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Mergers and Acquisitions: An Indian Experience

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This paper undertakes a scan of the first Mergers and Acquisitions (M&As) wave which is currently underway in India. This roughly coincides with the latest wave of international M&As. Takeovers are the dominant mode of M&As in India, similar to the international trend.

Mergers and Acquisitions (M&As) have emerged as a natural process of business restructuring throughout the world. The process of M&As spans geographical boundaries: cross-border M&As, mostly by transnational corporations (TNCs), have assumed a significant proportion. For the Indian industry, market driven M&As are essentially a phenomenon of the late 1990s. The early M&As in India were arranged either by the government agencies[1] or by the financial institutions within the framework of a regulated regime. However, since 1991, Indian industries have been increasingly exposed to both domestic and international competition and competitiveness has become an imperative for survival. Hence, in recent times, companies have started restructuring their operations around their core business activities through M&As.

The primary objective of this paper is to analyse the recent trends in M&As in India. As the current wave of M&As in India is the first of its kind, international experiences are relied upon to understand the issues relating to M&As in a historical perspective. Section II provides an overview of the emergence of M&As with special emphasis on cross-border M&As. Section III examines the recent trends in M&As in India. Section IV assesses the preparedness of the regulating authorities in India to frame suitable guidelines for M&As. Section V provides summary and concluding observations.

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There is an acute data deficiency with respect to M&As in India. Only the Securities & Exchange Board of India (SEBI) currently maintains a limited database on M&As relating the companies registered on Indian stock exchanges. This, however, provides a partial picture of M&As in India. The database maintained by a few private agencies is neither elaborate nor fully reliable as they are not available for public use on a regular basis. The Centre for Monitoring Indian Economy (CMIE) is the only agency which has been publishing data on M&As in India on a regular basis since January 1997. However, data compiled by the CMIE have obvious limitations as they are based purely on announcement of M&As rather than actual execution of the deals. Due to non-availability of more reliable data, CMIE data on M&As are used in this paper.

Section II

Mergers & Acquisitions : Motivations, Trends and Impact

There are several motivations, which govern the process of M&As (Annexure I). The economic motivations behind M&As are: 1) to gain efficiency through synergies, 2) to minimise risk through diversification, 3) to achieve short term financial gains from imperfect capital and foreign exchange markets. Sometimes, non-economic factors like prestige, market power or market dominance etc., do influence access to proprietary assets through M&As. Besides these underlying motivations, there are several other enabling factors responsible for the upsurge in M&As during the last two decades. These are new technologies, capital mobility, policy liberalisation, particularly with respect to FDI, deregulation and privatisation and changes in the capital market. The production system is now globally integrated mostly due to information and communication technologies. The advent of internet and electronic commerce has further accelerated the process of M&As in a cost effective manner. Liberalisation of trade, capital account convertibility, formation of regional trade groupings could also be attributed as major enabling factors for rapid growth of cross-border M&As.

There have been at least four distinct merger waves in the corporate history of the USA. The exact timing of these episodes were: (1) 1897-1902, (2) 1926-29, (3) 1965-69 and (4) 1988-90 (Boff & Herman, 1989). During the first wave, eight industries, namely, primary metals, food products, petroleum products, chemicals, transport equipment, fabricated metal products, machinery and bituminous coal experienced the greatest merger activity (Nelson, 1959). The bulk of the M&As were horizontal among these industries. The second wave is characterised mostly by vertical M&As. The industries, which witnessed the largest merger activity were: primary metals, petroleum products, food products, chemicals and transport equipments - leading to integration of manufacturing, suppliers and distributors. While the first merger wave is treated as "merger for monopoly", the second merger wave is termed as "merger for oligopoly". When both horizontal and vertical mergers were regulated through anti-trust laws,[2] there was a surge of conglomerate M&As in the third wave. The fourth wave of M&As offers a mixed picture with hostile takeovers and leveraged buyouts (LBOs) dominating the composition of M&As. One of the notable features in the fourth wave of M&As is that they assumed an international dimension. The current wave of M&As since the mid-1990s may be treated as the fifth wave. According to the World Investment Report 2000 (UN 2000), M&As completed worldwide have grown over the past two decades (1980-1999) at an annual average rate of 42 per cent and reached $ 2.3 trillion in 1999. In relation to GDP, total M&As in the world were hardly 0.3 per cent in 1980, which rose to 2 per cent in 1990 and further to 8 per cent in 1999. During this period, cross-border M&As hovered around 25 per cent in terms of both value and the number of total M&A transactions.

Cross-border M&As

Cross-border M&As have assumed significance since the late 1980s mainly because of gradual liberalisation and globalisation.[3] Although the bulk of the cross-border M&As continue to be concentrated among the developed countries, they have emerged as an important mode of FDI flows to the developing countries.[4]

The total value of cross-border M&As increased from US$ 74.5 billion in 1987 to US $ 720.1 billion in 1999 (Table 1).

Around 60 per cent of the cross-border M&As were in the manufacturing sector in the late 1980s, followed by about 32 per cent in the tertiary sector and less than 10 per cent in the primary sector. The trend of cross-border M&As seems to have reversed between manufacturing and tertiary sector, the latter accounting for a little over 60 per cent in 1999, while the manufacturing sector's share has fallen below 40 per cent and the share of primary sector has become negligible. The main reason behind the rising trend of M&As in the tertiary sector is the greater degree of liberalisation of the services sector, particularly the financial services. In the services sector, the industries with highest levels of cross-border M&As in 1999 were telecommunications, energy and financial and business services like banking, finance and insurance etc. In the manufacturing sector, the leaders were automobiles, pharmaceuticals, chemicals, food, beverages and tobacco etc. In the primary sector, mining and petroleum, extraction of mineral oils and natural gas are the notable industries with the highest M&As.

