"Competition Commission and SEBI Take Over Code Interface in Mergers & Acquisitions"

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DISSERTATION SYNOPSIS

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CERTIFICATE

This is to certify that the research work entitled **'Competition Commission and SEBI Take Over Code Interface in Mergers & Acquisitions'** is the work done by Shashank Pant under my guidance and supervision for the partial fulfilment of the requirement of B B.A., LL.B. (Hons.) degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

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DECLARATION

I declare that the dissertation entitled '**Competition Commission and SEBI Takeover Code Interface in Mergers & Acquisitions'** is the outcome of my own work conducted under the supervision of Professor Krishna Singh, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

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TABLE OF CONTENTS

CHAPTER 1: Origin of SEBI and SEBI

A. History Of SEBI Takeover regulations......................................10-11
B. Origin Of Competition Laws In India.......................................12-13
C. SEBI takeover procedure Snap Shot...14-17
D. Take-Over Regulations exemptions...18

CHAPTER 2: M & A Regulation by SEBI and CCI.

E. New Changes in M&A Takeover code.................................19-24
F. CCI and the nature of Markets..25-28
G. CCI & its investigations procedure......................................29-31
H. CCI & Cartels..32-33
I. CCI & Combinations under section 5&6.............................34-36
J. Combination Triggers benchmark...37
K. Timeline and Combination filings.......................................38-40

CHAPTER 3: M & A compliance regulations.

L. Merger Agreements...41
M. Legislative Framework..42
N. Kinds of Mergers and Takeover..43-44
O. M and A regulatory approvals...45-46
P. Court Applications..47-53

CHAPTER 4: M & A activities affecting India.

Q. 11 biggest acquisitions by Indian Companies.............................54-58

R. Factors giving rise of M & A activities.......................................59-60

S. Pros and Cons of M & A activities..61-64

T. M and A activities basic procedure..65-67

CHAPTER 5: Takeover Code and Combination Case Law Analysis

U. Sun Pharma- Ranbaxy (Acquisition case law analysis)....................68-72

V. Jet Airways-Etihad 24% stake acquisition analysis..........................73-79

W. Bibliography..80.

Statement of Problem

This research study aims to explore regulatory conflicts in India and project countries and assesses the approaches taken at various stages to address them (conflict in mergers). The project also tried to compare conflict of jurisdiction between sector regulation and Competition in India market as well world. The objective of the study is to draw on the experiences of different countries to tailor an effective cooperative/merger/amalgamation regime for India.

Survey of the existing literature

When one takes a closer look at the existing literature on research on M&As' performance, three basic research streams can be discerned in respect of literature related to reasons for M&A failure or success. According to Jarillo (2006) and Hitt et al. (2005), and in keeping these works conclusion, successful acquisitions generally involve well-conceived strategy to select the target, an effective integration process and avoiding paying too high a premium. Hence, the theoretical arguments and empirical findings of those three dimensions will be further analyzed M&A' performance.

Corporate acquisitions represent part of a corporate/business strategy used by many firms to achieve various objectives. For example, acquisitions can be used to penetrate into new markets and new geographic regions, gain technical/management expertise and knowledge, or allocate capital. In order to survive and grow, business organizations often utilize mergers and acquisitions strategically. However, many poorly understood and managed acquisitions result in disappointing performance, and up to 85 percent are regarded as generally unsuccessful (Business Week, 2008; Louis, 2008). Moreover, according to Mercer Management Consulting (Cited in Smith & Hershman, 2009), in the 2009 the success rate of corporate acquisitions is barely 85 percent, and in the 2000, 77 percent of acquisition deals failed.

Identification of the issues.

- Regulatory conflicts for approving a Merger/Amalgamation.
- CCIs investigation issues in a merger.
- Benchmarks for declaring abuse of dominance in a merger with reference to case study.
- Justification Of Open Offers-Triggers under SEBI rule.
- Complete analysis of Section 5 and 6 of Competition act.

Scope of the research

This research will extend up to various regulatory bodies like SEBI, CCI and NCLT. A section of research will deal with a comparative study of SEBIs take over code and Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011

Research Methodology adopted

The research in this study has been done having relied upon "Doctrinal Method" of research. The methodology adopted for this dissertation work is doctrinal, analytical and descriptive. The researcher mainly depended on the secondary sources like books, articles, journals and other internet sources.

Hypothesis

The dissertation will bring out various issues in M&A, how regulatory bodies can work to make Mergers/combinations easy and less complex. At the end dissertation will be concluded with a suggestion, which can simplify complex Merger/Acquisition problems in India and make it hustle free.

Chapters.

CHAPTER 1: The first chapter gives a historical overview of the integration of trade and competition policy. The researcher will discuss the Havana Charter, Restrictive Business Practices: Arrangements for Consultations and report by P.N bhagwati on Anti-Trust Watch dog.

CHAPTER 2: the researcher will discuss the existing SEBI and CCI regulations affecting M and A activities. The open offer regulations, Open Offer triggers and Combination notification to CCI.

CHAPTER 3: The existing scenario related to Mergers and Acquisition in India. Role of SEBI and CCI in regulating Mergers.

CHAPTER 4: This chapter will focus of M&A approvals, Compliance/Due-Diligence requirement, Regulatory Approvals and Other filings.

CHAPTER 5: Case study Analysis with reference to SEBI &CCI and Conclusion/Reference.

HISTORY OF SEBI TAKEOVER REGULATIONS

SEBI notified Security and exchange Board Of India (Substantial Acquisition of Shares and Takeover) regulations, 1994 in November 1994. Prior to this, Clauses 40A and 40B of the listing agreement were the only regulations; however they did not have the regulatory force. They were more in the nature of a contractual obligation. Though they incorporated the correct approach to the regulation of a takeover bid, they were not elaborate enough to serve as a code for regulating the complex process of takeover. Also, these clauses were not binding upon an acquirer, those being just a contractual obligation between the target company and the stock exchange. Further the only possible penalty for non-compliance with these clauses was delisting of the target company which was against the interest of the public shareholders. The 1994 regulations notified by SEBI were far more elaborate than the clauses 40A and 40B and addressed a number of complex issues in the takeover process.

However there were still loose in many areas and lacked clarity issues in the takeover process. Therefore a committee was setup in November 1995, under the chairmanship of P.N bhagwati, Former CJI to review the said regulations. The committee submitted its report in January 1998, based on which the SEBI notified SEBI takeover regulations 1997 and repealed earlier regulations. Even the 1997 regulations underwent a number of changes till it was replaced in 2011 by SEBI (Substantial acquisition of Shares and Takeover) regulation 2011. For this purpose SEBI had established a committee under the chairmanship of Mr. C. Achuthan, former presiding officer of Security Appellate Tribunal. The committee which had many high profile lawyers and practitioners of M&A as its members published its report in July 2011. This time around, however it took SEBI more than a year to finally codify most, but not all of the committee's recommendations and to finally notify the Security Takeover regulations 2011 in September 2011. The main bones of contention is the Achuthan Committee recommendations were whether each open offer should be compulsorily for all the shares other then the shares held by the acquirer and the persons acting in concert with him, if any and whether the open offer under these regulations should be allowed as a direct route for delisting of the target company.

Takeover of a company is well accepted and established strategy of corporate growth. This is so since the process of substantial acquisition of shares and takeover ensures rational allocation of shares and takeovers ensures rational allocation and optimal utilization of resources. However for these objectives to be achieved, it is necessary that these processes take place in an orderly manner with fairness, transparency and equity.

It is also necessary that in the process, shareholders interest specially the public shareholders interest is not are not compromised. Therefore every country has a code that governs the process of substantial acquisition of shares and takeovers. In India, the said code is at present embodied in the SEBI substantial acquisition of shares and takeovers regulations 2011 or SEBI takeover regulations 2011as it is generally known.

Any company/organization undergoes change on a continual basis. Often these changes are forced upon due to external factors such as increase in competition, advent of new and more efficient technology, emergence of new competition, advent of a new and more efficient technology, emergence of new competing products, emergence of new markets or new classes of consumers, demographic changes, business cycle and others. Wise corporations foresee external changes well in advance and change themselves accordingly. Some of the organizations go beyond just being wise to change in time and make efforts to change even though there is no external pressure in sight. They make proactive efforts to transform themselves even when they are at the peak of their performance and enjoy leadership in their business. These organizations undertake changes to increase their cutting edge over the competition and enhance their leadership position so as to make it impossible for competitors to catch up with them. These practices are termed as corporate restructuring which is classified into Merger, Acquisition, Demerger, Joint ventures, Carve-out, Reduction of Capital and delisting of Securities. Under SEBI regulations author will focus more of Takeovers.

<u>ORIGIN OF COMPETITION LAW IN INDIA.</u>

In 1964, Government of India appointed Monopolies Inquiry commission. The purpose of this commission was to find out the extent and effect of the concentration of the economic power in the private hands and the existence of Monopolistic and Restrictive trade practices in the country. Based on the report submitted by this commission in 1965, the Monopolistic and restrictive trade practices act, 1969 came into effect from 1st June 1970. The act was amended several times, during its existence MRTP act became sufficiently notorious due to its draconian provisions that imposed several restrictions on expansion of businesses to global scale and stymied the ambitions of business leaders. Post launching of reforms in1992,it was felt that the act had totally outlived its utility, since in the new economic era, it is essential to shift focus from curbing monopolies to promoting competition. Accordingly, **<u>based on the recommendations of the Raghavan committee, MRTP act was abolished and Competition Act 2002 was enacted.</u>**

New competition act 2002 got its assent from president on 13th January 2003 and was gazetted on the next day. Its various provisions were implanted in a phased manner, in terms of the provisions of this act, CCI was established on 14th October 2003 and Mr. Dipak Chatterji was appointed first chairperson of CCI. First set of regulations relating to the functioning, powers and procedures of CCI was promulgated only in 2009 and the regulations relating to the procedure for approval of business combinations only in 2011. It can thus be concluded that CCI became truly functional especially with regard to regulation of business combinations in year 2011.

Competition is the essence of any market economy. If the markets were to protect and promote the interest of consumers, competition among all the market players especially among the producers and distributors of good and services is very vital. Recognizing this most countries in the world have laws that protect and promote competition. Importance of competition law is well summarized in a Judgment of Supreme Court which states “The main objective of Competition Law is to promote economic efficiency using competition as one of the means of assisting the creation of market response to consumer preferences. The advantage of perfect competition is to promote efficiency and encourage competitive practices. The essential motive of competition is to ensure optimal allocation of available resources, produce more while using less resources and thus achieving efficient market outcome. Competition in a market promotes efficiency and offers wider choices which increases consumer welfare and brings better products/services. Indian market is quite huge and in demand due to a population of 125 crore people.

The market is filled with dominant players and monopolies like Coal India and Hindustan Aeronautics. Now if a young enterprise wants to enter Indian market the dominant players/Monopolies/cartels may come up with various practices to destroy a new business. To regulate dominant players and control monopolies competition act 2002 was introduced. The competition commission ensures that there is no discrimination between young players and dominant players. Everyone gets equal opportunities and resources so that everyone can fairly compete with each other.

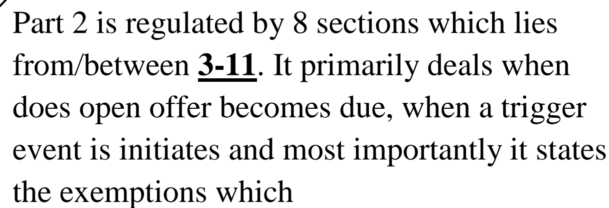
SEBI TAKE OVER-CODE AMENDMENTS/ SNAP-SHOT/TRIGGERS/EXEMPTIONS

SEBI TAKEOVER CODE SNAP SHOT.

CHAPTER 1 – Preliminary Part

Contain Key definitions and is regulated by Section/Rules – 1 and 2. Key Definitions like Control/Acquirer/Acquisitions.

Chapter 2/Part 2. This part deals with Control Rights/ how acquisition is executed/voting rights of target Company.

