Comparative Analysis of Mergers & Acquisitions in Banking Sector: A Scrutiny from the Competition Law Perspective

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Abstract

"*We get talent and scale from mergers*."- Angela Braly

This dissertation is an attempt to bring to light the effects of the mergers in the banking sector and the impact of mergers and acquisitions with the scanner of competition regulation on banking entities in the market as defined as per Competition laws in India. The central theme of this research will address and interpret the fundamental questions by concentrating on the instances of the issues creeping in recently. Through this research, we approach the problem of exclusion of the CCI from investigating any merger, acquisition, reconstruction, transfer or restitution of any banking entity(s). Such exclusion, as proposed in the new amendment of the Banking Regulations Act, 1949, would prove to be detrimental to a healthy economy and a healthy market. To arrive at a more focused solution to the problem, there are discussions on various banking entities, M&A in the banking sector, competition issues involved in the banking sector and banking regulationspertaining to M&A. This research tries to find an answer to the question as to whether the legislative framework on the provisions laid down in the Banking Regulation Act, 1949 along with the Regulatory Authority, i.e. RBI as well as the provisions of the Competition Act, 2002 where the regulator is the CCI is a parallel intervention. The researcher has looked upon the discourse among the Reserve Bank and the Competition authority which discusses a regime of comparative study of laws as in the United States and Japan along with the set of best practices prescribed by the ICN and OECD documentation is to be based upon as mentioned in the sector of financial institutions, especially in these nations the role of the Central bank is important in setting the interest rates. In view of the above discussion, the dissertation attempts to evaluate various facets for effectiveness of bank mergers. The researcher has considered this paper to raise the contentious issues where the Central Bank focuses and tries to divert attention of the people which might stimulate the smaller voices in society. Therefore a Central Bank should check the issuance of mergers from the Competition authorities so that fairness in the market is maintained.

KEYWORDS- Mergers, Acquisitions, Banking Sector, Regulatory Framework

Introduction and background

The epoch of globalization marks a major change in the financial system in India as well as in many other nations where a phenomenal growth of the process of mergers and acquisitions were initiated. The proposal for mergers and acquisitions with special reference to the Banking Sector has to be elaborated under the legal framework. The development of merger and acquisition has been significant and is brought under the scheme of corporate restructuring. Today there is a huge competition in the economic market and global business model and hereby integrating the business units by the increase in their competitive advantages. The Banking laws shall not be seen in isolation but they shall also be kept under the check in the economies of scale, increased market share and shareholder's value, sharing and saving cost enhancement of revenue, reduction of risk, better pricing measures, enhanced market access and inclusion of new technologies will certainly bring in adverse effects on competition in such sector. It is a source of competitive advantage which might be a strategy for enhancing capability. The competitive advantage is achieved through consolidation, economies of scale, increased market share and shareholder's value, better pricing, enhance market access and access to new technologies.[1] The research will also involve the extent of Pre and Post mergers analysis in banks and its impact on the stakeholders.[2]

The liberalization segments in banking sector marks the greater connotation for the defense for the effect of competition in Banking and its relation in the market rivalry principles of economic activity. The experience in Indian banking sector has been stable and sound after independence. There have been a number of reforms for the banking sector and it is a necessity for economic growth across the world making it an attribute of dynamism. The development of banking sector has led to the growth of the entire economy. The entry of new private banks in the market raised a competitive spirit into the field of banking. Therefore, globally the financial economy of any nation is build-up of processes of mergers and acquisitions which do have an impact in the competition market. In such business development, a question of competitive advantage comes up regarding better positioning, economies of scale, increased market share and stakeholder's value, reduction of risk, better pricing, enhanced market access and better access to new technologies. The historic invasions should be cited where the three main Banks of India were merged together to form a single bank, i.e., State Bank of India. The RBI although being the regulator in this sector, is still facing competition when the foreign banks have already stepped their foot in India. Such is the pressure where the private banks have already merged with foreign entities to build up their financial strength and to capture larger portion of the growing retail business and market share. This research shall however elaborate on the pre and post analysis of mergers and acquisitions on the banking sectors and its impact on stakeholders.[3] The researcher has therefore thought of such urgent positioning of such processes in this sector where an approach has been undertaken in order to give a solution regarding the best practices in understanding the issues better. The legislation of Banking Regulation Act of 1949 gives the power to RBI to regulate financial market in India. Further the paper shall evaluate such reforms vis-à-vis the economic growth of the country. Though there are several amendments in the Banking Laws which draw the research to the central point, that whether it is advisable to grant a blanket exemption as per the newly introduced amendment to the Banking Law where it states that Section 5 and 6 of the Competition Act, 2002 will not be applicable to the banking sector.