Table 1 : Cross-Border Mergers & Acquisitions by Sector

(US $ Million)

Year	Primary	Manu-facturing	Tertiary	All Industries	% share of total		
					Pri-mary	Manufa-cturing	Ter-tiary
1	2	3	4	5	6	7	8
1987	10795	42393	21321	74509	14.5	56.9	28.6
1988	3911	73727	37986	115623	3.4	63.8	32.9
1989	1941	89596	48851	140389	1.4	63.8	34.8
1990	5170	75495	69911	150576	3.4	50.1	46.4
1991	1164	36176	43297	80713	1.4	44.8	53.6
1992	3637	43222	32384	79280	4.6	54.5	40.8
1993	4201	43204	35649	83064	5.1	52.0	42.9
1994	5517	69321	52270	127110	4.3	54.5	41.1
1995	8499	84462	93632	186593	4.6	45.3	50.2
1996	7935	88522	130232	227023	3.5	39.0	57.4
1997	8725	121379	174744	304848	2.9	39.8	57.3
1998	10599	263206	257843	531648	2.0	49.5	48.5
1999	9417	275148	435443	720109	1.3	38.2	60.5

Note: Sectors may not add up to all industries.
Source: World Investment Report 2000, United Nations.

Region-wise, around 90 per cent of the cross-border M&As are carried out in the developed countries (Table 2). Cross-border M&As in terms of purchases by developed countries were marginally higher than their sales, indicating a small part of capital flowing into developing countries through cross-border M&As. On the contrary, cross-border M&As in terms of sales were slightly higher than the purchases in the developing countries. Although the share of developing countries in the total cross border M&As is low, it has been rising in the 1990s.

Table 2 : Cross-Border Mergers & Acquisitions by Region

(US $ Million)

Year	Developed Countries				Developing Countries				World Total
	Pur-chase	% of the total	Sale	% of the total	Pur-chase	% of the total	Sale	% of the total	
1	2	3	4	5	6	7	8	9	10
1987	71874	96.5	72804	97.7	2614	3.5	1704	2.3	74509
1988	113413	98.1	112749	97.5	2180	1.9	2875	2.5	115623
1989	135786	96.7	135305	96.4	3990	2.8	5057	3.6	140389
1990	143216	95.1	134239	89.2	7035	4.7	16052	10.7	150576
1991	77635	96.2	74057	91.8	3057	3.8	5838	7.2	80713
1992	74431	93.9	68560	86.5	4827	6.1	8119	10.2	79280
1993	72498	87.3	69127	83.2	10439	12.6	12782	15.4	83064
1994	116597	91.7	110819	87.2	10164	8.0	14928	11.7	127110
1995	173732	93.1	164589	88.2	12779	6.8	15966	8.6	186593
1996	198257	87.3	188722	83.1	28127	12.4	34700	15.3	227023
1997	272042	89.2	234748	77.0	32544	10.7	64573	21.2	304848
1998	511430	96.2	445128	83.7	19204	3.6	80755	15.2	531648
1999	677296	94.1	644590	89.5	41245	5.7	64550	9.0	720109

Note : Regions may not add up to World Total.
Source : World Investment Report 2000, United Nations.

Among the developed countries, western European firms are most actively engaged in cross-border M&As in 1999 with a total of $354 billion in sales and $519 billion in purchases (Table 3). Bulk of these transactions were among the European Union driven by the introduction of the single currency and measures promoting greater regional integration. The United Kingdom has emerged as the single largest acquirer country, acquiring mostly firms in the US. The US continued to be the single largest target country with M&A sales of $233 billion to the foreign investors in 1999.

Of late, developing countries have emerged as important locations for incoming cross-border M&As in terms of value, although their share in the world cross-border M&As remained less than 10 per cent (Table 4). The value of cross-border sales has gone up from $1.7 billion in 1987 to $64.5 billion in 1999. Cross-border purchases among developing countries have also increased from $2.6 billion to $41.2 billion during the same period. Among the developing countries, Latin America and the Caribbean accounted for almost 60 per cent of total transactions, followed by Asia (slightly less than 40 per cent). Major sellers among the developing countries were Argentina, Brazil, Republic of Korea, Chile, Poland etc. In the developing countries, the principal acquirers have been TNCs based in developed countries. Of late, European firms have replaced US firms and have become the largest acquirers accounting for more than two-fifth of all cross-border M&As in the developing countries. In 1999, the highest M&As among the top five countries belonging to both the regions are given below (Table 5). India does not figure among the top five developing countries either by sales or by purchases.

Table 3 : Total Cross-Border Mergers & Acquisitions by Developed Countries

(US $ Million)

Year		European Union	% of 10	Other Western Europe	% of 10	North America	% of 10	Other Developed Countries	% of 10	Total Developed Countries
1	2	3	4	5	6	7	8	9	10	11
1987	P	32617	45.4	452	0.6	32138	44.7	6668	9.3	71874
	S	12761	17.5	448	0.6	57918	79.6	1677	2.3	72804
1988	P	40141	35.4	9549	8.4	38577	34.0	25146	22.2	113413
	S	31012	27.5	3262	2.9	72641	64.4	5834	5.2	112749
1989	P	71365	52.6	2900	2.1	47862	35.2	13659	10.1	135786
	S	47358	35.0	1591	1.2	79233	58.6	7123	5.3	135305
1990	P	86525	60.4	6043	4.2	30766	21.5	19883	13.9	143216
	S	62133	46.3	5237	3.9	60427	45.0	6442	4.8	134239
1991	P	39676	51.1	2797	3.6	20702	26.7	14461	18.6	77635
	S	36676	49.5	1844	2.5	31884	43.1	3654	4.9	74057
1992	P	44391	59.6	5362	7.2	17190	23.1	7488	10.1	74431
	S	44761	65.3	1070	1.6	18393	26.8	4337	6.3	68560

(Contd.)

Table 3 : Total Cross-Border Mergers & Acquisitions by Developed Countries (Concld.)

(US $ Million)

Year		European Union	% of 10	Other Western Europe	% of 10	North America	% of 10	Other Developed Countries	% of 10	Total Developed Countries
1	2	3	4	5	6	7	8	9	10	11
1993	P	40531	55.9	2478	3.4	25534	35.2	3955	5.5	72498
	S	38537	55.7	2061	3.0	22291	32.2	6237	9.0	69127
1994	P	63857	54.8	12086	10.4	33610	28.8	7044	6.0	116597
	S	55280	49.9	1982	1.8	49093	44.3	4464	4.0	110819
1995	P	81417	46.9	11122	6.4	69833	40.2	11360	6.5	173732
	S	75143	45.7	3971	2.4	64804	39.4	20672	12.6	164589
1996	P	96674	48.8	13954	7.0	69501	35.1	18128	9.1	198257
	S	81895	43.4	6617	3.5	78907	41.8	21303	11.3	188722
1997	P	142108	52.2	11928	4.4	99709	36.7	18297	6.7	272042
	S	114591	48.8	6958	3.0	90217	38.4	22983	9.8	234748
1998	P	284373	55.6	40285	7.9	173039	33.8	13733	2.7	511430
	S	187853	42.2	6258	1.4	225980	50.8	24761	5.6	445128
1999	P	497709	73.5	21781	3.2	131131	19.4	26675	3.9	677296
	S	344537	53.5	9668	1.5	257862	40.0	32523	5.0	644590

Note : Regions may not add up to total. P : Purchases, S: Sales.
Source : Worlds Investment Report 2000, United Nations.