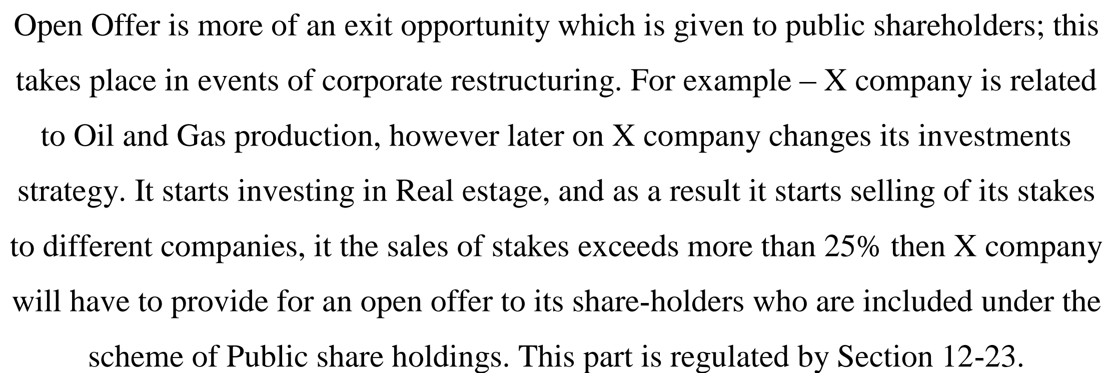


Part 2 is regulated by 8 sections which lies from/between **<u>3-11</u>**. It primarily deals when does open offer becomes due, when a trigger event is initiates and most importantly it states the exemptions which

Part 3 deals with Open Offer regulations/procedure.

This part consists of 11 sections.

It main consist/deals with triggers which lead to open offer.



Open Offer is more of an exit opportunity which is given to public shareholders; this takes place in events of corporate restructuring. For example – X company is related to Oil and Gas production, however later on X company changes its investments strategy. It starts investing in Real estage, and as a result it starts selling of its stakes to different companies, it the sales of stakes exceeds more than 25% then X company will have to provide for an open offer to its share-holders who are included under the scheme of Public share holdings. This part is regulated by Section 12-23.

Chapter 4 – This deals with specific obligations of various parties involved in Takeover procedure. For example role of Mercantile Bankers in evaluating a fair amount which is to be given in open offer deals to public share holders. Role to target company towards its shareholders after an acquisition. This is a small Chapter/Part which consist of only three sections from 24-27.

This is Chapter 5 which deals with disclosures of Control in a company and revealing the shareholding requirements which needs to be made by the Acquirer. The disclosures help in making a system/deals/transactions more transparent and Consumer friendly. This section is regulated by Section 28, 29,30 and 31

Chapter 6 deals Miscellaneous Provisions, three sections 32,33 , 34 and 35 regulates these provisions. This includes Making competitive bidding, Making public announcements for acquiring shares and evaluating the bidding process.

EXEMPTIONS OF TAKEOVER REGULATIONS.

Transfer of shares through Merger/Acquisition/Amalgamation and overseas mergers that cause a change in control in an Indian subsidiary are exempted from takeover code. It may be noted that European Union does not recognize automatically or exclude mergers cleared outside its jurisdiction. The EU competition commission blocked in 2001 general electricity's proposed takeover of Honeywell which was claimed to be giving too much weight on the interests of competitors rather than those of consumers. The takeover panel decides on exemptions. It has 15 days to make recommendations on application to SEBI, which passes orders within 30 days.

1. *Succession or inheritance.*
2. *Acquisition by government companies.*
3. *SFCs to promoters.*
4. *Scheme under Sick Industrial Companies Act.*
5. *Arrangement/recognition including amalgamation or merger or de-merger.*
6. *Indian promoters and foreign collaborators who are shareholders, promoters and acquisition of shares in the ordinary course of business.*
7. *Banks and Financial institutions as pledges.*

Categories of acquisitions which do not attract public offer but reporting is mandatory.

8. *Where acquirer acquires share in public issue [Reg. 3 (1) (a)].*
9. *Where acquirer acquires share in rights issue [Reg. 3 (1) (b)].*
10. *Where acquisition involves transfer of shares from state level financial institutions to Co-promoters of company pursuant to the agreement.*

NEW CHANGES/AMENDMENTS IN TAKEOVER CODE.

1. **Introduction of New Definitions**.

SEBI takeover code has seen amendments in following four definitions.

Enterprise Values.

Volume Weighted Average Market Price.

Volume Weighted average Price

Weighted Average Number Of total Shares.

2. **Changes in TRIGGER thresholds limits.**

Earlier threshold limit for open offer was 15%,

The new threshold limit for open offer is 25%, the limits have been increased so as to increase the acquisition activities in India.

3. **Increase in Offer Size.**

Earlier Offer size was 20%

The new amendment proposes an increase in offer size upto 26%.

The offer size has been increased to 26%, which means the public shareholding in a listed company can now move upto 26%, earlier it was 20%. This move has been introduced so as to increase the public participation in secondary market. At the same time with the increase in Public participation the domestic markets potential of increasing the money availability has been increased.

4. Involvement/Classification of new form of Open Offers.

Open Offer has been divided to two steps-

A. Trigger Offer or a mandatory offer- In this kind of offer if an acquisition exceeds 25% limits then it has to mandatorily give/introduce an offer open to the public.
B. Voluntary Offer- This open-offer takes place with the consent of Target Company or an Acquirer. This offer does not necessarily meet open offer requirements. Its give so as to provide a safe passage/ safe exit to the shareholders.
C. Mandatory open offers are divided in four form-
    - Indirect Acquisition- From FDI route.
    - Change in Control- Change in Share ratio.
    - Initial Threshold.
    - Creeping Acquisitions

Takeover refers to transfer of control of a firm from one group of shareholders to another. Takeover is achieved by merger and tender offers trough purchase of shares of target firm. Merger, acquisition, amalgamations and takeovers are like any investment decisions and objective is value creation as reflected in increase in share price of the company. Even in leveraged buy-outs, large profits are expected by exploiting the targets assets. By and large, it is the return that influences the decision. though, in the Indian context, management control has motivated takeovers rather than returns. Control may be defined as having a majority vote on the board of directors. Management control especially consists of the right to determine management of corporate resources, the raising and development of funds. These are of course other aspects of a company administration which can be subsumed under management control and influence takeover decision. Management control manifests organizationally in the control of the board. The code of Bhagavathi committee does not define a takeover. It only stipulates that they should be undertaken in transparent manner.

The code envisages that opportunity to gain from takeover is distributed as wide as possible. The report of Bhagawathis committee has dropped the distinction between negotiated takeover and market takeover. The report refers to the acquisition of shares irrespective of whether it is through a negotiated deal or market operation. Takeovers by and large companies acquisition of shares by negotiations as well as open market purchase. The code envisaged in the report is expected to facilitate corporate takeovers. Actually any management that fails to use its assets productively will become a takeover target. This could inject new life into capital market by forcing inefficient managements to tone up their performance or get out which would make them accountable for their performance.

Sickness could be prevented by throwing out poor management and the resulting improvements in management inures to the benefit of shareholders, employees and the economy. In a capital scarce economy the existing capital stock and assets have to be efficiently used. A rigorous takeover market would be an important safeguard against economic mediocrity. The proposed code would help in dovetailing the performance or improvement of the fundamentals of the company to its share price. So far our markets have been governed by sentiment, manipulation and insider trading.

Reforms in the securities legislation have to be matched by performing managements. To the extent the proposed code would achieve it; it is a step in the right direction. The takeover code however demands a relook at the insider guidelines to improve the effectiveness of both by reinforcing each other.

The objective of regulations according to the committee is to provide an orderly framework within which the takeover process could be conducted. According to the committee “The regulations should also help in evolving good business standards as to how fairness to shareholders can be achieved, as maintenance of such standards is of importance to the integrity of financial markets, but should not concern itself with issues of competition or financial or commercial advangates of a takeover”. The committee enumerated a set of general principle which should guide the operation and interpretation of regulations. Theese principles consists of-

1. Equality of treatment and opportunity to all shareholders.
2. Protection of interest of minority shareholders.
3. Fair and truthful disclosure of all material information by acquirer in all public announcements and offer documents.
4. No information to be furnished by the acquirer and the other parties to an offer exclusively to one group of shareholders.
5. Availability of sufficient time to shareholders for making informed decisions.
6. An offer to be announced only after the most careful and responsible consideration.
7. Acquirer and all other intermediaries professionally involved in the offer, to exercise highest standard of care and accuracy in preparing offer documents.
8. Awareness of the limitations on freedom in the process of substantial acquisition of shares.
9. All parties to an offer to refrain from creating a false market in the securities of the target company.
10. No action will be taken by the target company to frustrate an offer without approval of shareholders.

Anti-Trust LAWS/ENFORCEMENTS/INVESTIGATION PROCEDURE/ PENALTIES/CCI-MARKETS RELATIONSHIP/CCI-PERFORMANCE IN LAST 7 YEARS.

CCI AND MARKETS

According to the preamble of CCI, Competition acts main aim is to ensure promotion of competitive environment as competition is an important engine of economic growth. India has a population of 125 crore, there are dominant players in various sectors. At the same time we have small enterprises that are new in markets. Today various young, dynamic and capable entrepreneurs come up to set up something they believe in which they can make a difference. Through their hard work and commitments they are trying to be the best in the business. The market is filled with dominant players and monopolies like Coal India and Hindustan Aeronautics. Now if a young enterprise wants to enter Indian market the dominant players/Monopolies may come up with various practices[1] to destroy a new business. Their primary weapon **is price reduction(temporarily)** so as to drive out the competition. Due to such reductions a small business may struggle for survival and eventually fail to compete. As a result the small business would have to shut down or they may merger with a large enterprise. If monopolies are left unmonitored and unregulated then they would adversely affect social justice as new players will lack equal opportunities and resources to compete with dominant players. Overall the economy, fair markets, consumers and business environment will have an adverse affects. To counter such issues and promoting fair market practices, Competition Commission came up.

The Parliament gave a mandate/authority to CCI, to ensure that the market remains competitive and every business gets equal opportunity to compete. If a market remains fair and competitive then it will indirectly lead to economic efficiency and protection of consumer's interest. CCI has been dread of many corporate industries as in only six years it has imposed a penalty of Rupees 15,000 crore on various cartels and corporations who were involved in abuse of dominant positions and anti-competitive practices. How CCI regulates the competition and brings social justice in the market is still blur as this act is relatively new. Let's take some examples and case laws to make CCIs image more clear-

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[1] The concept of 'Price Leadership' stated by, Robert F. Lanzillotti, Competitive Price Leadership–A Critique of Price Leadership Models, available at http://www.jstor.org/stable/1926221.

HYPOTHETICAL SITUATIONS.

Company A and **B** are the only two pharmaceutical companies that manufacture an essential vaccine for curing and preventing AIDS. Now let's assume Company A & B have merged, as a result of this merger some efficiencies such as production or distribution cost reduction or management rationalization accompanying the integration of management resource will be expected. On the other hand, the market for the vaccine will become highly concentrated; in short duopoly will become monopoly.

Due to monopolistic character the market will see a serious increase in prices. In the above case even if the price of vaccine increases significantly, patients of the disease would have no option but to buy the essential vaccine. When dominant players like A and B abuse their dominant position and monopolize the fair market CCI comes up orders an enquiry and if there is a Bona-Fide case it will impose penalties on the entities and thus but a halt in monopolistic markets. The intension of legislature/parliament was to make a quasi-judicial body/watchdog (CCI) who would ensure a fair and competitive market so that every competitor can compete in a market fairly. If their is a fair and competitive market then it will benefit consumers by keeping prices low and the quality/options/choice of goods and service high. Let's take a case law to see how CCI brought uniformity and Social equality in Car[2] manufacturing markets.

[2] Shri Shamsher Kataria v. Honda Siel Cars India Ltd. &Ors, Case No. 03 of 2011.

"Recently CCI imposed a fine of Rupees 2544 crore against fourteen automobile companies. The issue started when Shamsher Kataria[3] filed a complaint with CCI against Honda, Volkswagen and Fiat alleging that these automobile companies were using anti-competitive methods[4]. The main issue in this complaint was that if a consumer wanted to get a brand new spare part of these three automobile companies then he has to approach an authorized dealer as independent repairers had no access to branded spare parts and technical knowhow pertinent to the brand. Shamsher Kataria found this unfair therefore a complaint was filed with CCI alleging that Honda, Volkswagen and Fiat were restricting spare parts and after sales services supply".

