

Chapter 6

Validation of Recommendations

6.1 Introduction

The recommendations of the study as outlined in Chapter 5 need to be validated. This has been done by using the case study method along with expert interview to elicit the opinion of experts as regards the recommendations.

6.2 Methodology

The methodology used for validation of recommendations is explained herein. The idea is to study past cases to understand the source of problems as regards regulatory framework and test these against recommended solutions, as well as to elicit expert opinion on robustness of recommendations using structured, face to face interviews.

6.2.1 Case Studies

Two case studies were chosen for validation of recommendations. The cases were chosen deliberately with a view to ‘generalizing’ the research findings (Johansson, R. 2003, p.8). Johansson’s work highlights that, ‘a case may be purposefully selected in virtue of being, for instance, information-rich, critical, revelatory, unique, or extreme (as opposed to cases selected within a representational sample strategy used in correlational research). If a case is selected purposefully selected, then there is an interest in generalising the findings’ (p.8). The first case study describes merger review of an important domestic transaction. It was chosen because it represents the third and most recent Phase II case investigated by CCI and one in which the Combination was approved with modifications. CCI’s order in this case reveals that its processing involved departures from the formal provisions of the legal framework which CCI allowed despite the stringent statutory timelines, in the interest of due process and natural justice. As this a recent case, it probably forms the basis for industry feedback as regards remedies and greater interface with parties in Phase II cases.

Case Study II describes merger review of an important international transaction wherein CCI imposed penalty on the parties under Section 43A of the Act for gun jumping. This case highlights the variance of Indian law vis-à-vis the RPs on statutory thresholds for merger notification. In this case the parties have filed an appeal in COMPAT⁷⁷ against CCI's penalty order as regards this issue. The matter is *sub judice*, but the party's arguments as detailed in CCI's orders also bring out issues regarding transparency and alignment with RPs. The Case studies are detailed in Chapter 6 and 7 respectively.

6.2.2 Expert Interview

Apart from Case studies, validation of findings has been carried out by interviewing one eminent legal expert, a competition lawyer of repute, and one expert from CCI. Both experts have the desired attributes of specialized knowledge including technical, process related and interpretative-evaluative knowledge, vast professional networks and insights and low likelihood of being influenced by the interviewer on account of their expertise and stature (Littig, 2013). Based on the information available in the public domain it was noted that Ms. N.K. Uberoi is an eminent competition lawyer who has been closely associated with the drafting of the Combination Regulations and has received many national and international accolades for her work in the sphere of competition law. She has written prolifically on merger review⁷⁸ in India and given her wealth of experience in merger review she would be well aware of industry concerns and challenges. It was therefore decided to interview her as she would provide expert opinion from an industry perspective. On the regulatory side, it was decided that it would be appropriate to interview a Member at CCI who preferred to remain anonymous. While in service, he had supervised the notification of the Combination Regulations in 2011. He has direct knowledge of the internal challenges faced by the Commission and is also the main point of interface between stakeholders and CCI on merger review. Before seeking expert opinion, a structured questionnaire containing a predetermined schedule of questions was designed

⁷⁷ Appeal No. 44/2016, *M/s. Eli Lilly and Company v. Competition Commission of India*.

⁷⁸ She has handled over 190 of the 400 odd merger notifications with CCI and has acted on 10 of the 16 Form II merger cases filed with the CCI. Also, she has advised parties on 3 out of the 4 Phase II investigations carried out by CCI.

and discussed with experts from CCI and industry as also experts on research methodology. The questionnaire is placed at Appendix VIII. Time was sought from the two experts after explaining the background and purpose of the research and the purpose of the interview to them. The CCI Member was mostly unavailable on account of his busy schedule, and with some difficulty time for interview was obtained on 28.2.2017. The interview lasted for two hours in the afternoon. The Member was briefed again about the topic, background and purpose of the research and about the basis of the questions in that they had been arrived at after careful study of: (a) ICN RPs and India's present position vis-à-vis RPs as far as regulatory framework for merger review is concerned; (b) the challenges faced by CCI and industry, given current regulatory framework and (c) the way forward as regards improving Indian regulatory framework for merger review in the context of (a) and (b) above. Ms. Uberoi too was travelling abroad and was able to give time only on her return on the evening of 1.3.2017. She was similarly briefed and in a two and half hour interview she too gave her views on the questions, in detail.

6.3 Conclusion

This chapter explains the methodology followed to validate research findings. The recommendations were validated with the help of two case studies and expert interviews. The results of the validation are available in Chapter 9 dealing with Conclusion and Limitations.