Table 4 : Total Cross-Border Mergers & Acquisitions by Developing Countries

(US $ Million)

Year		Africa	% of 13	Latin America & Caribbean	% of 13	Developing Central and Eastern Europe	% of 13	Asia	% of 13	India	% of 13	Total Developing Countries
1	2	3	4	5	6	7	8	9	10	11	12	13
1987	P	100	3.8	142	5.4	8	—	2372	90.7	—	—	2614
	S	143	8.4	1305	76.6	—	—	256	15.0	—	—	1704
1988	P	—	—	100	4.6	—	—	2080	95.4	22	1.0	2180
	S	—	—	1305	45.4	—	—	1569	54.6	—	—	2875
1989	P	—	—	992	24.9	6	—	2998	75.1	11	0.3	3990
	S	1039	20.5	1929	38.1	27	—	2089	41.3	—	—	5057
1990	P	—	—	1597	22.7	—	—	5438	77.3	—	—	7035
	S	485	3.0	11494	71.6	289	—	4073	25.4	5	0.0	16052
1991	P	229	7.5	387	12.7	14	—	2441	79.8	1	0.0	3057
	S	37	0.6	3529	60.4	880	—	2182	37.4	—	—	5838
1992	P	—	—	1895	39.3	22	—	2624	54.4	3	0.1	4827
	S	177	2.2	4196	51.7	2734	33.7	3614	44.5	35	0.4	8119
1993	P	—	—	2507	24.0	120	1.1	7843	75.1	219	2.1	10439
	S	301	2.4	5110	40.0	1178	9.2	7347	57.5	96	0.8	12782

(Contd.)

Table 4 : Total Cross-Border Mergers & Acquisitions by Developing Countries (Concld.)

(US $ Million)

Year		Africa	% of 13	Latin America & Caribbean	% of 13	Developing Central and Eastern Europe	% of 13	Asia	% of 13	India	% of 13	Total Developing Countries
1	2	3	4	5	6	7	8	9	10	11	12	13
1994	P	16	0.2	3653	35.9	329	3.2	6486	63.8	109	1.1	10164
	S	154	1.0	9950	66.7	1419	9.5	4701	31.5	385	2.6	14928
1995	P	41	0.3	3951	30.9	59	0.5	8755	68.5	29	0.2	12779
	S	200	1.3	8636	54.1	6050	37.9	6950	43.5	276	1.7	15966
1996	P	618	2.2	8354	29.7	504	1.8	19136	68.0	80	0.3	28127
	S	700	2.0	20508		3679	10.6	13368	38.5	206	0.6	34700
1997	P	34	0.1	10720	32.9	275	0.8	21690	66.6	1287	4.0	32554
	S	1682	2.6	41103	63.7	5764	8.9	21293	33.0	1520	2.4	64573
1998	P	160	0.8	12640	65.8	1008	5.2	6399	33.3	11	0.1	19204
	S	675	0.8	63923	79.2	5120	6.3	16097	19.9	361	0.4	80755
1999	P	406	1.0	24939	60.5	1553	3.8	15875	38.5	21	0.1	41245
	S	591	0.9	37166	57.6	10561	16.4	25262	39.1	776	1.2	64550

P: Purchases
S: Sales
Source: World Investment Report 2000, United Nations.

Table 5 : Cross-border M&As : Top Five Countries During 1999

Developed Countries		Developing Countries	
Name of Country	Amount ($ million)	Name of Country	Amount ($ million)
1	2	3	4
A. By Sales		**A. By Sales**	
1. United States	233032	1. Argentina	19183
2. U.K.	125403	2. Brazil	9396
3. Sweden	59618	3. Rep.of Korea	9057
4. Germany	41938	4. Chile	4032
5. Netherland	38497	5. Poland	3561
B. By Purchases		**B. By Purchases**	
1. U.K.	209543	1. Bermuda	18815
2. United States	112426	2. Iran	4382
3. Germany	84421	3. Singapore	4048
4. France	82951	4. Brazil	1901
5. Netherlands	48429	5. Mexico	1839

Source : World Investment Report 2000, United Nations.

Impact of M&As on Corporate Performance

Most of the empirical studies on M&As focus on domestic M&As and have used data from the US and the UK, where M&As have been prevalent since the beginning of the last century. The conclusions drawn from these studies may not be true in case of developing countries and economies in transition. Moreover, the experience of the 1990s has not been fully explored in the literature except a few recent surveys (AT Kearney, 1999; KPMG, 1999). Besides, it may not be possible to factor in what would have happened to a firm, had merger or acquisition not taken place.

The post-merger performance of the firms could be measured in several ways. One way to measure the performance is to monitor the share prices after the merger or acquisition deal is struck, that is "event studies" which assumes that stock markets are efficient. Empirical studies of this type indicate that a target firm's shareholders benefit and the bidding firm's shareholders generally lose (Franks & Harris, 1989). All the major episodes of M&A waves occurred in periods of economic expansion, high liquidity, rising stock prices and an influx of new participants into financial markets. Therefore, it is not surprising that each merger movement was terminated by a stock market crash or a recession or both (Boff & Herman,1989). In view of this, share prices may not be true indicators of the company's performance, particularly when capital markets are underdeveloped and/or inefficient.

Another set of studies evaluate the impact of M&As in terms of various measures of profitability before and after M&As. This type of industrial organisation studies normally consider longer time horizons than the event studies. Most of the firms do not show significant improvement in long term profitability after acquisition (Scherer, 1988). There are some studies which have concluded that conglomerate M&As provide more favourable results than horizontal and vertical M&As (Reid, 1968; Mueller, 1980). Moreover, some evidence indicates that cross-border M&As may outperform domestic ones, although several recent surveys have found a high failure rate among cross-border deals (Morosini *et al*. 1998). Broadly speaking large number of M&As failed both in terms of share prices and profitability than those who did not enter into M&As. However, the picture is more positive with regard to the target companies.