The proposed Section 2A the Act states that "Competition Act will not be applicable "*to any banking company, the State Bank of India, any subsidiary bank, any corresponding new bank or any regional rural bank or cooperative bank in respect of* *matter relating to amalgamation, merger, reconstruction, transfer, reconstitution or acquisition…”* which forbids the rule of Competition Act in the entire Banking industry from its purview which might bring adverse effects on the prevailing competition in the Banking Sector. The research has been constructed upon the Indian bank mergers in comparison to the United States of America and Japan, because in all these nations the Central Bank plays an important role in the financial markets by settling the interest rates and deciding upon the equations of Government debts. The major problem has been to fix the banking equation as the big banks have always been preferred for which there is less growth in this sector. There should also be adequate legislations in order to tackle development in this industry.[4]

The reporting of RBI, being the nation’s federal bank has sought the exemption from the Competition Act of 2002 in such bank mergers. The Ministry of Finance has however exempted RBI under the unique nature of mergers in forced situations. Mergers are a form of consolidation where two or more corporate entities are merged with the new surviving entity. Acquisitions on the other hand are procedures where the control of the company is transferred with a change in shareholdings which previously did not have any control. The researcher will draw an analysis of the role of RBI as it erodes the authority of CCI where the Competition Act of 2002 will fall redundant. The illusory conflict will be resolved through channelling the procedures.[5] The CCI is also investigating a merger between regional rural banks (RRBs) sponsored by Punjab National Bank and Syndicate Bank for possible breach of norms. The case is being scrutinized under the combination provision of the Competition Act, 2002 where the RRB mergers wherever necessary permission has not been taken by the respective authority.[6]

However, the main purpose of this research is to find out whether there is any conflict in provisions of the merger of Private Sector Bank with Nationalized Bank, Cooperative Bank with Private Sectors Bank, Cooperative Bank with Nationalized Bank and Nationalized Bank with another Nationalized Banks, Private Sector Bank with Private Sector Bank and Cooperative Bank with another Cooperative Bank. The argument still lies as RBI is still in demand of the exclusion of jurisdiction of the CCI into such mergers as it does not have the necessary technical expertise. A delay in impact might have a direct impact upon the public and society at large who are the depositors of money in such institutions. The new licensing procedure also need to get analysed as also whether the legislative framework on the provisions laid down in the Banking Regulation Act, 1949 along with the Regulatory Authority, i.e., RBI as well as the provisions of the Competition Act, 2002 where the regulator is CCI.[7] The principal objectives of the research is basically to direct the prospective, harmonized and corresponding system regarding the merger regulation in Banking sector and its economic and social implications.

Research questions

The main research questions for the research proposal are as follows:

- **i.** What is the existing legal framework governing the Bank mergers in India?
- **ii.** Whether there is any conflict regarding the overlapping of jurisdiction between the RBI and the CCI?
- **iii.** Whether the present regulatory mechanism of banking merger is at par with international standards? Is there a possibility of any improvements in the light of comparative regulatory framework?

Regulatory rule: the role in bank mergers

The banking sector has seen a tremendous amount of change in the post liberalization era, i.e., in the early 1991, the then Narasimha Rao government embarked the policy of liberalization. Licenses were given to small number of private banks like Global Trust Bank, which later amalgamated with Oriental Bank of Commerce, Axis Bank (earlier UTI Bank), ICICI Bank and HDFC Bank. This move had augmented the growth in Indian Banking. Along with rapid growth in the economy, strong contributions come from all the three sectors of Banks, viz. Government Banks, private banks and foreign banks in India. There were 20 nationalized Banks, which were reduced to 19 Banks when the New Bank of India merged with Punjab National Bank. Thus, in post liberalization era, the Indian Banking sector experienced the growth as a result of issuance of licenses to the private Banks by the Government of India.[8]