"CCI ordered a DG investigation against 14 car manufacturers and found them guilty on two grounds. Firstly for entering into anti-competitive agreements with suppliers (Section 3 violation) and Secondly abusing dominant position in relevant markets (section 4 violation). A faulty engine, broken drive shaft and a malfunctioning control unit in all such situations a consumer felt forced to go back to authorized dealer and pay the price determined by them. The competition commission got worried about the fact that the consumers were getting locked in with car manufacturers for spare parts and services. Hence, they intervened and imposed a heavy penalty for unfair trade practices".

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[4]http://psalegal.com/upload/publication/assocFile/ENewslineSeptember2014.pdf

"This order by CCI is considered a landmark decision as it has changed the business model of car-manufacturers. CCI in its order directed automobile companies to ensure that spare parts and diagnostics services are available to independent dealers without any restrictions on them. Due to the efforts of CCI, the spare parts are now available in open markets. CCI ensured that local dealers have an equal opportunity to compete with big players by providing them with same resources (spare/original parts) which were used by big manufacturers".

"Similar practices were followed in EU, where under block exemption rules[5] *the manufacturers were supposed to provide spare parts to independent operator. Even in US several states have introduced right to repair act*[6] *to remove restrictive practices by automobile manufacturers. Like EU and US, the competition commission of India has strengthened the pillars of social justice in India. As in present times an independent dealer gets same* ***opportunity and resources*** *like that of a dominant player".*

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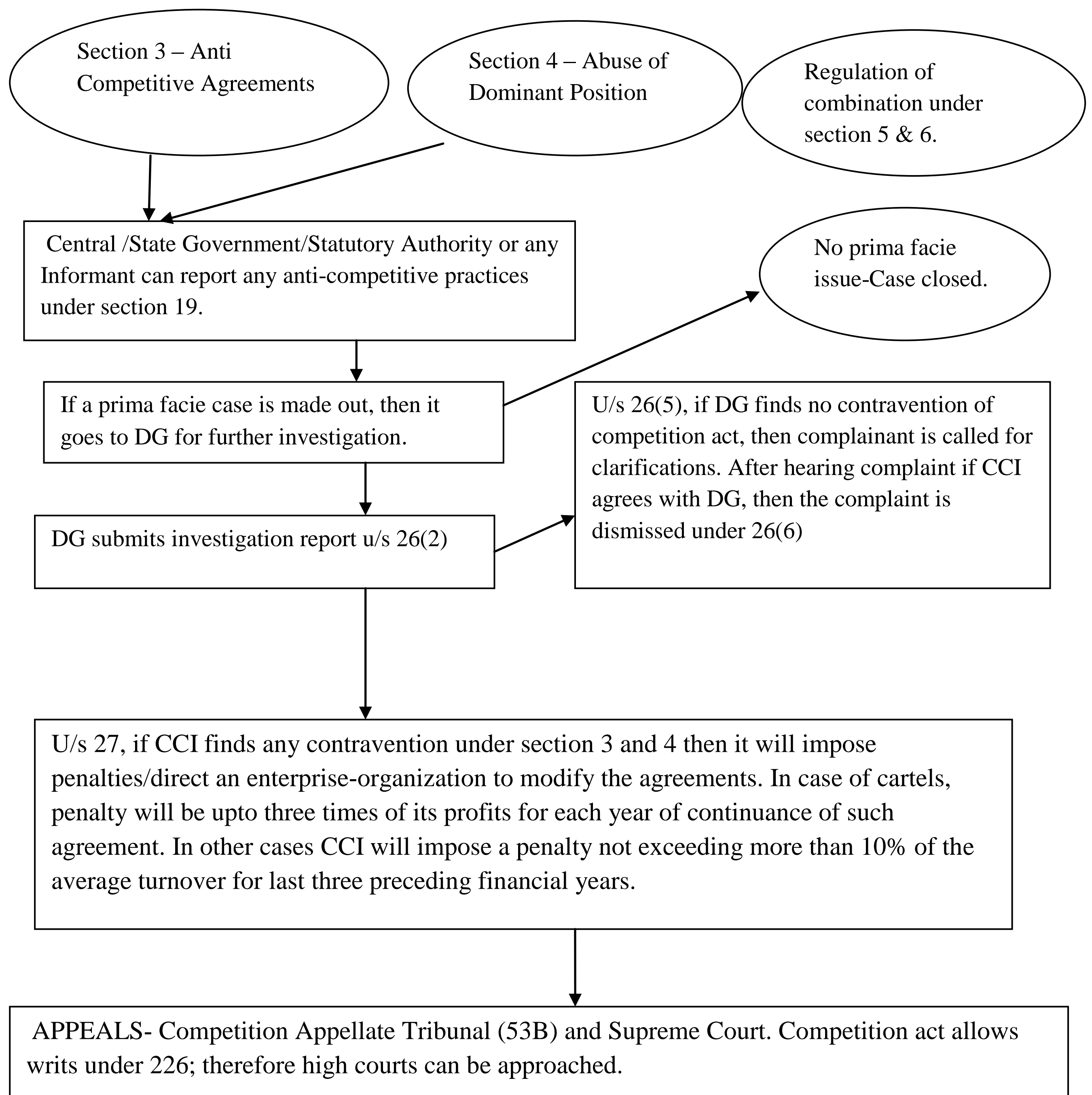
[5]http://wardsauto.com/news-amp-analysis/eu-s-new-block-exemption-rules-please-auto-industry-good-consumers (Visited on 2nd april 2015)
[6]http://en.wikipedia.org/wiki/Motor_Vehicle_Owners%27_Right_to_Repair_act

CCI INVESTIGATION PROCEDURE/APPEALS/PENALTY.

The competition law in India is basically divided into three parts, Anti-Competitive agreements (Section 3), Abuse of Dominance (Section 4) and Regulation of Combinations (Section 5 and 6). Combination is regulated by CCI (procedure in regard to the transaction of business related to combinations) regulations 2011. Following flowchart states a brief working of CCI under Competition Laws.



CCI'S ROLE IN MONITORING CARTELS/MONOPOLIES FOR EFFICIENT MARKETS.

Cement and coal are one of the most important infra raw materials for building backbone of a nation. Forming cartels and monopolising a market affects markets/economy and consumers. In cement[7] industries 11 companies were found liable for establishing cartels and entering into anti-competitive agreements. Whereas Coal India was guilty for abuse of dominance and misuse of monopolistic character as Coal India controlled major coal mines in India.

CCI & MONOPOLIES.

-

In coal sectors Coal India and its subsidiaries enjoys a monopolistic status and has a strong dominance over private players. Various power companies (Gujarat state electricity and Maharashtra state power generation) knocked the doors of CCI, as Coal India had imposed various unfair/discriminatory conditions in fuel supply agreements. On the other hand Coal India supplied low grade quality coal at high prices and most importantly Coal India used to discriminate between states owned companies and private buyers of coal. Due to the monopolistic character, the buyers of coal had no other alternative source of fuel supply. As a result the buyers were forced to follow the arbitrary terms of Fuel Supply Agreement.

CCI imposed a penalty of Rs. 1773 crore for abuse of dominance and ordered Coal India to end such practices in the future. Coal India was also instructed to modify Fuel Supply Agreements and ensure equality/parity between private companies and Public Sector Units.

[7] *Cited by* Rahul Singh, *Analyzing the Impact of CCI's Order Against Cement Companies*, available at http://indiacorplaw.blogspot.in/search/label/Competition%20Law?updated-max=2013-06-17T15:22:00%2B05:30&max-results=20&start=5&by-date=false (Last visited on April 2, 2015).

SIGNIFICANCE OF THE JUDGMENT.

- CCI for the first time penalized public sector undertaking for anti-competitive practices.
- CCI has sent a strong note to government that these kinds of situation arise due to low competition. There aren't enough players in the market to supply coal therefore government has to increase the number of players who can compete with coal India.
- The order underlines the fact that even government entities have various commercial interests. If any such entity uses anti-competitive practices to achieve such interests then CCI will step in/intervene and take necessary actions. CCI removed the disparity between private buyers and state owned companies as private players were often discriminated. CCI ensured every player gets equal opportunity when it comes to distribution of natural resource. A monopoly is bound to treat everyone uniformly.

CCI & CARTELS.

Cartels are very unhealthy for a developing nation as it spoils business environment and kills new entry in the market. In cartels two or more big organizations come together and act as a single entity, further they control the prices/production and supply. In India we see cartels in Air industry, Oil Industry, Cement industries, rubber industry and others.

In recent times CCI busted a cartel in cement industry by using circumstantial evidence. Cartels are temporary phenomena; the investigators have to catch it at a certain movement as they can break at any point of time. Cement industries in India is fragmented into five different regions due to bulky nature of cements/limestone which makes it very hard to transport over long distance. A cement plant is generally located near limestone deposits. It’s an uphill task to catch a cartel as collecting evidence and establishing a relationship is no child’s play. However, CCI found legal evidence in a very interesting manner.

Every big industry has an association, for cements we have Cement Manufacturing Association (CMA). To make a system more fair/transparent and accountable the government of India made a rule for industries as follows “Any Industry which has an association has to state its prices on a weekly basis, and the same needs to be declared”. CCI used Data on Price hike, Economic Growth, Output and capacity of these 11 cement companies to prove there was a cartel. More over when ever these 11[8] companies had a meeting their used to be a price increase in cements. CCI failed to get direct evidence in form of communication between cement companies to prove that they were cooperating to lower output or increase price from time to time, nevertheless the circumstantial evidence was very strong. Hence CCI imposed a penalty of Rs. 6300 crore on eleven cement companies for forming cartels and prejudicing the end customers.

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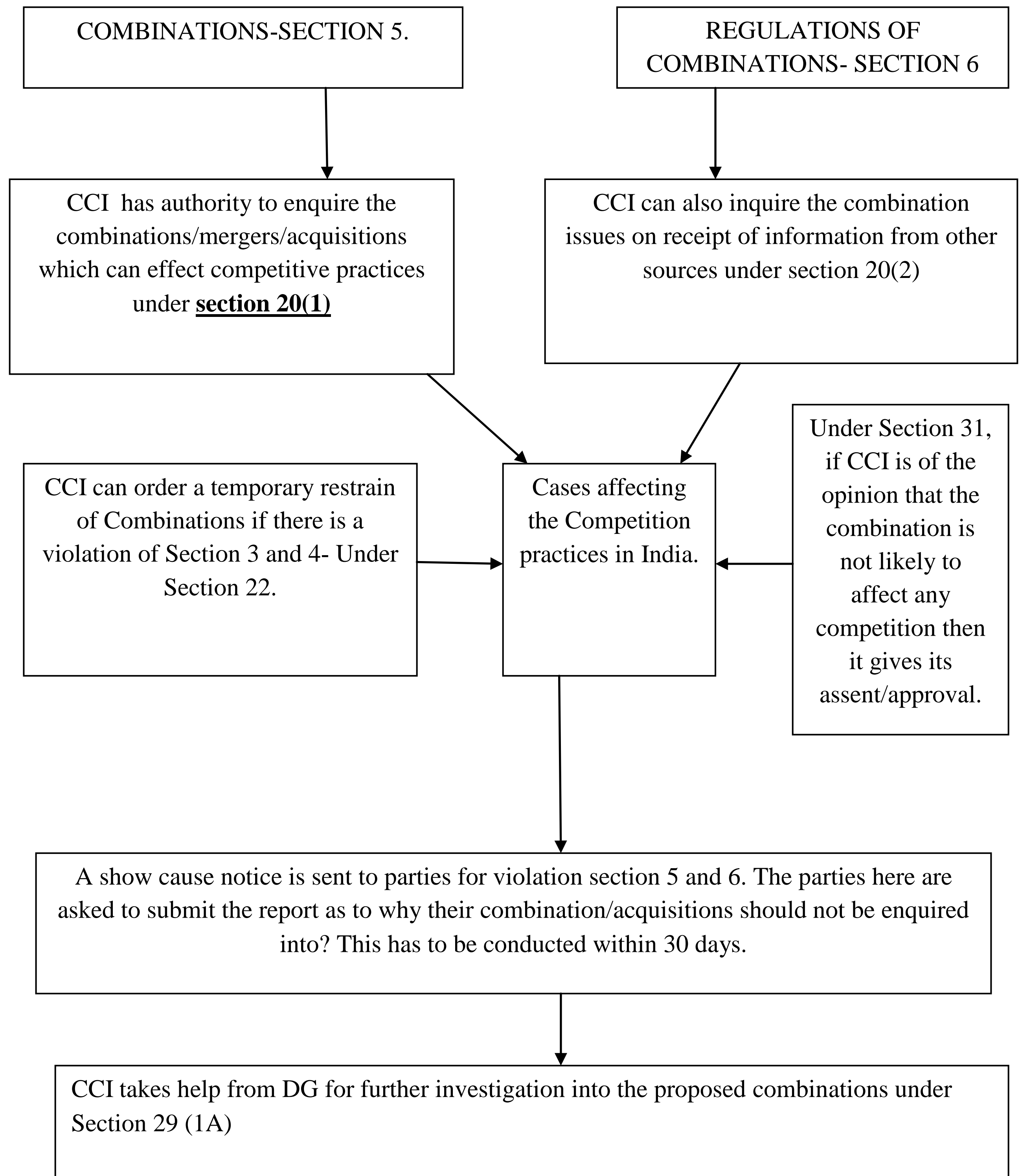
[8] The CCI order was against the following commercial entities, ACC, Gujarat Ambuja Cements Limited (now Ambuja Cements Limited), Ultratech Cements, Grasim Cements (now merged with Ultratech Cements), JK Cements, India Cements, Madras Cements, Century Textiles & Industries Limited, Binani Cements, Lafarge India and Jaiprakash Associates Limited.