Modern firms are not necessarily profit maximisers. Studies relating to profitability after M&As may not, therefore, be sufficient to evaluate the corporate performance. Oligopolist firms may like to increase their market share through higher output, employment, capital stock and material purchases etc. It is, therefore, useful to examine the relative efficiency of the firms after M&As. This could be accomplished by measuring improvement in the *total factor productivity* compared to the industry average at any point of time or productivity trends before and after ownership change over a period of time. Major findings in productivity studies support the hypothesis that changes in ownership are associated with significant improvements in total factor productivity (Lichtenberg and Siegal, 1992). In fact, important indicators of firm activities like output, employment, capital stock and material purchases tend to decline at an accelerating rate prior to ownership change and gradually increase for several years following the change. The relative efficiency of leveraged buyout plants (LBOs) is significantly higher after the buyouts than it was at any time before the buyout. The efficiency increase is particularly large in the case of management buyouts (MBOs) (Lichtenberg, 1992).

Section III

Recent Trends in M&As in India

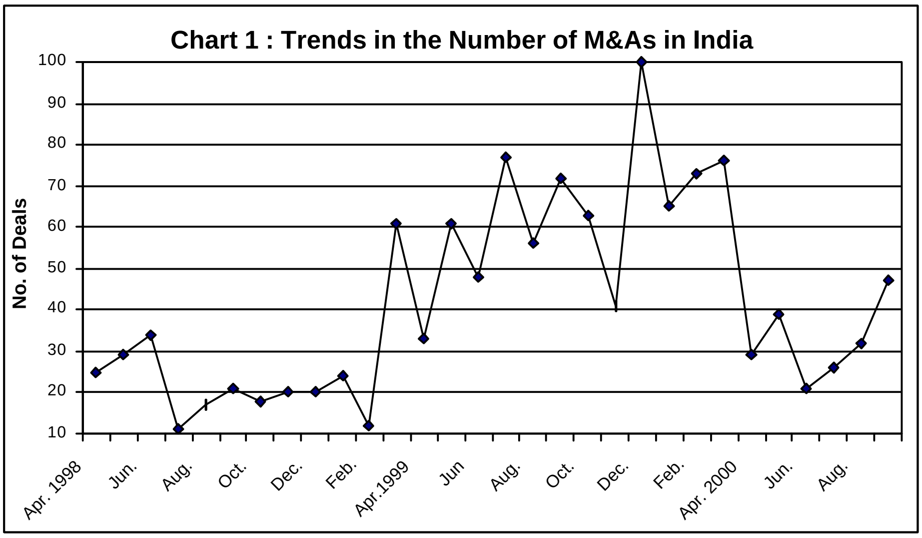
Indian industries are undergoing structural changes in the post-liberalisation period. Competitive pressures are high not only due to deregulation but also due to globalisation. As a part of the restructuring programme, the first merger wave in India is underway in the second half of the 1990s. The data presented in Table 6 reveal that, in recent years, there was a substantial growth in the M&A activities in India. The total number of M&A deals in 1999-2000 was estimated at 765, which is 162 per cent higher than the total number of estimated deals in the previous year (292). What is noticeable during 1999-2000 is the rise in the number of approvals in each month of the year (average of around 64), as compared to the months in the previous year (average number 24). During the current fiscal year up to September, the total number of deals was relatively lower at 194, a decline of 44.1 per cent as compared to the total number of deals during the corresponding period in the previous year (Chart 1).

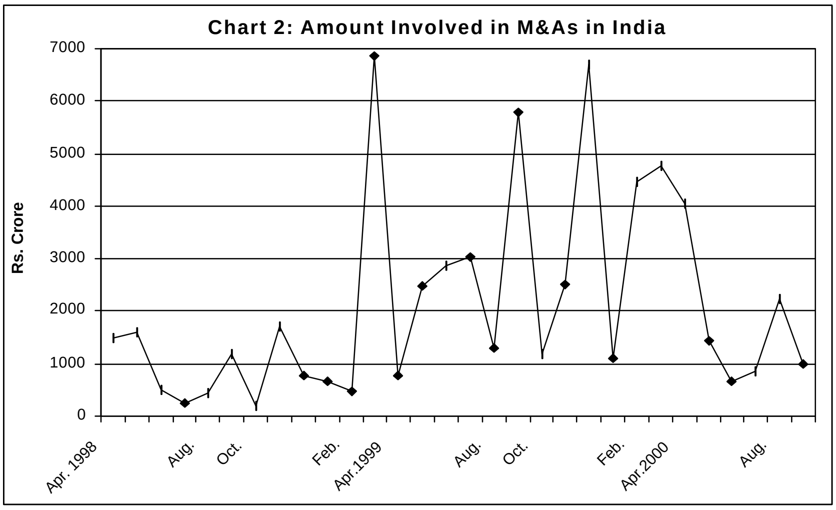
Along with the rise in the number of M&A deals, the amount involved in such deals has risen over time. During 1999-2000, M&As were worth Rs.36,963 crore, which was 130 per cent higher than the amount of M&A deals in the previous year (Rs. 16,070 crore). During the current year up to September, the deals were made worth Rs. 10,261 crore, which is 36.9 per cent lower than the amount of deals made during the corresponding period of the previous year (Table 6 and Chart 2).

Table 6 : Mergers and Acquisitions in India

	No. of Deals			Amount (Rs. crore)		
	1998-99	1999-2000	2000-01	1998-99	1999-2000	2000-01
1.	2.	3.	4.	5.	6.	7.
April	25	33	29	1477	775	4051
May	29	61	39	1585	2477	1423
June	34	48	21	485	2873	675
July	11	77	26	238	3040	868
August	17	56	32	445	1307	2246
September	21	72	47	1187	5784	998
October	18	63	NA	199	1182	NA
November	20	41	NA	1699	2498	NA
December	20	100	NA	780	6694	NA
January	24	65	NA	651	1107	NA
February	12	73	NA	474	4469	NA
March	61	76	NA	6851	4757	NA
Total	**292**	**765**	**194 @**	**16070**	**36963**	**10261@**

@ : April-September. NA : Not Available.
Source: Centre for Monitoring Indian Economy.