In the context of the Indian Banking Industry, the need for merger and acquisition as a strategic tool, was highlighted by BASEL conventions – "A set of agreements set by the Basel Committee on Bank Supervision (BCBS), which provides recommendations on banking regulations in regards to capital risk, market risk and operational risk.[9] The purpose of the accords is to ensure that financial institutions have enough capital on account to meet obligations and absorb unexpected losses". The Committee on the Financial System (Narasimham I) in 1991 – "The Government of India constituted a nine member committee under the chairmanship of Mr. M. Narasimham, retired RBI Governor on August 14, 1991 for making recommendations on existing financial system and to give suggestions for improving the existing structure. The committee submitted its report to the Financial Minister in November, 1991 which was placed on the table of Parliament on December 17, 1991,[10] which had recommended a possible structure, towards which the banking system could evolve with 3 to 4 large banks (including SBI) having an international presence and 8 to 10 national banks with a network of branches throughout the country".

Review of the banking reforms

Section 44A of the B.R. Act states the procedure which is to be followed for merger of two entities. As per Section 44A of BR Act of 1949 it is easy going and cost effective. After the two banking companies have passed the necessary resolution in their general meetings, representing not less than two third portion of holdings of two banking entities for the proposal of merger where the resolution has to be submitted to RBI for approval, where the RBI by an order in writing by the Reserve Bank of India, is binding not only on the banking company concerned, but also on all shareholders thereof. While sanctioning the scheme of amalgamation, the new entity will emerge as a stronger bank.[11] The experience of the Reserve Bank has been by and large satisfactory in approving several schemes of amalgamation in the recent past.

The committee considered that there was an urgent need for reviewing and amending main laws governing Indian Banking Industry like RBI Act, Banking Regulation Act, State Bank of India Act, Bank Nationalization Act, etc. This up-gradation will bring them in line with the present needs of the Banking sector in India. Apart from these major recommendations, the committee has also recommended faster computerization, technology upgradation, training of staff, depoliticizing of banks, professionalism in banking, reviewing bank recruitment, etc. The successful execution of such recommendation has raised a new dynamism to the banking sector from 1992.[12]

During the last few years, the Indian Banking System has witnessed some very high profile mergers, such as the merger of ICICI Ltd. with its banking arm ICICI Bank Ltd. also the merger of ICICI Bank with Bank of Madurai. Subsequently various other mergers also took place like the merger of Global Trust Bank with Oriental Bank of Commerce, the merger of IDIBI with the banking arm of IDBI Bank Ltd. and the most recently merger of ICICI Bank and the Bank of Rajasthan which was in news for various reasons like employee strikes, penalty imposed by sectorial regulators, etc. Here, the Global Trust Bank in 2004 failed and had to be bailed out by RBI through a merger with Oriental Bank of Commerce. The Verma Committee had identified that Indian Bank, UCO Bank and United Bank of India were the weakest bank in terms of NPAs and the gross NPAs of scheduled commercial banks rose from Rs. 71,000 crores out of which Rs. 57,000 crores came from the public sector banks.

Mergers: the construct for building growth

The merger in the banking sector has been for the development of the weak institution by the stronger banking company under the approval of the Reserve Bank of India. Mergers are the two combined entities under common ownership. Bank merger is however distinctive in this perception, that the banks combine together to form one institution, i.e., one headquarter and a unified branch network. In this case, the active bidder includes the assets and liabilities to the target or the passive bank through a series of legal compliance's. The Narasimham Committee had recommended that these combinations between strong banks result great economic benefit.[13]

The motives of the bank mergers are an important tool for the growth and expansion of an entity.[14] M&A gives an opportunity to the companies to bear a cut throat competition in the carriage of day to day operations. The companies may find out the best measure to grow and to achieve high profit and expansion of market share. Moreover, M&A's are the outlets through which the weak companies are merged with big entities. Section 72A of the Income Tax Act, 1961 does provide for the carry forward of losses and the advantage is to book losses and to save tax outflow.[15]
The sector of Banking is concerned for M&A's for these reasons:

1. Growth – the new reforms in the society has increased banking mergers in order to compete at international level. The time is to increase the market share and the presence of some powerful banks in order to set out for new opportunities in the market.
2. Deregulation – the withdrawal of the entry barriers have made new private banks to come inside the competition and have strived for their networking in market.
3. Technological Knowhow – Latest technologies have led to deliver high performances with value added services to the customers and banks that cannot thrive will have to go for mergers.
4. Innovative Services – The latest technology and new customers are getting attracted to the new services for which the old banking companies shall merge to instil such risks.