CCI performance in last seven years.

Competition laws in India is regulated by CCI, it's a new/young regulator which is only seven years old. In last seven years CCI has imposed a penalty of Rs.16,000 crore **on** various dominant players like DLF (630 Cr.), Car Manufacturers (2544 Cr.) and other. In case of Cartels/Monopolies it had imposed a penalty of 6300 Cr. on 11 cement manufacturers (penalty recently turned down by Appellate Tribunal) and in cases of monopoly, Coal India was fined 1773 Cr. for abuse of dominance. CCI for the first time had penalized a public sector undertaking for abuse of dominance under Competition law. CCI even ordered a change in the Fuel supply agreement, as coal India was discriminating between states owned companies and private players.

The competition laws have woken up corporate India; companies are doing some serious audit so as to ensure they don't come under the scanner of CCI. Regulators like SEBI, TRAI, PNGRB and others are learning but CCI has scaled up a lot in last seven years. Anti-trust laws have shaken the Indian industries and the signal is quote clear, the old way of doing business is no longer possible. Once you have competition laws there has to be a substantial compliance with the legal provisions and there is no getting away. The message of commission is straight if you violate the law, penalties will be reasonably stiff since it has to be exemplary because that's the way the world operates in competition laws and CCI will be will be no exception to it. There is no point on being a watchdog which only barks because CCI got a mandate from legislation to ensure fairness in markets, breaking down monopolies/cartels and promoting competition. In various cases CCI has done the same and improved the business environment. Competition laws were introduced to improve competitiveness so that a population of 125 Cr. people can benefit from it. Strong competition laws in India has strengthened the commission, therefore CCI is not going to be a watchdog which only barks it will bite if there is domination and no competition in markets.

<u>COMBINATION LEGAL PROCEDURE AND REGULATION UNDER SECTION 5 AND 6.</u>



If CCI is of the opinion that a combination is likely to affect the competitive practices and it will order/ensure that a combination/acquisition is not executed- Under section 31(2)

CCI APPROVES COMBINATION-31(1)

CCI REJECTS COMBINATION-31(2)

CCI ORDERS MODIFICATION IN THE AGREEMENT FOR COMBINATIONS -31(3)

If parties fail to accept the modifications as proposed by CCI then it's assumed that the Combinations entered by parties will have adverse affect on competition as a result CCI will retract from further giving its approval-Under Section 31(9)

Parties are allowed to submit their changes in the terms/conditions and agreement so as to make Combination a success. This has to be done within 30 day. In short CCI provides 30 additional days so as to ensure a combination is in the line with Competition Act 2002 as combinations play an important role in shaping an economy- Under Section 31(6)

CCI has an authority to change its own order, In short it can rectify it any mistake prevalent from the record- Under Section 38.

According to Competition act, under section 38 CCI can

- 38(1) amend its own motion
- Or, it can make changes once a party brings info./rectification to its notice.

ENFORCEMENT- Parliament has given CCI an enforcement power, its decisions are binding on the parties and it is orders are treated as if a decree or order has been executed by Principle Civil Court/ High COURTS-Section 39.

Joint Ventures are excluded from Competition Act 2002, In India Joint Ventures definition is not defined specifically in any act, however it's divided into Equity/Corporation and Contractual Obligations. Anti-Trust act is silent on such issues.

COMBINATION TRIGGERS UNDER SECTIO 5 AND 6.

	APPLICABLE TO THE FOLLOWING.	ASSETS		TURNOVER.	
In India	Individual parties before acquiring	***1,500 c.r***		***` 4,500 c.r***	
	Group/association after acquisition.	***6,000 c.r***		***` 18,000 c.r***	
In India and outside		**ASSETS-In form of buildings, cash, fixed assets.**		**TURNOVER-Total output before profit.**	
		Total(World Wide)	Minimum Indian Component	Total(World-wide)	Minimum Indian Component
	Individual parties before merging.	***$ 750 mil.***	***750 c.r***	***$ 2,250 mil.***	***2,250 c.r***
	Group/cartel	***$ 3 bill.***	***750 c.r***	***$ 9 bill.***	***2,250 c.r***

Time Line for Executing/getting an approval for Combination.

This is divided in three stages.

- STEP 1- Formulate a Prima Facie Case/Opinion.

This opinion has to be cleared within 30 days.

- STEP 2- Issuing a direction/Preparation to give a final order.

  This has to take place within 180 days.

- STEP 3- Giving a final order on the combination. In this CCI has to pass an combination order within 210 days.

If CCI fails to deliver an order within 210 days then it deemed as if CCI has cleared the combination deal. Legislature has given a mandate to quasi judicial bodies to take a final call on the mergers/acquisitions/takeovers within a fixed time otherwise there won't be any difference between Quasi judicial bodies and that of courts. A commission like CCI will take more than 210 days to investigate a matter as a result of which the economic activities of a country would suffer greatly. CCI in comparison to other regulators has done an impressive work in giving fast clearance to organizations who wanted to have mergers/amalgamations.

Filings required in a combination.

Following Forms with fees are stated as below-

FORMS	FEES
Form 1[9]	Rs.-50,000/-only
Form 2	Rs. 10,00,000/-only
Form 3	Free/No charge.

[9] The instances where Form I is required to be filed *include*:

(i) where the parties to the combination are conglomerates (i.e. neither horizontally nor vertically situated);

(ii) where the parties to the combination are predominantly engaged in exports of goods or services from India (i.e. at least 75% of the turnover of the parties to the combination is derived from exports out of India) and the market share of the combined entity is less than 15% in the relevant market in India;

(iii) where the acquisition or acquisition of control is by a liquidator, administrator or receiver through court proceedings or through a scheme approved under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or under the Sick Industrial Companies (Special Provisions) Act, 1985;

(iv) where an acquisition results from a gift or inheritance;

(v) where an acquisition is of a trustee company or arises from a change of trustees of a mutual fund established under the Securities and Exchange Board of India (Mutual Fund) Regulations 1996;

(vi) where the parties to the combination are horizontally situated and the combined market share is less than 15% in the relevant market;

(vii) Where the parties to the combination are vertically situated and their individual or combined market share is less than 25% in the relevant market.

MERGERS&ACQUISITIONS/DIFFERENCE/LEGAL PROCEDURE UNDER COMPANIES ACT1956/COURT PROCEEDINGS UNDER 391/KINDS OF TAKEOVER AND MERGERS.

Mergers and Acquisitions-Legal Procedure and Execution.

Merger Agreements.

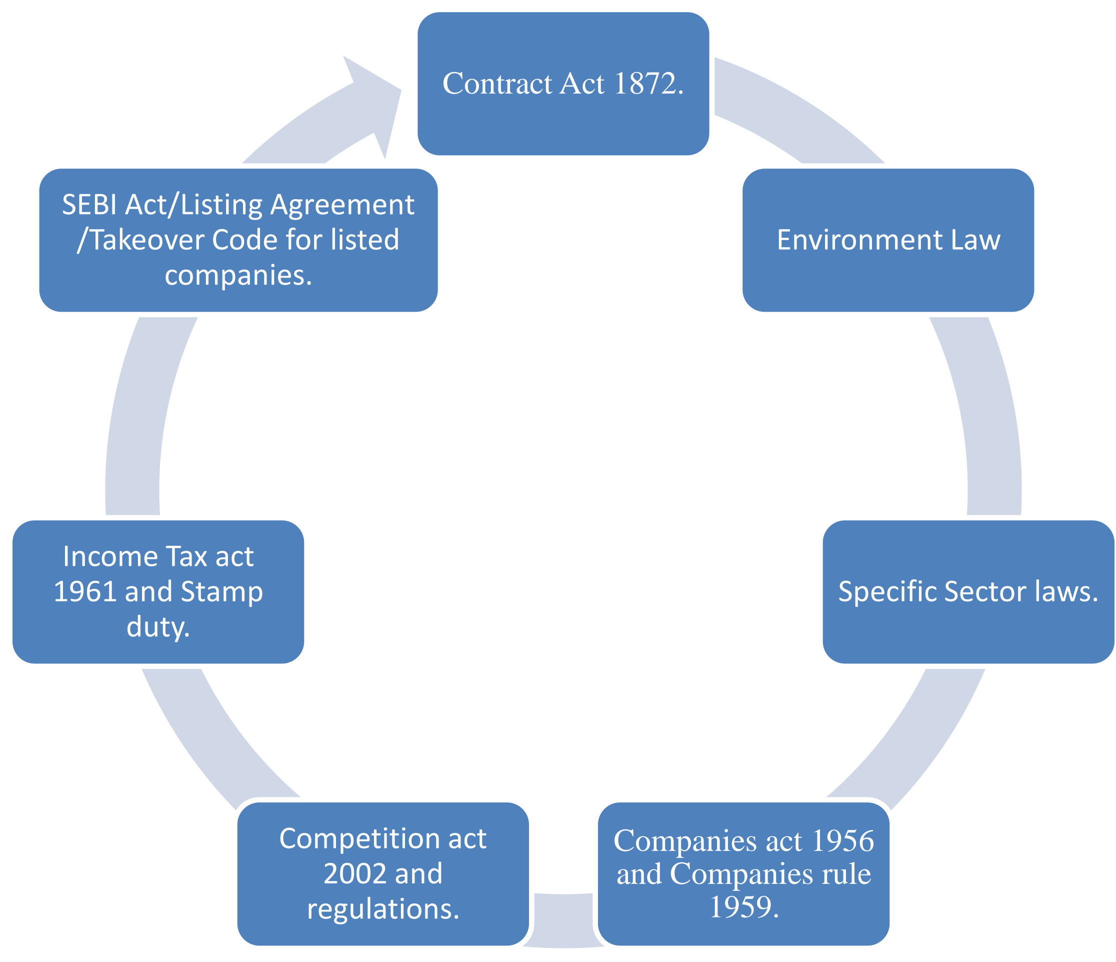
The nature of merger agreement depends upon on whether the seller is a single corporate shareholder, privately held company or a public limited company. In case of a target which is a division with a single corporate shareholder or a privately held company with a few share-holders, stock purchase agreement defines the stock and price to be paid in stock or cash at which the deal is struck. If the shareholder group is large a tender offer is used. While a stock purchase agreement like a merger agreement covers all the five aspects price, representation,covenants,conditions and indemnifications, the point of closure of the transaction and circumstances under which the seller is out after agreement to sell/buy is reached are not clear.

In the case of public limited company considerable information regarding the past performance is available in SEC filing. This reduces the need for aggressive due diligence and making representations less critical. However, the dispersal of consideration among shareholders of target also makes indemnity meaningless. Escrow could be used but rarely adopted. Given the requirement of disclosures for investor protection and wide dispersal of shareholders, the merger of a large public company is often legally less complicated and faster to execute than an acquisition of a division or a private company.

In case of assets purchase agreement the target company which is selling the majority of its assets and intends to liquidate shortly thereafter cannot grant indemnity, since there is no large shareholder blocks to grant it.

LEGISLATIVE FRAMEWORK &COMPLIANCE IN M&A ACTIVITIES.

Following acts/legislations have to be complied with so as to execute a successful M&A.



KINDS OF MERGERS.