Trends in Mergers

The total number of mergers in 1999-2000 was 193, which is 141.3 per cent higher than the total number of mergers in 1998-99. From the limited available data, it appears that mergers account for around one-fourth of total M&A deals in India. It implies that takeovers or acquisitions are the dominant feature of M&A activity in India (Table 7), similar to the trend in most of the developed countries.

Table 7 : Share of Mergers in Total M&As in India

	1998-99			1999-2000		
Months	**Total No. of M&As**	**Number of Mergers**	**% Share of Mergers**	**Total No. of M&As**	**Number of Mergers**	**% Share of Mergers**
1	**2**	**3**	**4**	**5**	**6**	**7**
April	25	18	72.0	33	15	45.5
May	29	5	17.2	61	17	27.9
June	34	6	17.6	48	12	25.0
July	11	3	27.3	77	12	15.6
August	17	2	11.8	56	20	35.7
September	21	4	19.0	72	15	20.8
October	18	2	11.1	63	14	22.2
November	20	12	60.0	41	16	39.0
December	20	4	20.0	100	24	24.0
January	24	13	54.2	65	11	16.9
February	12	2	16.7	73	16	21.9
March	61	9	14.8	76	21	27.6
Total	**292**	**80**	**27.4**	**765**	**193**	**25.2**

Note: Data are provisional.
Source: Centre for Monitoring Indian Economy.

Trends in Open Offers

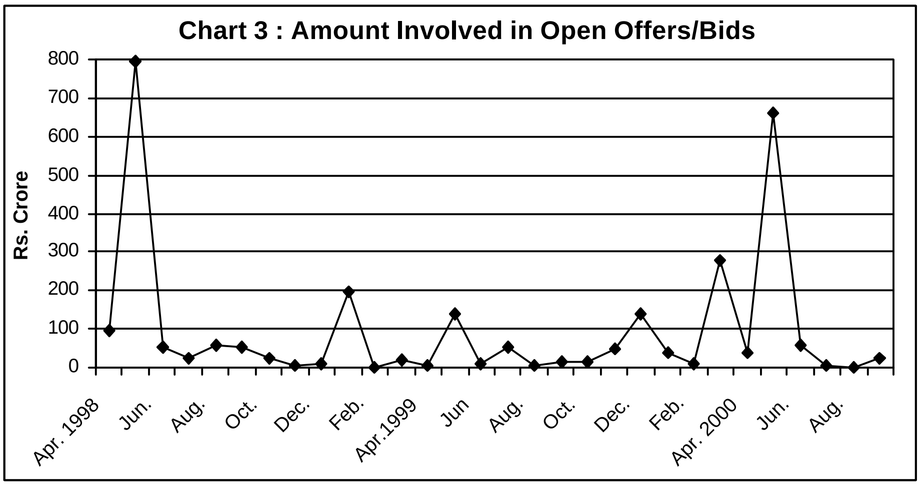
Along with the rise in M&As, there was also an increase in the number of open offers, *albeit* at a lower pace. The number of open offers rose by 27.5 per cent to 88 in 1999-2000 from 69 in 1998-99. However, the amount involved in the open offers rose by around 44.0 per cent during the above period. During the current financial year up to September, the number of open offers rose by 34 per cent and the amount by 252.2 per cent (Table 8 and Chart 3). During 1998-99, the number of open offers were mostly in industries like software, cement, chemical industries and pharmaceuticals.

Table 8 : Open Offers/Bids

Month	**No. of Open Offers/Bids**			**Amount (Rs. crore)**		
	1998-99	1999-00	2000-01	1998-99	1999-00	2000-01
1	2	3	4	5	6	7
April	8	9	6	97.0	4.8	38.2
May	8	7	9	793.9	136.7	660.8
June	8	2	2	54.8	11.1	56.7
July	2	4	2	22.2	50.4	2.4
August	5	4	5	56.4	4.4	1.4
September	7	3	6	50.9	14.6	22.3
October	5	6	NA		14.6	NA
	3	5		7.0	48.1	
December	4		NA	10.4		NA
January		6	NA		38.7	NA
	1	13		0.3	8.4	
March	7		NA	17.2		NA
Total		**88**	**30**	**1326.7**	**745.8**	**@**

@ : April-September. NA : Not available.

Source: Centre for Monitoring Indian Economy.



Sale of Assets

Sale/transfer of assets are not included in the M&A announcements reported in Table 6. However, companies often have to shrink and downsize their operations for various reasons.[5] This may be due to poor performance of some divisions of the company or because the affected divisions no longer fit into the firm's future plan of action. Restructuring may also be necessary to undo a previous merger or acquisition that proved unsuccessful. During 1999-2000, the number of sale/transfer of assets was higher at 212, as compared to 72 in 1998-99. The lower level of sale of assets in 1998-99 can be partly explained in terms of lower FDI flows during that year. During the current financial year up to September, the number of sale of assets was lower at 50 as against 146 in the corresponding period in the previous year (Table 9).

Table 9 : Number of Sale/Transfer of Assets

Item	1997-98	1998-99	1999-2000	1999-00 April-September	2000-01 April-September
Total No. of Sales/ Transfer of Assets	316	72	212	146	50
% Change	NA	**-77.2**	**194.4**	—	**-65.7**

NA : Not available.

Source: CMIE, *Economic Intelligence Service, Monthly Review of the Indian Economy*, various issues.

Industry-wise M&As

Industry-wise, the largest number of mergers have occurred in

number of mergers/takeovers, were chemicals, textiles, electrical and electronic industry, hotels, and pharmaceuticals. Of late, M&As

are taking place in India. During the three year period 1997 to 1999, nearly 40 per cent of FDI inflows in India have taken the

sectors like banking and financial services, advertising and other business services and travel agencies (Kumar, 2000).

the entry of TNCs. Instead of setting up fresh greenfield capacities, they preferred to either acquire existing companies or

developments, *viz.,*
M&A activities, and ii) economic liberalisation measures and introduction of Takeover Code in India. The cross-border M&As

years, the condition was somewhat subdued (Table 4).

There is a virtual absence of empirical work on the impact of

limitation that prohibits any meaningful empirical research in this area. Secondly, M&As being a recent phenomenon, adequate data

However, it is a potential area of research on the issues raised in the previous section.

Section IV

Regulatory Framework for M&As and the Role of Competition Policy

Regulatory Framework for M&As

As M&As have implications for market dominance, concentration of economic power, and unfair practices, suitable regulatory mechanism for the orderly conduct of M&A activities is crucial. In India, mergers and amalgamations are governed by the provisions of Companies Act, 1956, while acquisition of companies comes under the provisions of Takeover Code of SEBI. In case of mergers and amalgamations, there are well laid down procedures for valuation of shares and protection of the rights of investors (SEBI, 1997).