5. Increases in Limits – Latest entities in banking have come upon with high capital structure and to increase the market share is necessary where the target banks might not have the innovative services.
6. Customer base – To utilize the new private sector banks there should be a huge customer base and in order to provide several types of advances the target bank should have new sort of customer groups.
7. Merger of Weak Banks – The practice of merging weak banks has been done by the RBI. It was also suggested by the Khan Group like the Developmental Financial Institutions shall merge but it was left with dissent by the Narasimham Committee II.
8. Risk Management – The banking sector has to manage its risks properly due to get high savings and advance records.
9. Huge Competition – New systems in financial sectors have increased the competitive force to such extent that the interest rates have started to differ which is the reason to go for merger.
10. Expansion – The banking market had been developed with increased market share and they always expand and cut costs by way of M&As.
11. Market Competition – The mergers have to generate the economies of scale where they lower the service cost and provide a competitive edge to the society.
12. Transfer of Skills – When mergers are supposed to happen, the banking organizations refers to the rise in mergers.
13. Liberalization – Financial sectors in the international market and for which the global impact has been seen in the domestic issue reaching to markets all over the world.

Therefore, the bank mergers are to expand the capital assets of a bank where after limitations, it can lend on basis of its stocks and surplus. There might be a possibility that a banking company might have less assets and clients to compete in international market, for which mergers are the only expansions.[16] The rising market competitions in the regional and national financial system are asking the banks to get development without huge profit margins and there will be cut costs by way of M&As. After such combination, it seldom leads to two banking companies transferring their skills on part of the merged banks. The larger the size of banking company, the larger salaries will be paid in order to attract new leaders. By the merger, the branches will be increased in future.[17]

In dealing with the Banking Sector Reform, the Indian Government has tried to make blueprints for the Indian Banking Industry right from the initiation of the year 2015. In a Conference at GyanSangam held at Pune for two days where changes were initiated at the change for the lending sector norms as led by the Prime Minister ShriNarendraModi, Finance Minister ShriArunJaitley and the RBI Governor ShriRaghuramRajan. The issue of capital strength should be the focus for which the issues of mergers and acquisitions came up. Consolidations however is not only the path to follow but it may structure the small banks to infuse capital as well as to improve the records in the balance sheets.[18]Although the combinations of the PSU Banks is to be the key issue at the banking industry right now as most of the banks are having huge amount of NPAs which is to be regarded as loss for the money lending industry accounting to be over Rs. 2.43 lakh crore as on September, 2014. The reason regarded by the Government is that it will try to take steps by way of consolidation of the position of Public Sector Banks where the Budget of July, 2014 as proposed by the Finance Minister ShriArunJaitley has highlighted such options. These Banks also would have to meet with the Global Capital Adequacy Norms. The PSBs would now have to check their equity capital of Rs. 2.4 lakh crore by the year 2018 in order to meet Basel III norms.[19]

Bank mergers: Indian and global scenario

The competitive world is all set to evidence larger players to merge smaller competitors as the wave of 1997 to 1999 states in USA where the highest number of merger took place and it created new millennium. Here, the mergers are averaged at 170 per year and a reduction of independent banking organization and have increased to 498 in number with $64.4 billion of total assets. In the end, the mergers left 25 largest banks and 70% of the assets being controlled by leading banks. In Europe, it has been on the rise with Abbey National (UK) by Banco Santander of Spain in 2004. Another merger of UniCredito's of Italy and the *Hypo v. Bank of Germany* were the important combinations. Nations in Asia are planning for arrangements with most of the banks that came out in such bailed out mergers. With the collapse of Northern Rock, it has nationalized and acquired by the Virgin Mobile. In a bid of Royal Bank of Scotland quoted for 22 billion pound and the Barclays' for 5.5 billion dollars. In Canada, the domestic acts of consolidation with unacceptable level of concentration. In Sweden, the merger of cooperative bank with commercial bank and the largest savings banks into banking group.