Horizontal Merger- This is a merger in which two companies become a single entity, the two merging companies are of the same nature and is involved in same kinds of business activity/industry.

Vertical Merger- When two companies who is merging belongs to same industry of work, but they are involved in separate sectors of work.

Conglomeration Merger- In this merger the companies who are merging belongs to different industry/field of work. They don't have any thing in Common.

Co-Generic -Co-generic merger is a kind in which two or more companies in association are some way or the other related to the production processes, business markets, or basic required technologies.

KINDS OF TAKEOVER.

TAKEOVERS.

Friendly Takeover- This takeover goes by its name; this is a takeover which happens with the consent of Board Members. The condition of a takeover are lay down and is agreed by both the parties. This practice helps in promoting synergy.

Hostile Takeover- It's the opposite of friendly Takeover. The takeover takes place without the consent of the target company. On the other hand after successful takeover the acquirer destroys the company by breaking it into different parts, selling them to different owner. Such practices are common and are done by dominant players.

LEGAL PROCEDURE FOR MERGER.

A scheme of merger/Amalgamation/involving two or more companies requires approval of court. Section 390-396A of old companies act deal with provisions related to merger/amalgamation. The procedure for obtaining the approval of the court is laid in Company rules 1959. The court has very wide power while sanctioning the scheme and can provide for all matters incidental to it. While tax aspects are covered by the income tax act 1961, other aspects attract the provisions of MRTP act 1969, Foreign Exchange act 1973.

Formulation of Scheme.

Once the prospecting phase is over, the companies help of merchant banker to finalise the details of proposed scheme or merger in accordance with the guidelines formulated by SEBI, SEBI has statutory powers to enforce the guidelines.

Articles of Association.

The objective of AOA is to see if it permits continuation of the business of amalgamating company by it. If it does not, then suitable amendments/alternation must be made in the manner prescribed in the companies act.

Intimation to SEBI/Stock Exchange & Notification.

On acquisition of 15 %(25% latest amendment) of voting capital, open offer should be made to other shareholders to acquire 20% of the floating stock. As soon as the offer of merger is made, the stock exchange where the shares of the companies are listed should be notifies and the fact of the offer should be announced in the newspapers. To ensure proper disclosure, the announcement should be made in the form approved by the stock exchange.

The board of directors of the companies involved in a merger negotiation behind the scenes in great secrecy and come to an agreement. The relative values of the companies are worked out and a share exchange ratio is agreed upon. The help of financial and legal experts is taken during this phase. Who initiates the merger talks has a bearing on the values put on the companies and therefore on the share exchange ration. A merger scheme is drawn up. Inevitably a few other persons have to be taken into confidence, and they should be careful not to be accused of insider trading. The merger proposal is then given a legal status by approving it at formal board meetings and notifying the stock exchanges.

Shareholders' Approval.

The scheme once approved by board of directors, should be placed before shareholders at a general meeting for their approval. It is not legal necessity but the companies in practice, get the scheme approved by their shareholders before they file an application for the sanction of the court. At such a meeting, the transferee company can pass such resolutions as are necessary to implement the scheme e.g alternation of AOA, rescinding the right to get shares on priority basis under Section 81 of companies act and Increase/Decrease in share capital.

APPICATION TO THE COURT.

Each company has to file an application with HC of the state in which registered office of the company is located along with the merger scheme as approved by directors. Although the purpose for filing is the same the transferor and transferee companies must file separate petition. A common petition is not maintainable.

It is incumbent upon both the transferor and transferee company to approach the court under 391 and seek proper directions for convening meetings of those affected by the scheme of amalgamation, and to obtain approval of the scheme by, those interested persons examining it in separate meetings and approving it by a statutory majority.

The court directs the company to call a meeting of the shareholders and to place the scheme together with an explanatory statement, before them and report back to the court the decision of the shareholders. The chairman of the meeting is appointed by the court. The court also orders the company to publish advertisements in various newspapers about the scheme and the meeting. In due course the court peruses the report of the chairmen of the meeting, hears the view of company law board and any other person who wishes to be heard and passes such orders as it think fit.

Generally the court tends to view the merger as essentially a business decision to be taken by the shareholders and approve the merger, if the legal formalities have been properly observed and the shareholders have voted in favour. This procedure has to be gone through for each of the companies concerned. Before finally approving the merger the court calls for a report from the official liquidator on the affairs of the transferor company and then orders the merger as effective. Thereupon the transferor company is dissolved without winding up.

MEETING ORDERED BY THE COURT.

The chairmen of such a meeting or any other person directed by the court sends individual notices to creditors and members. The notice accompanied by a copy of the proposed scheme is sent by the post under certificate of the posting, at least 21 clear days before the date fixed for the meeting. Simultaneously a notice of the meeting is advertised in such newspapers as judge may direct. The chairmen of the meeting or the person directed by the court to issue the advertisement and send the notices of the meeting files an affidavit, at least 7 days before the date fixed for the meeting, that the courts directions in this regard have been complied with. The proposed merger scheme is taken as approved if it is passed by a majority in number representing ¾ in value of the members present and voting in person or proxy. The chairman of the meeting shall report the results of the meeting to the court within 7 days of the meeting or such time as directed by the court.

PETITION FOR CONFIRMATION OF AMALGAMATION

If a merger scheme is passes by creditors and members the company within 7 days of the filing of the report by the chairmen has to present a petition for confirmation of the scheme and appropriate order and directions under section 394 of companies act. The court then fixes a date for hearing of the petition. The notice of such hearing is advertised in such newspaper as directed by court at least 10 days before the date fixed for the hearing. This notice is served on the central government, the registrar, the company law board and official liquidator as well.

PASSING COURTS ORDER.

For passing the order of the court has to receive a report from registrar of the company, official liquidator that the affair of the company has not been conducted in a manner prejudicial to the interest of its member or of the public. It has to be shown that the requisite approval/acknowledgement from the company law board, CCI, RBI, and SEBI has been obtained. The court on hearing all the parties satisfies itself that the proposed amalgamation is fair and reasonable. If the court is satisfied it shall pass the order sanctioning the scheme. For the order to be effective every company in relation to which the order is passed should file a certificate copy of the order with the registrar within 10 days of the order.

There is very little interference by any government agency or authority. There is also no prescribed format for drawing up the merger scheme, and the explanatory statement to be issued to the shareholders, except for some guidelines found in company rules and the precedents which have developed and are usually adhered to. In this area also there is a need to lay down a clear ground rules, in the interest of investors. This can be done effectively by companies act and relevant rules if they stipulate-

1. The disclosure of the basis for the share exchange ratio

2. Publishing in the next three to five years annual reports to be issued after the merger becomes effective, the actual benefits realized on account of the merger. If these are compared with the benefits anticipated at the time of framing the merger proposal and determining the share exchange ratio it will be more informative.

BASIS FOR EXCHANGE RATIO.

The justification for the share exchange ratio, one of the most important terms of any merger scheme is generally not provided. Obviously the exchange ratio must necessarily be taken into consideration the projected future earnings of the companies and the benefits expected from the merger which will increase the combined profits.

The merchant banker should be mandated to give due diligence opinion on the assumptions themselves; otherwise the exchange ratio will have to be taken as just the management speaks through him.

Along with the scheme, the full report of the CA should be circulated to the shareholders and others entitled to have a say on the merger proposal. It is not sufficient to make it available for inspection at the registered office, because in practice, distances and high travelling costs effectively prevents a shareholder from inspecting. It may be noted that legally the report of the accountants need not even be kept open for inspection. The report of the accountants who made the valuation and recommended the share exchange ratio is not amoung the documents mentioned as available for inspection at the registered office. It will then be impossible to take an informed decision on the merger approval.

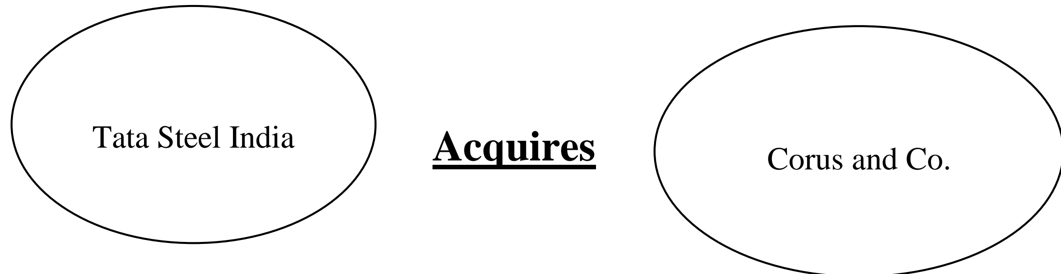
Mergers and Acquisitions difference.

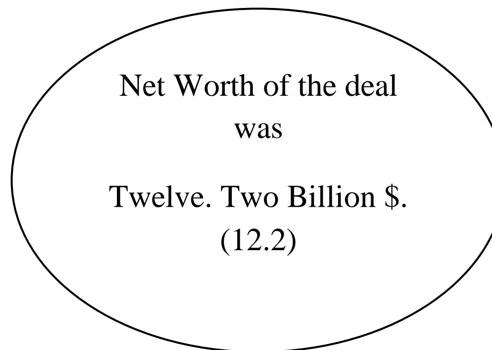
MERGER	ACQUISITION
Under a merger two companies decide to operate their business activities under a same roof/umbrella, therefore they become a single entity. For Ex. A+B=C	Under Acquisitions, A dominating company decides to take on a weak company and become its new owner.
Mergers are generally friendly in nature, and happen with consent.	Acquisitions are not friendly, generally it takes place without the consent, and the target company after acquisitions suffers as it breaks into various parts.
In a merger both the companies looses their existence, as a result they issues fresh shares.	Under acquisitions, the business of target company is absorbed as a result, the share of target company is taken in.
Mergers can be divided in different parts, like conglomeration/ congeneric, etc.	Acquisition is divided in two parts- Hostile and friendly acquisitions.
The equity owners face dilution in share value as the number of owners goes up in mergers.	Under acquisition scheme, there is hardly any dilution. The acquitting company becomes more powerful.

Mergers take long process as a merger activity goes through a lengthy process of due-diligence/risk management.	Acquisition is a quick activity, which involves direct purchase of shares. It’s not a lengthy process.
Merge is an expensive activity, under Merger the companies have to appoint law firm/ legal councils for execution of a successful merger.	In acquisition, the cost involved in legal procedure is not very high.
Public share-holders get various benefits of a successful merger. The history and the present trends have always shown us that after a merger the share value of company sky-rockets.	The same can’t be said for an acquisition. In acquisitions, the share value changes according to external factors.
Example of a merger- Ranbaxy merger with Sun-Pharma.	Example Of Acquisition- Etihad had acquired 24% stakes in Jet India.

Big Mergers/Acquisition Deals In India.

1.





Affect of this acquisition/Take-over was that, Tata became 5th largest/biggest producers of Steel.

2.

This acquisitions estimates equity share value was 11 Billion $. It's one of the biggest telecom acquisition of all time.

3.

Reliance India
private ltd.

Merges.

Reliance Petroleum

Net Worth of the deal- 1.70
billion $.

Reliance Petroleum was a subsidiary company of Reliance India (parent company).

4.

Sterlite

Acquires

Asarco

Deal Valuation- 2 Biilion $.

5.

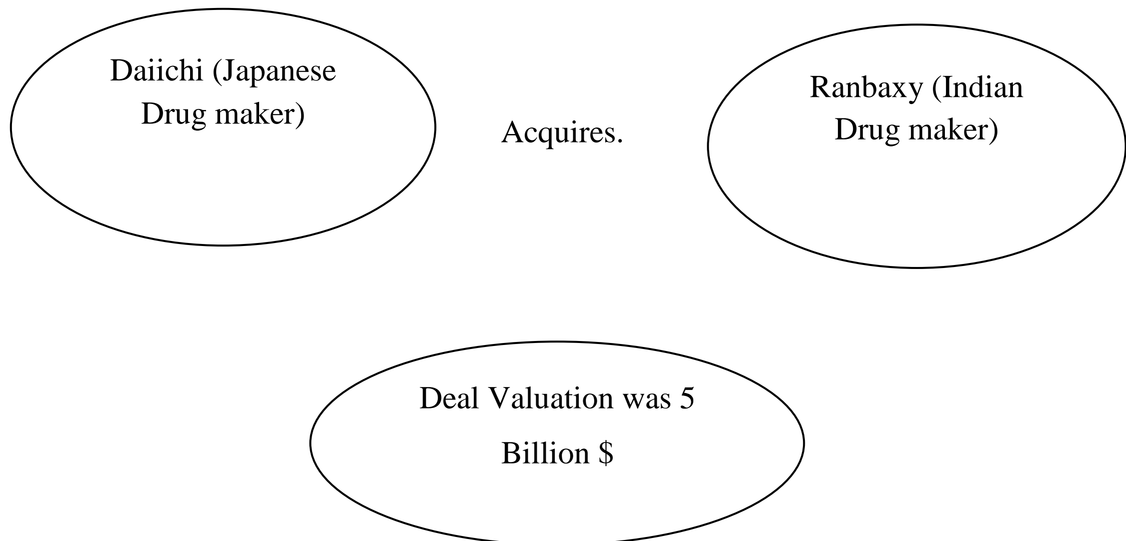
Tata Motors.