In India, the institutional arrangement which has a bearing on the evolution of regulatory framework for M&As are: (i) various provisions of MRTP Act, 1969, (ii) Clause 40 of the Listing Agreement, (iii) amendments to Clause 40 in 1990, iv) creation of SEBI in 1992 and adoption of takeover code in 1994, v) Bhagwati Committee on Takeovers and adoption of a new code in 1997 and vi) amendments to the code in 1998. At present, the Takeover Code of the SEBI is the major regulatory mechanism relating to acquisition of companies.

Clause 40 of the Listing Agreement

Historically, the genesis of takeover regulation could be traced to the Monopolies and Restrictive Tade Practices (MRTP) Act, 1969. According to the MRTP Act, the Union Government can prevent an acquisition if it leads to concentration of economic power to the common detriment. Before SEBI came into existence, there were some attempts by the stock exchanges to regulate takeovers. A significant effort in this direction was incorporating Clause 40 in the listing agreement. Clause 40 provides for making a public offer to the shareholders of a company by any person who sought to acquire 25 per cent or more of the voting rights of the company. However, the acquirer easily circumvented this Clause by garnering shares with voting rights just below the threshold limit of 25 per cent.

Hence, in 1990, the Government amended Clause 40 to

1992 and thereby SEBI has been empowered to regulate substantial acquisition of shares and takeovers. In November 1994, SEBI issued guidelines for substantial acquisition of shares and takeovers, which are widely referred to as Takeover Code 1994. Thus, for the first time, substantial acquisition of shares and takeovers became a regulated activity. These regulations introduced several new provisions allowing hostile take-overs, competitive bids, revision of open offer, withdrawal of open offer under certain circumstances, and restraining a second offer on the same company within six months by the same acquirer.

Bhagwati Committee on Review of Takeover Code

As there were many loopholes in the Takeover Code 1994, a committee, chaired by Justice P.N. Bhagwati, was appointed in November 1995 to review it. The prominent among the recommendations of the Bhagwati Committee were: mandatory public offer consequent to change in management control, additional disclosure in public announcements, definition of the term promoter, creeping acquisitions for consolidation of holdings, and inclusion of price in the preferential allotment for the purpose of calculating the minimum price for public offer. The Bhagwati Committee report also laid down circumstances in which the regulations did not apply, including transfer of shares among group companies, promoters and foreign collaborators, and acquisitions of shares by financial institutions in the ordinary course of business. The SEBI accepted Bhagwati Committee's recommendations, *albeit* with some minor modifications and they formed the basis of a revised takeover code adopted by SEBI in 1997, known as "SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997".

The new code provides for the acquirer to make a public offer for a minimum of 20 per cent of the capital as soon as 10 per cent ownership and management control have been acquired. The creeping acquisitions through stock market purchases over 2 per cent over a year also attracted the provision of public offer. In order to ensure compliance of the public offers, the acquirers are required to deposit 50 per cent of the value of offer in an escrow account. Further, the acquirer has to disclose the sources of funds.

Reconstituted Bhagwati Committee

The Bhagwati Committee was reconstituted in 1998 to examine the provisions of "SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997" relating to consolidation of holdings, threshold limit and acquisitions during the offer period. The Takeover Code 1997 was amended in October 1998 on the basis of the recommendations of the re-constituted Bhagwati Committee. The major recommendations of the Committee, *inter alia*, include, revision of the threshold limit for applicability of the Code from 10 per cent acquisition to 15 per cent. The threshold limit of 2 per cent per annum for creeping acquisition was raised to 5 per cent in a year. The 5 per cent creeping acquisition limit has been made applicable even to those holding above 51 per cent, but below 75 per cent stock of a company.[6]

M&As and the Competition Policy

The competition policy is defined as those Government measures that directly affect the behaviour of enterprises and the structure of industry so as to promote efficiency and maximize welfare. Such a policy has two elements. First, it involves putting in place a set of policies that enhance competition in local and national markets. These would include a liberalised trade policy, reberalised foreign investment and ownership requirements and economic deregulation. Second, there should be legislation to prevent anti-competition business practices and unnecessary Government intervention.

The Need for Competition Policy

One of the major concerns about M&As is the concentration of market power. In the absence of an anti-trust regulation in India, there is a need for formulating competition policy so that M&As do not lead to concentration of market power. The need for competition policy becomes particularly critical in a liberal FDI and industrial investment policy regime. An effective competition policy would promote the creation of a business environment, which improves efficiency, leads to efficient resource allocation and prevents the abuse of market power. In addition, competition law prevents artificial entry barriers and facilitates market access and complements other competition promoting activities. There is also a development dimension to the competition policy. In developing countries with liberalised trade and investment regimes, competition policy can provide a level playing field for domestic enterprises *vis-a-vis* subsidiaries of TNCs (Kumar, 2000). Thus, there is a need for a competition policy to deal with possible anti-trust implications of overseas mergers and dealing with M&As of Indian enterprises.

In India, the MRTP Act, 1969 and the Consumer Protection Act, 1986 (CPA) deal with the anti-competitive practices. However, the MRTP Act is limited in its scope and hence it fails to fulfil the need of a competition law in an age of growing liberalisation and globalisation. In this context, a High-Level Committee on Competition Policy and Law was set up in October 1999 under the chairmanship of Shri S.V.S Raghavan to examine the existing MRTP Act, 1969 for shifting the focus of the law from curbing monopolies to promoting competition and to suggest a modern competition law in line with international developments to suit Indian conditions. The Committee submitted its report in May 2000.

Raghavan Committee on Competition Policy

The Committee has examined several issues relating to competition policy & competition law which are analysed below:

Agreements among firms have the potential of restricting competition. Most laws make a distinction between “Horizontal” and “Vertical” agreements between firms. The Committee felt that the Competition Law should cover both these types of M&As, if it is established that they prejudice competition. However, the agreements that contribute to the improvement of production and distribution and promote technical and economic progress, while allowing consumers a fair share of the benefits, should be dealt with leniently. On the contrary, certain anti-competitive practices, such as, blatant price, quantity bid and territory sharing agreements and cartels should be presumed to be illegal.