There has been the new entry of foreign banks and the establishment of "*niche banks*." Mergers herein benefit both the customer and the bank. In the case of HDFC Bank and Centurion Bank of Punjab which took place in May 2008, the HDFC Bank added geographical arrangement of northern and southern state branches for itself. It had the necessary requisite expertise amongst the retail, transactions and banking practices. The merger of Centurion Bank of Punjab along with HDFC Bank in the year 2008 was approved by the Reserve Bank of India in order to complete the statutory compliances and regulatory processes. The scheme of approval has been complied with the CBOP shareholders receiving 1 share of HDFC Bank for every 29 shares of CBOP. The HDFC Bank came up with huge network, workforce and clients. Previously, the Times Bank Limited was merged with HDFC Bank Ltd. in the year 2000. Here the shareholders of Times Bank received 1 share of HDFC Bank for 5.75 shares of Times Bank. The deal created an entity's asset size of Rs. 1,09,718 crore which gave a boost of being the 7th largest bank of India and it helped to distribute 1148 branches and 2359 ATMs which is one of the largest in the private sector. The target bank's strong SME relationship helped to provide high rate corporate entities to HDFC Bank.[20]

However, there were certain drawbacks to the merger as the merged entity did not lend home loans whereas it has more number of unsecured and two-wheeler loans for which HDFC Bank earned profit on its own stakes. The merger was a safety to the customers and it did not ignore their interest. The issue of Universal Banking also arose on the terms of services which will be the stream of business economics. ICICI Bank's reverse merger between ICICI Ltd. with ICICI Bank Ltd. on 30th March, 2002 has led to the establishment of India's first "Universal Bank". It means the Bank can provide supplies of all financial products and activities such as accepting deposits, short-term and long-term loans, insurances which are known as the commercial banking platform and also investment banking like underwriting, venture capital, mutual funds and several other verticals. It is still the undisputed leader as it challenges the Banks and Financial Institutions in India to get accustomed to the option of conglomeration or combination for the expansion of favourable business.[21]

Recently in a bank merger between Kotak Mahindra Bank and ING Vysya Bank, the Competition Commission of India in this case under Combination Registration No. C-2014/12/231 dated 12th February, 2015 had provided a notice under Section 6 (2) of the Competition Act of 2002 where an Order was passed under Section 31 (1) of the Competition Act where it stated that the merger scheme/amalgamation. The order for approval was provided by the CCI without prejudice to any other laws and it is not going to create any appreciable adverse impact after the assessments under Section 20 (4) of the Act. Due to this amalgamation, Kotak Mahindra Bank will be the 4th largest private sector bank in India.[22]

Comparison between regulation of bank mergers in India and Japan

The regulation for bank mergers in India and Japan has huge difference where in Japan the regulating system is independent. In Japan, mergers are dealt under Antimonopoly Law where the JFTC is a different body regulating mergers of companies. Its objective is to prevent anti-competitive agreements and unfair trade practices. The parties in Japan file an application before the JFTC and through Administrative Guidance the merger policies are scrutinized under Section 10 and 15 of the Antimonopoly Law in regulating competition. Under the Indian Law, mergers are regulated by Special Laws and Competition Act. The Banking Regulation Act of 1949 states that Section 44 A needs to be complied where the amalgamation scheme has to be approved by the RBI. The Competition Law regime states that the CCI regulates the mergers of financial institution. As per Section 5 and 6 of the Competition Amendment Act it states that the relevant thresholds are set for scrutiny under CCI regulation and moreover CCI has the power to investigate such schemes. Section 6 also deals with the combination's effect on appreciable adverse effects on competition and a pre-merger notification within 30 days of proposal for combination.[23]

The basic differences between India and Japan are that, in Japan there is only the Antimonopoly law and in India it has to pass through two windows, i.e., the CCI and the sectoral regulators. In Japan, the period for approval of any merger is 120 days but in India it is 210 days which creates unnecessary delay. In India there is the Banking Regulation Act and Competition Act, however in Japan there is only one law, i.e., the Antimonopoly Law. The CCI's main duty under Competition Act is to investigate into the proposal of combination which might have an adverse effect on competition and is not to look into other factors. It safeguards the abuse of dominant position and in Japan a regulatory authority looks into all the matters. In India, the bank merger laws are not too stringent as compared to that of US and Japan. So, in regulating Bank Mergers, one single body shall cross through all the work at less time to save commercial betterment in the society.