Acquires

Jaguar Land
Rover.

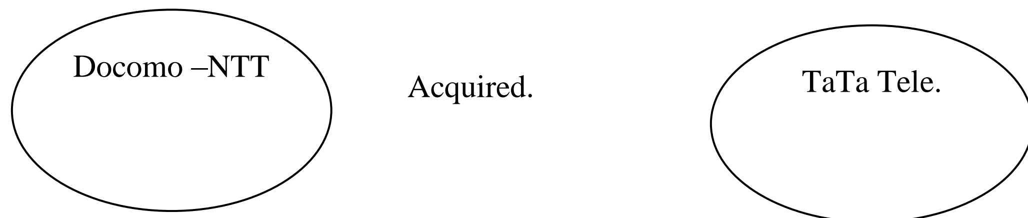
This was more of a Joint-Venture Partnership Deal, Than Acquisition. The deal was evaluated at 2.5 Billion $.

6.



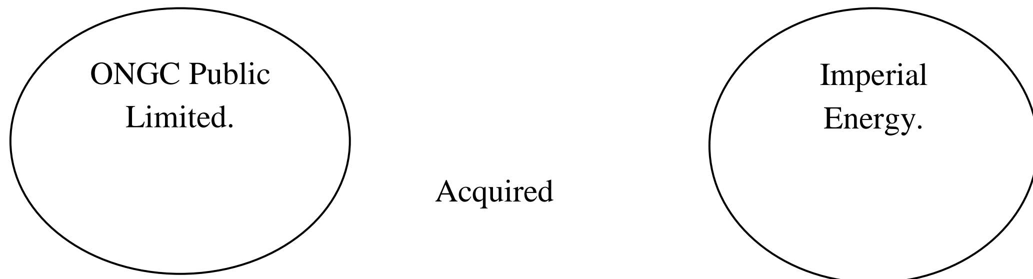
This deal was of a big importance for Indian Pharmaceutical Sector. Daiichi an Japanese Drug maker, acquired 67% stakes in Ranbaxy at the same time Tech-Know how was shared with Indian drug maker.

7.

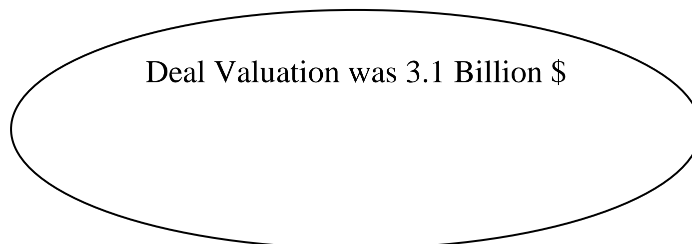


This was a big acquisition in telecom sector. Japanese company DoCoMo had acquired 26 % equity stakes worth around 14,000 crore in Tata Telecom

8.



Siberian markets were becoming very attractive amoung top oil companies, Therefore ONGC in its board meeting decided to Acquire Imperial energy-A well known Chinese company. ONGC cracked the deal with Imperial Energies by paying 900 bucks to each share holders.



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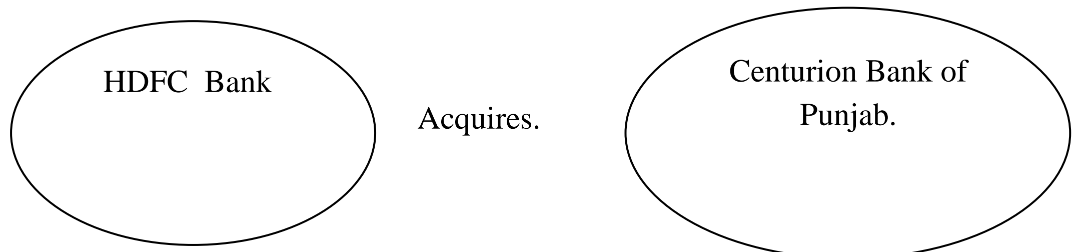
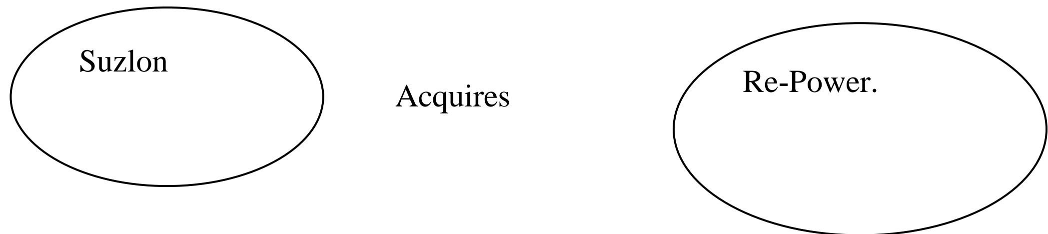


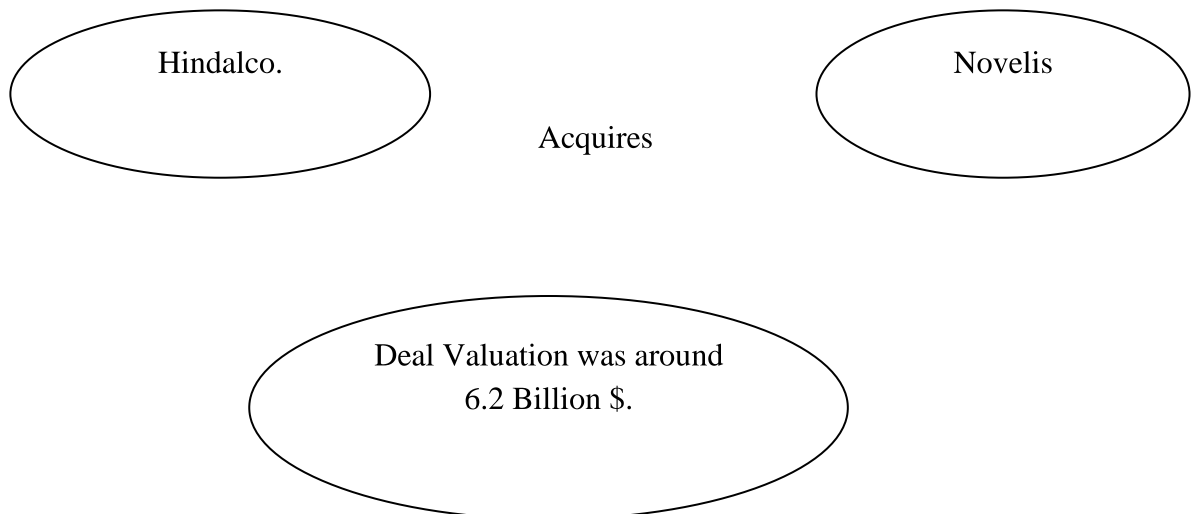
Deal Valuation was 2.2 Billion $, this deal further lead to other Banking sectors acquisitions.

10.



This Acquisition made Suzlon 5th Largest Producer In Energy-Turbine Sectors and the dominant Player in Asia. This deal took place in the year 2007, May. Deal Valuation was 1.9 Billion $.

11.



This acquisition took place in year 2008, after this acquisition Hindalco became a major player in Aluminium and Copper sector, it even feature in Fortune top 200 Companies in minerals and resources.

Factors giving rise to Mergers and Acquisitions.

1.

Economies of Scale- This mean reducing the Cost of Production by focusing on fixed Cost.

2.

Economy Of Scope- It means Better Utilization of resources for efficient Use and Utilization.

3.

Tax Savings- Various Governments provides several incentives in case of mergers.

4.

Better Utilization Of Resources. –A merger insures that raw materials/other other production activities are done with best intent so as to maximise the profit margins

5.

Better Globalized world- Every company wants to expand its base in different sectors and Locations for example Ethidah Entered Indian Market through FDI route and by Acquiring Stakes In Jet Airways.

6.

Better Use Of Synergy and Technology Transfer- A merger always leads to better technology transfer for E.x If NASA merges with ISRO then there can better use of resources and latest technology transfer.

PROS AND CONS OF Mergers and Acquisitions.

Cons Of Mergers and Acquisitions.

A.

Effects the image of a Company- If a merger is executed with a company which has a ethical issues or which has a bad public image. In such cases the goodwill of merging company will be affected

B.

Delays In executing a decision In time- Due to lack of clarity of thoughts one may have issues regarding execution of decisions at right time as BOD may not always agree with each other

C.

Different Cultural Issues- After a merger is executed, the employees of different companies may have to adjust with each other's culture. This is a very challenge as people hate working out of their comfort zone

D.

Dominance/Excessive Control of One Particular Company- Its Possible that one company may have a greater control over others, For e.x after a merger one company may have veto power where as other company may fail to get veto due to lack of big numbers in in BOD.

E.

Rise of Differences/Conflicts- Its common to have disputes after a merger. However, if these disputes are not resolved then it leads to huge losses, several-endless court cases, and Long term litigations. Even Litigations and arbitration proceedings may take huge pile of profit.

Benefits of a Merger and Acquisition.

1.

There are endless benefits of an M and A activity. They are as follows-

- Opportunity to enter a new market
- Increase in R and D activities which help in evolution/innovation/invention of new technologies.
- There is surely an increase in the market share of those companies which are involved in M and A.
- Real Competitiveness increases after companies gets involved in M and A activities.

2.

Increase in net worth and valuation of a company- Mergers have always shown that after its execution the share rates/equity markets reaches new heights as consumers expresses enormous confidence in such companies.

3.

Increase in revenue efficiency and collections as one has to pay lower taxes. ON the other hand a company when two companies come up together they bring huge talent with them, and other resources too which helps in efficient utlilization of resources which brings down the production cost and thus increases the profit margins for such firms.

Merger and Acquisitions Snap shot step by step process.

1. **Presence of M&A clause in MOA-** A merger/Acquisition activity will only be possible if if MOA provides for it, If MOA is silent about such provisions then it should be ratified by the board.

2. **Approval of Board**- The consent of BOD is mandatory so as to bring the scheme of amalgamation/merger forward. The board should file Form 33 and 34 from MCAs website

3. **Consent/Application to High Courts.**

4. **Announcements/Notifications to Stock Exchange**- If a company is listed then it has to notify the Stock market about proposed mergers. This move is made so as to ensure transparency and avoid insider trading like situations.

5. **Formalities with Registrar-Compliance**- Following compliance should be made/abided with registrar according to Companies law-

    - Submission of Companies general rules/contractual laws along with form 23.
    - The BOD meetings decision which gave consent/go ahead to such mergers/amalgamation deals.
    - Resolutions which were passed by the board member so as to allot shares to members, who are not included in existing shareholders group.

6. **Getting consent of various regulators**- A Merger/Amalgamations process in incomplete it regulators fail to give the deals a green signal. On the other hand Sector specific consent of regulators is an essential part of M&A activities, Regulators like SEBI, CCI,PNGRB in case of FDI investments FIPB approvals are needed, in case of Banking mergers RBIs consent /approvals are mandatory.

7. **Other Filings with ROC**- After getting approvals from regulators and High Courts, a certified copy of Courts order + Regulators consent and form 23 should be filed with ROC.

8. **Allocation of Shares-** After the compliance of various regulators/HC the companies starts allocation of Shares to public, promoters and others.