Abuse of dominance should be the key to Competition Policy/ Law. Abuse of dominance includes practices like restriction of quantities, markets and technical development. Predatory pricing, which is defined as a situation where a firm with market power prices the product below costs so as to drive the competitors out of the market, is generally prejudicial to consumer interests in the long run. This is because of the possibility that after elimination of competitors, the offending firm may start functioning as a monopolist. It is, therefore, desirable that predatory pricing be treated as an abuse, only if it is indulged in by a dominant undertaking.

Mergers should be discouraged, if they reduce or harm competition. The Committee did not favour monitoring of all mergers by the adjudicating authority, because very few Indian companies are of international size and there is a need for mergers as part of the growing economic process before Indian companies can compete with global giants. The Committee has, therefore, recommended pre-notification for a threshold limit for the value of assets of the merged entity at Rs. 500 crore or more and of the group to which the merged entity belongs at Rs. 2000 crore or more, both linked to the Wholesale Price Index. The potential efficiency losses from the merger need to be weighed against potential gains in adjudicating a merger. If within a specified period of 90 days, the adjudicating authority does not, through a reasoned order, prohibit the merger, it should be deemed to have been approved. The major recommendations of the Raghavan Committee are given in Annexure III.

Section V

Summary & Conclusions

The underlying motivations behind Mergers & Acquisitions are many. Therefore, it would be difficult to evaluate the success or failure of a merger or acquisition in terms of any single yard stick. Using alternative methods, the empirical literature has narrated the story of failure of M&As. Nevertheless, distinct merger waves across the world are real corporate events, which need to be reckoned with. Of late, cross-border M&As have emerged as an important mode of entry, as far as the foreign direct investment is concerned. Most of the countries by now, have adopted suitable regulatory system, particularly competition policy, to reduce the negative effects of M&As.

In the corporate history of India, the first merger wave is underway. This has assumed strong momentum in the post-liberalisation period, particularly in the second half of the 90s. India's share, however, remains very low so far as cross-border M&As are concerned. Although the liberalisation programme has progressed considerably, the degree of openness is perceived to be low by the overseas investors. The progress with respect to capital account convertibility has been gradual. Infrastructure bottlenecks are still a major problem. The second generation reforms, particularly the real sector reforms, are underway. A competition policy is being formulated which would take care of the issue of market dominance. Although quick and radical reforms have downside risks, opportunities should not be lost so that there could be an early restructuring of the Indian industries. This would not only increase productivity in the industrial sector but also address balance of payments problems in a number of ways. Besides the USA, India should encourage FDI flows from the Western European countries, particularly from the European Union, as they have been extremely active in cross-border M&As during the recent years. The outlook with respect to the current wave of international M&As is difficult to predict. As the recent upsurge in M&As in India roughly coincides with the current wave of international M&As since the mid-1990s, India may experience, a temporary let off in M&As in consonance with the international pattern. However, the M&A activities are likely to continue in India with periodic upsurge depending on the economic conditions and activities in the capital market. The regulatory framework in India needs to be modulated carefully to prevent the likely adverse affects associated with M&As.

Notes

1. Board for Industrial and Financial Reconstruction (BIFR) was the nodal agency to arrange early M&As in India.

2. The anti-trust environment of the 1920s was stricter than that which prevailed before the first merger wave. In fact, as the Sherman Act, 1890 was not effective, the Clayton Act was passed in 1914.

3. In the literature, often distinction is made between cross-border M&As and greenfield investment. For details about the debate, please see Annexure II.

4. Data on cross-border M&As are systematically collected by the United Nations only from 1987 onwards.

5. With the process of M&As in India, acquisition of brands has also started as part of the restructuring process.

6. The takeover code is being reviewed in the light of the recent controversy relating to the takeover attempt of Bombay Dyeing by Bajoria group.

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Annexure I

Motivations for Mergers and Acquisitions

Firms can grow either through M&As or through organic growth. There are several reasons as to why firms prefer to grow *via* M&As. The motivations behind M&As are : a) speed, b) removal of inefficient firms, c) short-term financial gains, d) efficiency gains through synergies, e) search for new market, increased market power and market dominance, f) diversification, and above all, g) access to proprietary assets for personal gains.

M&As often provide the fastest means of reaching the desired goal of expanding the firm activities, both domestically and internationally. For a late-comer to a market, M&As can provide an opportunity to catch up rapidly with the existing firms. For example, takeover is far more preferable to developing a new marketing network or a local distribution system.

Traditionally, M&As are preferred to remove the inefficient firms. As a matter of fact, no firm is equally inefficient in all lines of business. Therefore, it is often better to concentrate on core competencies rather than expand the empire through conglomerate M&As. Shedding of inefficient units not only improves the overall performance of the parent firm but also increases the shareholders' value of the ailing unit in the hands of a new management.

One of the major driving forces behind the recent M&As is the short term financial gains. Stock markets often do not reflect the true value of a firm. The acquirer may anticipate the earnings of a firm to be higher in future. Inefficient management of the firm, imperfections in the capital market and exchange rate misalignment often provide short term capital gains to the prudent acquirer. Moreover, some M&As are undertaken purely for tax planning.

The most significant justification for M&As cited in the literature is probably the anticipated efficiency gains through synergies. The synergy may be static that can reduce cost of production or enhance revenue at a given point of time; or it may be dynamic which can improve the overall performance through scale and scope economies over a period of time. Static synergies may arise due to pooling of management resources, sharing of marketing and distribution networks, greater bargaining power in purchases, avoidance of duplication of expenditures like R & D etc. The static gains are generally high in case of automative and defence industries. Dynamic gains spring from matching of complementary resources and skills that enhance the firm's innovative capabilities with a positive effect on sales, market shares and profits over a long period of time. Industries that are innovation-driven, such as information technology and pharmaceuticals are more suitable for achieving dynamic synergies under M&As.

Search for a new market is considered as one of the important motivations for M&As. When the domestic markets are saturated, firms prefer overseas markets for expansion. Through M&As, firms can quickly access overseas markets, increase market power and market dominance through immediate access to local network of markets, clients and indigenous skills. The recent expansion of crossborder M&As has, in fact, facilitated many TNCs to acquire oligopolistic positions across the world.