The bank mergers in US and Japan differ in procedural aspects as well as in law. The laws involved in US are the Bank Mergers Act of 1960 and the antitrust regime like the Sherman Antitrust Act, the Clayton Act and the Federal Trade Commission Act. The Sherman Act of 1890 prohibits all nature of contracts and combinations which restrain interstate trade and foreign commerce and prohibit monopoly in any state. The Act has both civil and criminal penalties. The Clayton Act of 1914 is a civil law statute where it has been amended in 1950. The Act prohibits mergers and acquisitions which substantially lessens the competition on commerce. This Act mandates the mandatory notification on Department of Justice and the Federal Trade Commission on the crossing of threshold. The Federal Trade Commission Act of 1914 encircles and prohibits unfair methods of competition in interstate commerce. The main purposes behind these legislations were to protect consumers and small businesses. Banks were originally exempted from the antitrust regime but in 1959 the Department of Justice brought a suit challenging a bank merger violative of Section 7 of Clayton Act. This suit was settled and thereafter the Congress has passed the Bank Merger Act of 1960 to close the loophole under Section 7 of Clayton Act. This new Act provided that the banks cannot merge without the prior consent and approval of supervisory agencies. The competition and monopoly on the bearing upon public interest and adequacy of bank's capital structure and competency of its management, future earnings prospects are the factors to be looked by Board of Federal Reserve System, Comptroller of Currency and Federal Deposit Insurance Corporation in performing their functions.[24]

The Antimonopoly law has been amended and relaxed which is not alike as per the original text. The relaxation process has been a result of several amendments where the law has transformed a lot in the practice of Administrative Guidance by the Ministry of International Trade and Industry and the implementation of exemptions. Under this law, Section 15 prohibits holding companies acquisitions and Section 10 prohibits acquisitions. Thus, laws differ from nation to nation as per the culture being followed.

The organization has evolved from the International Competition Policy Advisory Committee (ICPAC) where it was commissioned to act upon the international competition in the context of economic globalization and focused on multi-jurisdictional merger review. The interface between trade and competition and cooperation between agencies is the future goal. ICN is intended to encourage competition and best practices to facilitate international cooperation. ICN is not intended to replace or coordinate work of other organization. It does not make any rule and works for an informal platform for promotion of cooperation and exchange of information among competition authorities. The Report of ICN in almost all places under Ministry of Finance or Central Banks has the duty to control bank mergers for safety in the institutional procedures and guiding competition authorities. In the recent epoch, the number of jurisdiction including Germany, France, Canada and Italy have recognized that separation is best approach for efficient institutional structure and antitrust authority is made responsible for bank mergers and its effects.[25]

The member nations of OECD including Australia, Canada, Norway, and United States resolve the check on the regulators in the functioning of bank amalgamations as well as by the competition regulators. They are the backbone for the application and promotion of the national policies on competition without any hindrance to the nation's interest. The country has undergone wide changes in the regulation of banks and their amalgamation strategies whereby a joint mechanism is the need to settle with procedural disputes and discrepancies to revert from the dual review from authorities. In France, the amalgamation in banks have been done by the competition regulator and it is also suggested by the OECD member states that the economy should be specialized enough in order to check the industrial knowledge as well as to enforce the competition law policies in the market.

RBI and CCI adversity: the struggle for power

In India, CCI is restricted to deal with the competition issues by the Competition Act itself. The preamble of the Act states, that the purpose of Competition Commission of India was established in order to prevent practices having adverse effect in the market for competition. It was also to protect the interest of the consumers and to ensure fair trade. However, the regulators in the respective sectors shall enjoy their own knowledge in technical knowhow in their respective industries. They can be guaranteed that CCI would not overrun their dominion.

The CCI should distinguish between the competition norms of the market, where the banks and financial institutions are managed by RBI. Prudential regulation is mostly focused on placing and implementing instructions that edge indemnity of banks, trustee of public fund and constancy of the fiscal sector. Thus, such yardsticks would determine the regulation of M&A's by the RBI. On the other hand, regulation of Competition in relation to M&A in the banking sector is altogether a different matter. This is designed to ensure that banks participate in a healthy competition amongst themselves in combating for clienteles by imposing the central standings, lesser interest charges on advances and more noteworthy interest charges on deposits and securities.[26]

The regulation of Merger by CCI would be along these lines imagined to ensure that such endeavours are not motivated by the desire to plot and make ensured benefits at the expense of clients or to squash different players out of the business sector through a few practices. While CCI does not have either the prudence or the worry on prudential regulation, then again RBI does not have the competence or remittance to control the anticompetitive behaviour. If the particulars of their jurisdiction is noticeably demarcated and are also reciprocally appreciated by both RBI and CCI, then there is no single reason for RBI to deny having a concurrent jurisdiction with CCI. The much puffed up field war is inexistent, since the fields to which the RBI and CCI perform are largely on similar lines and tend to overlap.