CASE STUDY-CCI AND SEBI INTERFACE IN SUN-PHARMA AND RANBAXY ACQUISITION

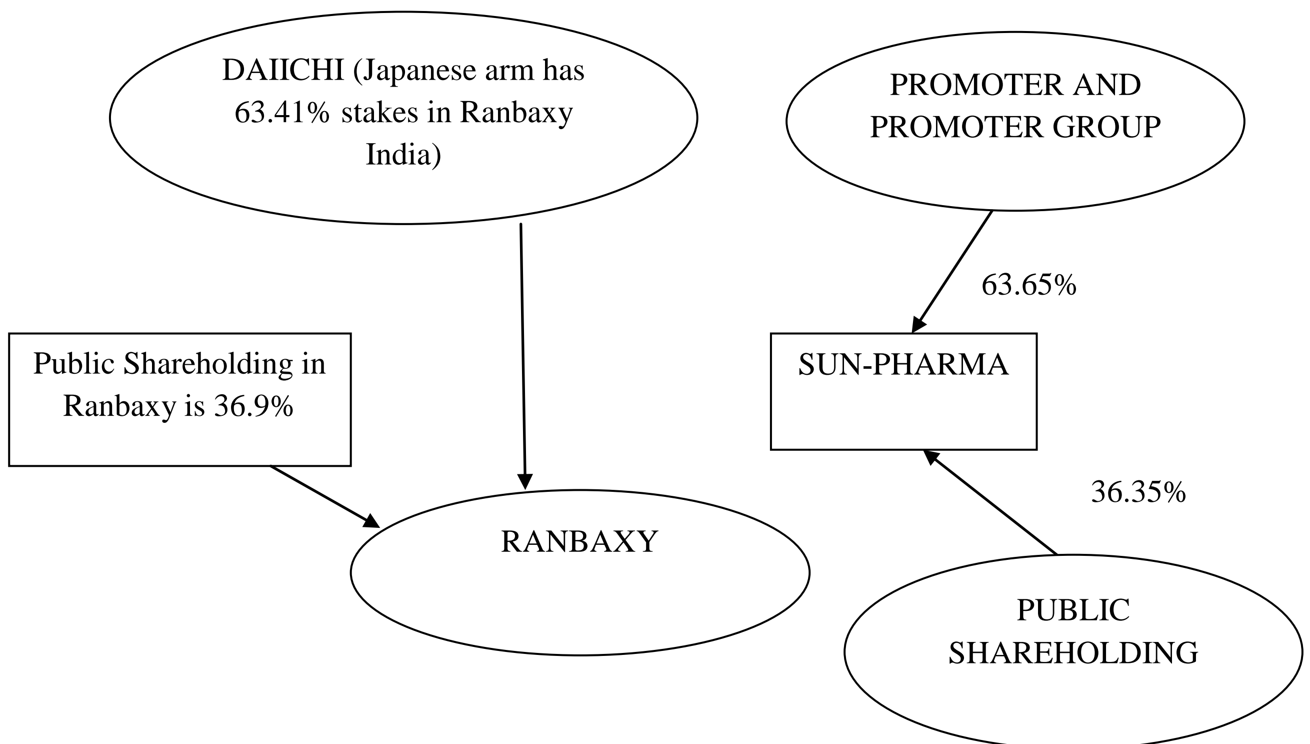
&

Jet Airways and Etihad -24% Stake Acquisition.

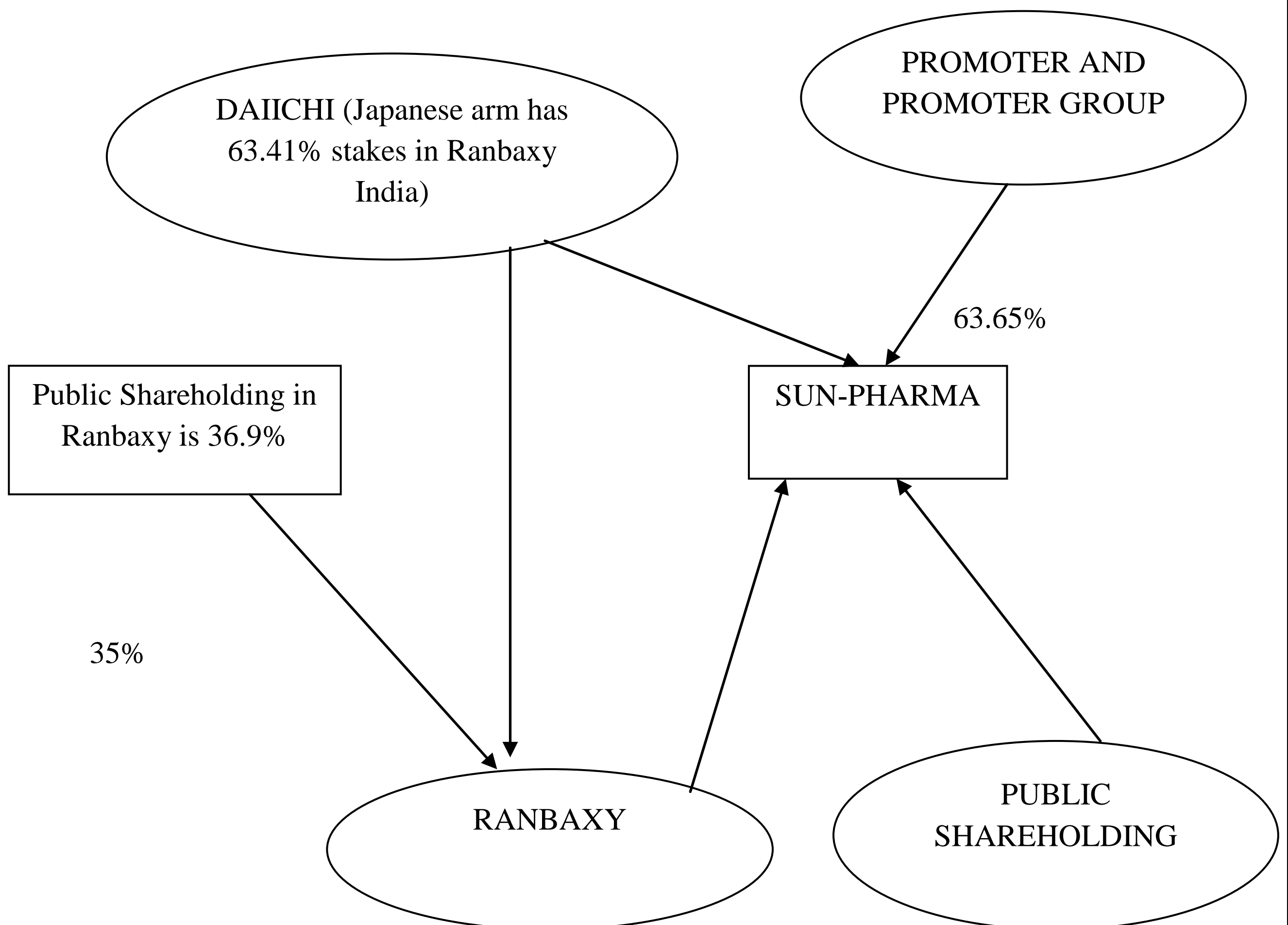
SUN PHARMA- RANBAXY DEAL ANALYSIS.

Recently Sun Pharma acquired Ranbaxy (100% stakes), this was a 3.2 Billion $ acquisition. SEBI and CCI played an important role in regulation the acquisition. Lets the structure of deal before acquisition and after acquisition.

BEFORE ACQUISITION.



AFTER ACQUISITION.



After Sun Pharma acquired Ranbaxy, An arrangement was made for Ranbaxy share-holders. According to the deal Every Ranbaxy shareholder was entitled to get 0.8 share of Sun-Pharma in exchange of 1 Ranbaxy share.

CCI Deal Summary.

TOTAL VALUATION OF THE DEAL INCLUSING NON-CONVERTIBLE DEBENTURES- Four Billion $

TARGET COMPANY- RANBAXY

SURVIVING ENTITY- Sun Pharma.

Sun-Pharma is absorbing Ranbaxy.

Share Exchange Ratio- After Sun Pharma acquired Ranbaxy, An arrangement was made for Ranbaxy share-holders. According to the deal Every Ranbaxy shareholder was entitled to get 0.8 share of Sun-Pharma in exchange of 1 Ranbaxy share.

SUNPHARMA-RANBAXY ACQUISITION- ROLE OF CCI.

Sun Pharma-Ranbaxy acquisition has surpassed the Merger trigger according to Section 5 and 6 on the act. After such acquisitions Sun Pharma became the 5th most dominating Pharmaceuticals Company. The competition act done not allow abuse of dominance, however the dominance of a company is not anti-competitive or against Section 5/4/3/6. CCI made following observations-

- The relevant market was the formula which was used for making drugs.
- In a report by DG, It was stated that If Sun-Pharma acquired Ranbaxy then it would become dominant in seven drugs sectors.
- Generally Pharmaceutical industry, compete on same formula made by a specific companies. Therefore the competitive work is based on the formulas.
- CCI used Section 31(3), in which CCI can propose modifications in an agreement.
- CCI specifically stated That Ranbaxy-Sun Pharma should divest in seven specific formulas.
- Therefore CCI gave a conditional yes to the acquisition. The inquiry and Order had taken a total 210 days.

Following were the Disinvestments, as proposed by CCI.

1. Formula having combination of Ezentimibe and Olmesartan.

2. Products having mixture of Rosuvantatin and Hydroclorthaizide.

3. Drugs Containing Levosulpiride and Fluoxetine.

4. All products Manufactured under the Brand-name of Olanex was to be sold off, Ranbaxy was dominant in this sector.

5. Rosuvas EZ Brands Manufacturing in Ponta Sahib was to be banned.

6. Esomeprazole Formula in Integration with Terlibax is to be completely banned.

7. Hydroclorthiazide products and nexus with those products were not to be touched by Sun-Pharma.

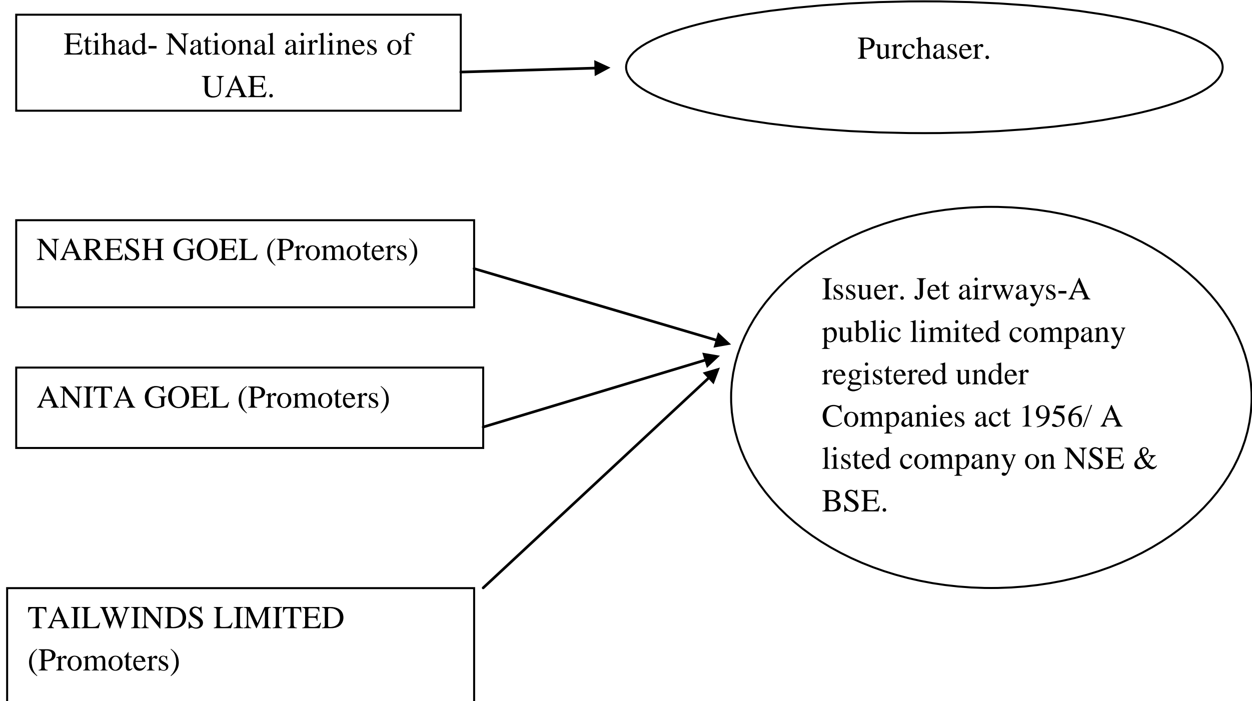
8. Raciper L Brand name products were not to be further marketed.

