and the competition rivalry.⁴⁵ These reasons make a need for larger investment through mergers.

CCI'S CONTROL AFTER COMBINATION

The CCI also has the power to order a demerger under Section 28 of the Competition Act 2002, if the merged entity is abusing its dominant position. This means that if the merged entity engages in any form of exploitative or exclusionary practice, the CCI can take appropriate action inclusive of the order to segregate the merged firm.⁴⁶ In *Mohit Manglani v. Flipkart India (P) Ltd*,⁴⁷ the informant alleged exclusionary agreements by e-portals with the sellers. The Commission analysed and opined that e-commerce accounts for less than one portion of total retail market. Hence, ordered that there is no dominant position creating adverse effects in competition. The Competition Commission also has powers to impose penalty extending 1% of turnover or assets value whichever is higher for non-furnishing of the information under Section 43A of the Act and penalty of fifty lakhs to one crore for furnishing of false information under Section 44 of the Act. CCI can also monitor the cartels and vertical agreements executed by the company u/s 3 and also abuse of dominant position u/s 4 of the Competition Act after combination. The monitoring power of the CCI after Combination helps to regulate FDI investments even after the approval of combination

RESULT ANALYSIS AND IMPLICATIONS

Foreign investment brings about innovations and improvements in Indian industry.⁴⁸ The retailers have the fear of their eviction from market due to foreign investment but the manufacturers are gearing themselves to face the global investors.⁴⁹ The Competition Commission has powers to reject or suggest modifications if foreign investment

⁴⁵ Saurav Kumar, *Restructuring of Indian Telecom Industry: Emergence of Reliance Jio and M&A Cases Involving Airtel-Telenor And Vodafone-Idea*, 14(1) *Management Insight*, 42,45 (2018)

⁴⁶ M. Tewari, *what does India think?*, (GODEMENT F., ED.). European Council on Foreign Relations, 79,83, (2015)

⁴⁷ *Mohit Manglani v. Flipkart India (P) Ltd.*, Case No. 80 of 2014, <http://www.cci.gov.in/sites/default/files/802014.pdf>

⁴⁸ Enderwick, P., *supra*.20 at 204-207

⁴⁹ ARPITA MUKHERJEE, NITISHA PATEL, AND ARVIND VIRMANI, *FDI in retail sector, India*, 69 (Academic Foundation, 2005)

combinations prove to be anti-competitive.⁵⁰ The study on the regulation of the Competition Commission on Foreign investment before and after the Combinations clearly portrays the indispensable regulating and monitoring position of CCI and it also shows that the administrative and executive powers of CCI have to be strengthened for efficient functioning. Liberalisation and the elimination of distortions within an economy do not automatically lead to growth in the absence of the supply capabilities to take advantage of new opportunities, and the prevalence of competition is only one factor determine countries' growth rates.⁵¹ The Competition Laws usually allow the competition authorities to assess the trade-off between the injury to consumers on permitting a monopoly versus potential benefits.⁵² The study on the impact of FDI on domestic investors and consumers portrays the need for effective participation of CCI for balancing the protection of domestic investors and FDI investment much needed for the economic development of India. Though Foreign Investment is often perceived as a channel of progress and development; it is also criticised as an instrument employed by rich countries to control resources in developing economies.⁵³ In this stage, Foreign Direct Investment and Competition has to be balanced to compete with Globalized countries in the world market. The main limitation of this study is the lack of analysis on the efficiency of CCI and there is further scope of study on analysis of efficiency of CCI based on its current functioning.

CONCLUSION AND SUGGESTIONS

The Foreign investment liberalisation by removing formal barriers to the entry of FDI has increased the competition among the national markets. The weighing balance of economic growth has to be balanced between Foreign Direct Investment and Competition in the Corporate sectors. The control of CCI on FDI through fixation of Combination thresholds,

⁵⁰Ram Mohan, M. P., and Vishaka, R., *supra*, 27 at 28.

⁵¹Report by UNCTAD Secretariat, UN Conference on Trade & Development, (Empirical Evidence of the Benefits from applying Competition Law and Policy Principles to Economic Development to attain greater efficiency in International Trade & Development((TD/B/COM.2/EM/10).)1-22,13(1998)

⁵²R. Gupta, & P. Malik, *FDI in Indian retail Sector: Analysis of competition in Agri-food sector*, 40 (Internship Project Report, Competition Commission of India, 2012)

⁵³M.PANT & S. DEEPIKA, *FDI in India: History, policy and the Asian perspective*, (Orient Black swan Private Limited, New Delhi, 2015)

approval procedures, factor analysis in Combination agreements with reference to Vodafone-Idea merger brings forth the regulation of FDI in India. The monitoring role of CCI after Combinations also paves way for the protection of domestic investors. In the light of the above considerations, a welfare-oriented competition regime could adopt a preventative approach to abuses of buyer power, and the remedies proposed should be prophylactic in nature. The Provisional powers of Competition Commission have to be strengthened to segregate the beneficial effects of Foreign Investment from the bad effects affecting consumers and domestic investors.

In the Vodafone case discussed above the role of CCI in approving FDI is commendable. The CCI while approving any combinations takes into consideration as provided in the Competition Act. But, it is also seen that combinations are analysed only in terms of the net worth of companies and whether there is any appreciable adverse effect on combination and the consumer perspective is missed in most cases. In Vodafone case by this merger the reduction in the number of telecom companies in the market before and after the said combination has come down. This results in the reduction of choice for customers in accessing the service. Reduction in choice may lead to monopoly and also reduce the quality of services provided. In any combination the CCI has to give importance to customer's choices which will in turn uphold the objectives of the Competition Act. Bringing in more FDI is important to the economy of the nation but at the same time it is equally important that customers rights are safeguarded. Hence a customer-oriented approach is needed in analysing combinations in the future. The upcoming changes in the Indian consumer market will create major opportunities and challenges for both the Indian and multinational companies and the strengthening of Competition Commission with consumer- oriented approach will pave way for better economic development.