The regulators both have different respective goals from both the RBI and CCI, and might result in a struggle between them. Even the diverse technique used for the similar difficulty may be the reason for the conflicts between the two. However, consultation might prove to be a better solution for such conflicts and resolution. The Competition Act offers for consultation between CCI and other sectoral regulators, by way of reference.

The CCI and RBI can work in collaboration and synchronize their acts which is possible if the Government try to ponder on forming a regulator's which might allow both the authorities the regulators to harmonize their work. This would also result in allowing the regulators to accomplish policy coherence while concurrently getting sensitized towards the competition law. It has been revealed by the studies that there is an adverse correlation between the rise in the concentration and savings of deposit rates and an affirmative association between the rise in concentration and an upsurge in interest rates and additional conditionality's. Recently the RBI has allowed perceptibility of bank accounts which is looked up as a step forward to put banks in competition as banks would gain a chance to mine extra charges from the clientele due to transferring charges for switching from one bank to another once they gain a dominant position.[27]

However, to guarantee the steadiness in the sector and depositor security RBI normally despite extreme competition among banks. Competition may result in the motion of risk taking as banks combat for clienteles, in so doing bargaining on security which can end up in trading off with economic stability. It is, thus, very much essential those with the RBI and CCI are provided with for discharging of their obligations in the banking sector. Thus, there is scope for both RBI and CCI in the banking sector and if both are permitted to exercise their supremacies the same would be beneficial for the economy. Candid apprehensions such as the effects of postponements and delay in making decisions by the CCI, expressly in event of forced mergers, cannot be accepted as rationalization for complete but rather provisional exclusions.

For improving on their productiveness and also to benefit the clientele there is a prerequisite of a healthy competition in all the sectors in the economy. Some sectors are expressly excluded and may be acceptable for the reason that some sectors in India may not be all prepared to be exposed to an open competition or vulnerable to the Competition. But then Indian consumers would be deceived by the elimination of any sector from jurisdiction of CCI which would be a catastrophe. Indisputably in the event of failing banks, the mergers are permissible as soon as possible. The OBC took over Global Trust Bank in 2004. One - time exception from the applicability of competition laws can be permitted in particular cases, like in the UK, soon after the earlier turned turtle subsequent to the financial crisis. Halifax Bank of Scotland was merged with Lloyds TSB in 2009.[28]

The apparent uncomfortable edge between the RBI and CCI is obvious from the statutory framework. A closer inspection and scrutiny of the interface needs experimental as well as normative understandings. RBI could not feasibly function as an operational device for advancement and bifurcation of consumer prosperity in absence where the Competition administration is a sophisticated, difficult procedure, in the hands of CCI. It is to lessen operation charges and proficiently improve legal conviction, the jurisdiction of competition law administration and implementation has to be left with the CCI. However, this does not convey that the RBI should not administer the mergers and be aloof from the merger transaction. But there is an utmost necessity of clearly demarcating the jurisdiction of both RBI and CCI, so as to guarantee smooth working of both the authorities.

To conclude, as it could fetch adversarial effect on the competition prevailing in the banking sector in India if the banking sector is exempted from the applicability of the Competition Act, 2002 completely, it may hence be not sensible to award the blanket exemption to banking sector from the applicability of competition laws. The Central Government is in the progression of espousing a National Competition Policy to reserve the competitive development, to safeguard competition and to boost competition in the domestic market so as to enhance productivity and maximize benefits to customer, and therefore the role of CCI in maintaining the competition in the economic sector which includes the banking sector cannot be disregarded.[29]

It is therefore necessary that the RBI and the CCI should synchronously and concomitantly conduct their respective inquiries in their respective area of dominion and co-operate in the assessment procedure of Bank M&As. In consideration to the international practices, the RBI and CCI can concurrently govern the mergers in the banking sector. However, in case of the failing bank, if considered suitable by the RBI in consultation with the Government, an exclusive jurisdiction will ensure regulating the matters with regard to "economic stability" or else mergers in banking sector as a total, in addition to the regulation by Reserve Bank of India, essentially stay concomitantly within the regulation of Competition Commission of India, in order to preserve and withstand competition in the Banking sector.