CASE STUDY- JET-ETIHAD DEAL (Regulatory role played by CCI and SEBI.)

Recently Jet airways got its Co-Pilot in form of Etihad Airways; Etihad Airways acquired 24% stakes in Jet airways through FDI (as 49% FDI investments are allowed in Airway industries). However Jet-Etihad had to go though the regulatory litmus test of CCI and SEBI.

DEAL SUMMARY.

PARTICIPANTS

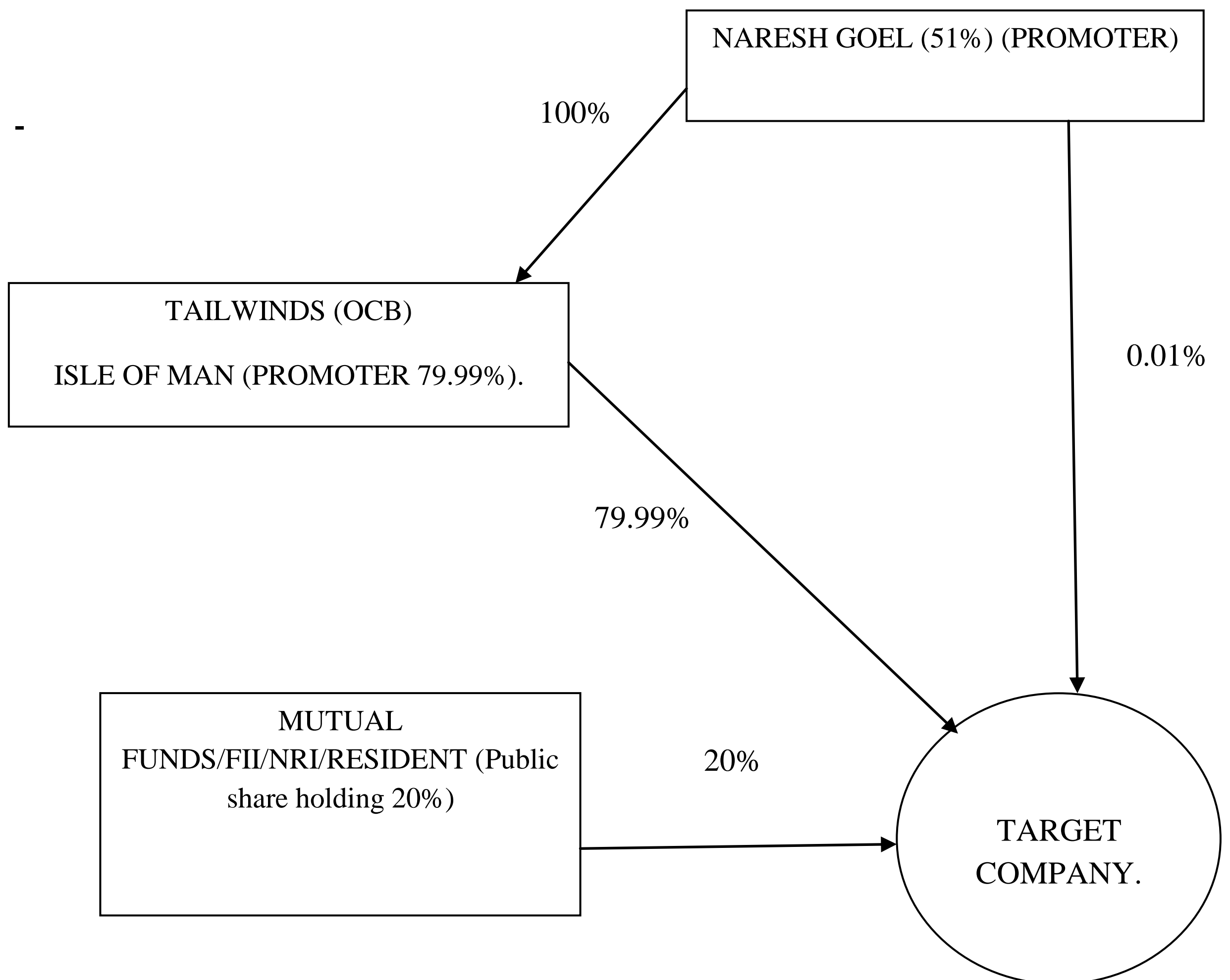


Acquisition of 24% share by Ethiad was through FDI route; therefore Etihad airways had to get various regulatory approvals from FIPB, MHA, CCEA (Cabinet committee on Economic Affairs), SEBI Takeover Code, CCI and Directorate General Of Civil Aviation. We will focus more on SEBI and CCI regulatory frame work.

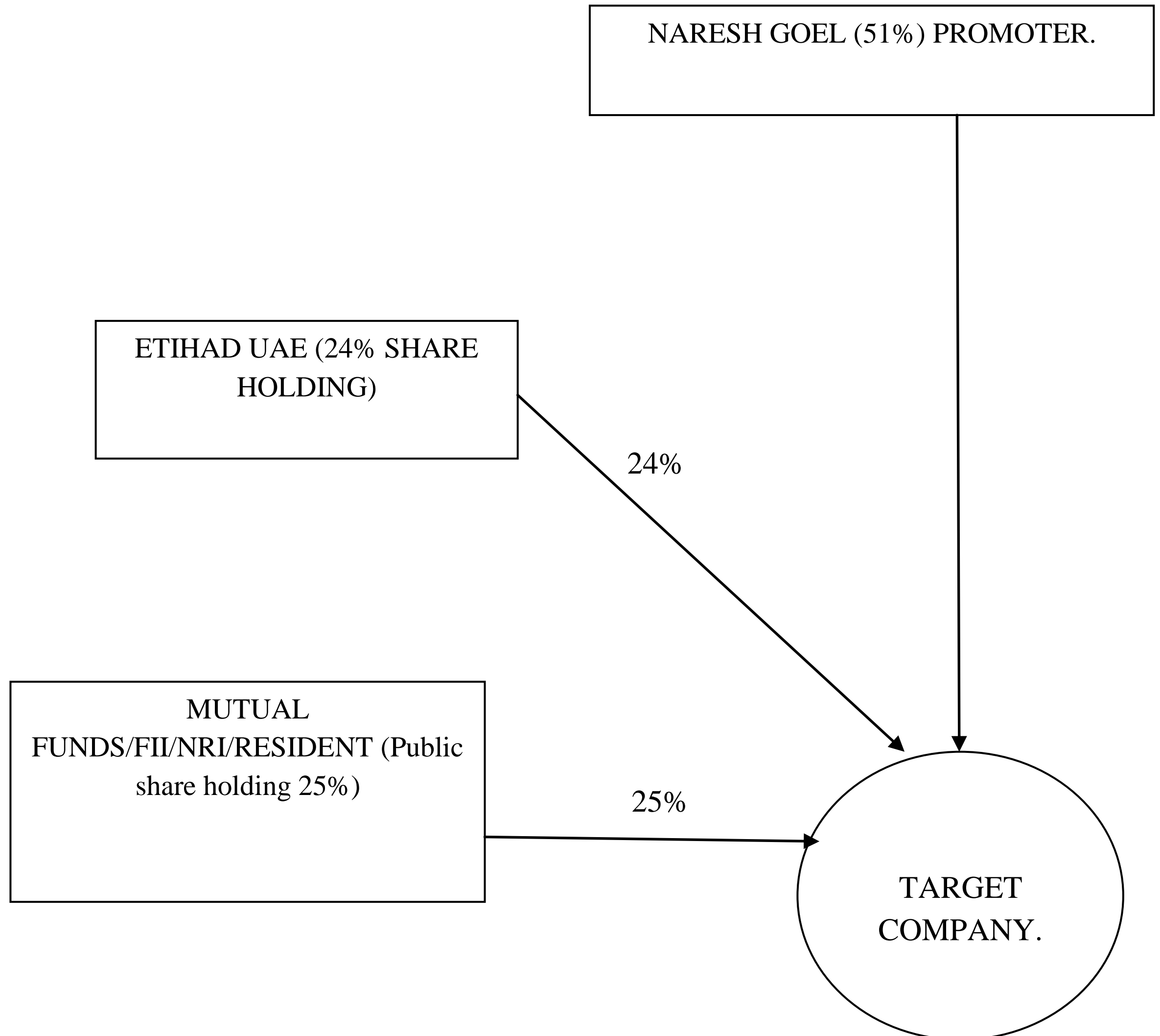
EVENTS OF THE DEAL

Date	Approval of Events.
3rd Jan.-2013	BSE is informed about possibility of Etihad-Jet Acquisition.
1st Feb.,2013	Ministry of corporate affairs, P. Chidambaram, Anand Sharma is informed about the deal.
27th Feb.,2013	Etihad buys jets landing and departure slots at London airport through lease back agreement.
24th April, 2013.	Three agreements are signed between Jet and Etihad. Share purchase agreement, Investment Agreement and Corporation Agreements is signed and executed. Jet issues 2, 72, 63,373 equity shares to Etihad Airways.
24th May, 2013.	Jet Shareholders approves the allotment of shares to Etihad.
29th June, 2013.	FIPB approves FDI regulations and gives Etihad a go-ahead for the deal.
16th Sep. 2013.	Open offer issues come up before SEBI.
1st Oct. 2013	SEBI clears 24% stake acquisition of Jet by Etihad and makes it clear that Etihad has no obligation of Open offer under Takeover code.
12th Nov.2013	CCI approves the deal, the combination is fine under Competition act 2002, and the combination is fine under section 5 and 6.
8th May 2014.	SEBI, CCI, FIPB, MCA and other regulatory issues are complied with, thus finally first international aviation investment through FDI is approved in India.

POSITION BEFORE DEAL/ACQUISITION.



POSITION AFTER ACQUISITION.



CCI gave a clean chit for Jet-Etihad Acquisition. According to CCI following were the field of Investigations and findings-

Relevant Market- Indian Air-ports/International Airways traffic was considered a relevant market.

Clarification on AAEC- CCI had to decide whether the combination would adversely affect Competition or not. Etihad had a rival in form on Emirates airways. However the main concern of CCI was that of Co-operation agreement signed between Jet and Etihad.

Etihad had made a mandatory provision in which Jet had to make a mandatory landing in Abu Dhabi so as to offer flight services in other nations like Africa/USA and other part of Europe. However the same forms of agreements were made by big Airlines like Pan America, Virgin Airlines. Therefore CCI cleared this agreement too. The minority panel however made a bonafide argument; they clearly stated that Indians were loosing their market to Abu Dhabi, as the number of Jet flights which were operating from Main Indian cities like Mumbai and Delhi were now getting reduced or were shifting towards Middle east.

Another concern regarding the Competition was that after a successful acquisition Jet India and Etihad Airways would stop challenging each other as it's cleared in the agreement. As a result there would be a limited chose for the consumers to choose from. After such investigation CCI proposed a change in the agreement in which Jet Airways had to change their routes so as to preserve the competition between entities.

SEBI CLEARENCE

ISSUES INFRONT OF SEBI.

Does Etihad have a direct control over Jet Airways Operations?

Is Etihad liable for open offers under regulation 3(1) and 4 of the SEBI takeover code?

Under Regulation 3 and 4 of takeover code it's stated that If a company acquires more that 25% stakes in target company then it is bound to make public offer upto 26%, The pricing of the company should be fair and square.

However, Etihad took a clear stand as it acquired only 24% stakes in Jet. Etihad was well aware about the trigger bench marks.

Does Etihad control Jets International Operations in any manner?

1. In the corporation agreement certain conditions were clearly stated which ensured Etihad got an upper hand/Control over Jet.
2. However SEBI, took reference from the report of other regulators like that of CCI and FIPB.
3. CCI had already established that etihad was not controlling any Jet operations due to following factors-

- Etihad is not in majority in the Board, therefore it can't be even called a promoter.

- Etihad had a right to vote/introduce only two directors out of a total majority of twelve.

- Lack of any veto power, which is considered a superior power. Etihad has not been given any veto power in making major decisions.

Therefore in short SEBI gave its approval as it relied on the FDI approval reports, CCI definition on Control, control triggers and regarding open offers it refers the take over code, it is specifically mentioned in section 3 and 4 that the limit of such open offer will be 25 % and above, therefore this provision was not attracted

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