Diversification is often attributed as a driving force behind M&As. The economic reason behind conglomerate M&As is the desire to reduce risk through product and geographical diversification. Risk-averse firms not only acquire domestic firms to reduce cost of production, but also spill over to foreign markets partly to circumvent tariff and non-tariff barriers and thereby reduce the level of uncertainty associated with a single market. Of late, product diversification has become less important vis-a-vis geographical diversification which has led to sharp rise in cross-border M&As.

Sometimes, managers pursue their self-interests for personal gains. Access to proprietary assets provides an opportunity to increase their size of operation, particularly where corporate governance is weak. The "empire building" motive of the modern managers offers prestige, power and job security even when the M&As are not technically efficient to increase the shareholders' value.

Annexure II

Cross-Border M&As *versus* Greenfield Investment

A firm can enter a host country either through cross-border M&As or through greenfield investment. Both modes of entry are included in the foreign direct investment flows. It is often debated that M&As as a mode of entry are less beneficial for economic development of the host country than greenfield investment. Arguments in favour of this hypothesis are as follows: Cross-border M&As do not add to productive capacity at the time of entry, but simply transfer ownership and control from domestic to foreign firms. This transfer is often accompanied by layoffs and/or closing of certain activities. Moreover, foreign owners need to be serviced in foreign exchange. If the acquirers are global oligopolists, M&As may lead to market dominance. Cross-border M&As, in fact, tend to reduce competition in the domestic market. The commercial objectives of TNCs and the development objectives of host country may not necessarily coincide. Sometimes, M&As in industries like media, defence, entertainment may threat national culture and even erode national sovereignty. In addition, TNCs are thought to benefit disproportionately while host country firms are being affected adversely.

The negative impact of cross-border M&As need to be evaluated dispassionately so as to derive sensible conclusion in the context of recent wave of liberalisation in general and globalisation in particular. Most of the shortcomings of cross-border M&As may be valid at the time of entry or soon after entry. Over a longer term, when both direct and indirect effects are taken into account, most of the differences between two modes of FDI flows disappear. In fact, cross-border M&As are often followed by sequential investments by the foreign acquirers. If sequential investments take place, cross-border M&As can generate employment over time. Although transfer of technology is not immediate at the time of entry, cross-border M&As are no less inferior to greenfield investment as regards transfer of new and better technology over a period of time. Under exceptional circumstances, cross-border M&As may play a crucial role, a role that greenfield FDI may not be able to play. FDI through M&As can bring in capital faster than greenfield investment, particularly when capital is needed urgently to tackle a crisis situation.

Cross-border M&As and greenfield investments are often perceived as alternative modes of entry of the foreign capital from the perspectives of both host country and TNCs. But they are rarely perfect substitutes for each other. From the host country's perspective, substitutability depends on the level of development, FDI policy and the institutional framework (UN 2000). In the developed countries with a large pool of strong private enterprises and well-functioning markets, both modes may be alternative options; but this may not always be the case in developing countries or the economies in transition. In general, higher the level of development of the host country, the larger the supply of firms that may be targeted for cross-border M&As. The liberalisation of FDI policy has gone too far. In many cases, liberalisation policy does not discriminate between the two modes of FDI. However, in a number of developing countries, certain restrictions are imposed on foreign takeovers. Even in some developed countries, authorisation is needed for the acquisition of companies in certain strategic sectors.

Institutional framework, like good corporate governance and competition policy, plays crucial role in balancing between cross-border M&As and greenfield investment. As these institutional arrangements are generally weak in the developing countries, the possibility of cross-border M&As causing unexpected harm is not ruled out. Nevertheless, FDI through M&As supplements domestic savings similar to greenfield investment. When domestic firms are otherwise not viable and, therefore due for closure, cross-border M&As act as a "life saver" of the firms in the host country. When globalisation is inevitable, it is wise to seize the opportunities through necessary regulatory changes.

Annexure III

Major Recommendations of the Raghavan Committee

III.1 Recommendations Relating to Pre-requisites for Competition Policy and Law

* The Industries (Development and Regulation) Act, 1951 may no longer be necessary except for location (avoidance of urban-centric location), for environmental protection and for monuments and national heritage protection considerations.

* There should be a progressive reduction and ultimate elimination of reservation of products for the small scale industrial and handloom sectors. However, cheaper credit in the form of bank credit rate linked to the inflation rate should be extended to these sectors to make them competitive. The threshold limit for the small scale industrial and small scale services sectors needs to be increased.

* All trade policies should be open, non-discriminatory and rule-bound. All physical and fiscal controls on the movement of goods throughout the country should be abolished.

* The Government should divest its shares and assets in State monopolies and public enterprises and privatize them in all sectors except those subserving defense needs and sovereign functions.

* The Industrial Disputes Act, 1947 and the connected statutes need to be amended to provide for an easy exit to the non-viable, ill-managed and inefficient units.

* The Board for Industrial and Financial Reconstruction (BIFR) needs to be eliminated and the Sick Industrial Companies Act (SICA) be repealed.

* The Urban Land Ceiling Act (ULCA) should be repealed.

III.2 Recommendations on State Monopolies and Regulatory Authorities

* The State Monopolies, government procurement and foreign companies should be subject to the Competition Law.

* All decisions of the Regulatory Authorities can be examined under the touchstone of Competition Law by the proposed Competition Commission of India (CCI).

* Bodies administering the various professions should use their autonomy and privileges for regulating the standard and quality of the profession and not to limit competition.

* If quality and safety standards for goods and services are designed to prevent market access, such practices would constitute abuse of dominance/exclusionary practices.

III.3 Recommendations on The Indian Competition Act and Competition Commission

The Committee recommended that a new law called "The Indian Competition Act" may be enacted. The MRTP Act, 1969 may be repealed and the MRTP Commission wound up. The provisions relating to unfair trade practices need not figure in the Indian Competition Act as they are presently covered by the Consumer Protection Act, 1986.

A competition law authority called the “Competition Commission of India” (CCI) may be established to implement the Indian Competition Act. It would hear competition cases and also play the role of competition advocacy. The CCI would have the power to formulate its own rules and regulations to govern the procedure and conduct of its business. It will have the powers to impose fines and punishment, to award compensation and review its own orders. All the pending monopolistic trade practices (MTP) and restrictive trade practices (RTP) cases in MRTP Commission may be taken up for adjudication by the proposed Competition

Commission of India (CCI) from the stages they are in. The Committee's recommendations are relevant in the context of providing a legal framework for promoting competition in our economy which is opening up in the context of industrial restructuring and the on-going globalisation process.