Conclusion

It can be concluded that, bank mergers in India have been considered as a perfect unity. Sound banking system is the foundation of strong economies. Banking system in India has been very stable and sound and has played a significant role in the development of Indian economy. In order to have a competitive advantage and to enhance capability, Indian banks have adopted Merger and Acquisition as the best policy tool. At the same time merger and acquisition has also played Indian banks to respond and cope with the international banking and financial system.

Having Banking Regulation Act 1949 as a backbone for regulating banking activities in India, the banking sector has been facing several challenges while responding to competitive pressures. One of such challenges is been of Merger and Acquisition of banks in India. In response to this challenge, Indian Parliament subjected Indian banking within the purview of the competition Act 2002 in order to regulate bank mergers more effectively. But the presence of RBI and its regulatory mechanism to regulate all banking activities including that of Merger and Acquisition of banks has led to overlapping of jurisdictions of both the authorities over bank mergers. On one hand the Competition Act of 2002 regulates merger as per Section 5 with laying down certain thresholds for transaction and any transaction meeting the required threshold is to compulsory notify to the CCI and further under Section 6, the amalgamation might lead to unfortunate impacts and will be considered as void combinations and thus are prohibited. Again there is combination regulation issued in 2011 to regulate combination more effectively. On the other hand Section 44-A of the Banking Regulation Act 1949 s the major source for the regulation of bank mergers in India. Under the said provision, the proposition of merger has to be laid before RBI for approval. Therefore, the RBI which sanctions and regulates bank mergers in India whereas curbing and regulating the anti-competitive effect of such mergers is has been the duty of the CCI.

Since RBI has specified the prudential regulation with to the bank merger but it withholds the portion of the check of market rankings and dominant practices which is vital in combinations to have a sound obligation to depositors. Thus it is obvious that the RBI should be given exclusive jurisdiction to regulate bank merger in India, as it has special knowledge and expertise required to regulate the banking sector and the same reason bank mergers should be exempted from the purview of the

Competition Act 2002 and Section 44-A of the Banking Regulation Act 1949 should remain the principal provision to regulate bank merger efficiently with needed amendment to the same.

The Banking Regulation Act 1949 has provided a sigh of relief to the investors and has also improved depositor's confidence on Indian Bank system. The RBI has laid down guidelines for the determination of Swap Ratio, disclosures etc. During this process the RBI in its capacity as a primary regulator and supervisor of the banking system has the complete information on the functioning of all the banks in India, thus in order to protect and guard the interests of the depositors in a well-defined manner and for the same reason it is already been stated that RBI is best suited to undertake merger review process.

In order to find out the best possible policy solution for the issues faced by the Indian Banking sectors related to its regulation, the present research studied the laws in the developed jurisdiction i.e. US and Japan. From the comparative study, it has been found that in US bank mergers are regulated entirely under the Bank Merger Act 1960. The act itself incorporates competition policies under Section 1 to 7 of Merger Act, 1960 for which it is no need for the intervention if the antitrust policy. Thus a single window facility has been provided in US and on the other hand in Japan also the bank mergers are regulated by the Antimonopoly Law, which aims at prohibiting private monopolizations, unreasonable restraint of trade and unfair trade practices by preserving excessive concentration of consumer power. But in India, there are two major statues sharing regulatory responsibility and thus leading to overlapping of jurisdiction. Hence, it has been suggested to follow the US model, have all the regulatory power to be vested with the RBI.

RBI is sufficiently empowered to ensure the combination of banking companies however the CCI shall make scrutiny and check necessary issues to regulate market. The study shall make suggestions for consideration of policy makers for regulating bank mergers are consultation by the sectorial regulators and the competition commission shall be made an important member which shall involve in decision making by the CCI within span of duration. The role of intermediary as played by the Government between the CCI and sectorial regulators for coordination and there should not be any sort of overlapping of powers. The CCI shall be made accountable through an independent committee and to prepare a National Competition Policy to declare the intent of Government to resolve competition and for guidance to different branches of Government in framing policies. The National Competition Policy Council shall be chaired by the Hon'ble Prime Minister and the Chief Ministers of states, luminaries from consumer organizations, NGO, media and academicians shall guide for its implementation. There shall be a State Competition and Regulatory Agency to resolve the local and domestic abuses in the market to promote fair practices. The Common Appellate Tribunal shall be established for the application of competition and regulatory laws for harmonious construction of the attitudes. There shall be an amendment to Competition Act for enhancing the powers of CCI and to make it accountable in providing an interface in overlapping of power.

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