Chapter 2
Literature Review

2.1 Introduction

The importance of competition and the need to nurture it through effective competition law, especially in developing countries has been highlighted by several authors. It has been said that,

> 'Competition is the foundation of an efficiently working market system.' Adam Smith recognized that it is competition that ensures that the 'actions' of individual market players while acting in their 'self-interest' do not lead to chaos. It is competition that ensures 'economically optimal, socially fair and desirable market results... allocative and distributive efficiency… innovation and enhance[d] competitiveness of an economy.' (Lachman, 1999, p.11).

However, various factors including in particular, barriers to entry, can protect certain players from competitive pressures and distort the level playing field, as dominant firms can then increase prices, reduce output or ignore quality without the fear of consequences. Thus, competition law exists to rectify problems created by such market failures and its primary purpose is consumer welfare. (Desai, 2007).

Given the fact that developing economies are often characterized by various barriers to entry, it is competition law that can prevent firms from leveraging market failures, thereby promoting efficiency and protecting consumers (Chowdhury, 2012). Competition is an important indicator used to measure goods market efficiency which in turn is one of the pillars of the World Economic Forum's (WEF) global competitiveness index (GCI). One of the sub indicators of this indicator is effectiveness of anti-monopoly (anti-

trust/competition) policy[5]. WEF's 2015-16 report states that, efficiently functioning markets ensure that resources are allocated to their most 'productive use', and firms vie with each other to meet the demand of customers in terms of type, variety, quality and pricing. Intense competition encourages efficiency and innovation, thus enhancing productivity. In contrast, oligopolies and monopolies are generally associated with higher prices and can negatively impact innovation. Effective competition policies should prevent the acquisition of 'such dominant positions while preserving economies of scale and incentives for innovation' (WEF, 2015-16, pp.49,50).

The need for effective competition law enforcement is more acute in developing countries owing to their historical lack of the competition and competition culture. Thus, Lachman (1999) has opined that,

> 'Most developing countries do not possess a favourable climate for competition to perform its economic functions. Since competition will not appear by itself …but needs specific conditions and adequate care, Governments bear great responsibility. In developing countries, where preconditions for a working competition are missing, competition policy and law are even more necessary, not only to face the danger imposed on competition through RBPs[6]-the main problem in developed countries-but above all to ensure a favourable environment for the development of competition and national and international competitiveness' (p.6).

This meant that, initial or 'first generation, 'market reforms by way of 'economic liberalization, deregulation, privatization and fiscal discipline' introduced by many developing countries, alone, proved inadequate to foster a competitive market economy. This in turn lead to the second round of reforms by way of enactment of economic laws such as competition law, in developing countries (Chowdhury, 2012, pp.72-73). However, the mere enactment of a competition law too does not guarantee effective enforcement and hence healthy competition. Budzinki and Beigi (2015) have observed that as many

[5] India's score on this sub indicator was 4.1 in 2015-16 and 4.3 in 2016-17, out of 7. It ranked 41 out of 140 nations in 2015-16 and 31 out of 138 nations in 2016-17 (WEF, 2015; WEF, 2016).

[6] Restrictive business practices.

developing countries have increasingly adopted 'competition policy regimes' especially in the 21st century as a consequence of adopting market oriented reforms to their economies. This is because market driven economies must have an 'effective competition policy regime' to guard competition against its 'self-eroding tendencies.' (p. 223) However, the results of enactment of competition law in younger regimes have been 'mixed' in terms of effective enforcement and successful transformation in the 'competitive environment' (Chowdhury, 2012).

2.2 The Need for Merger Review

Mergers lead to consolidation of control over business assets and can enhance efficiency and bring economies of scale and scope (Ray, 2013). Nevertheless, competition regulators across the world review / control M&As for their possible anti-competitive effect which arises out of potentially enhanced market power at the cost of competition in the relevant market(s). Unlike prohibitions on anti-competitive agreements and various forms of abuse of dominance etc., merger review or merger control is almost always *ex ante*[7]. Thus, approval of the competition authority is required before the parties concerned can proceed with the merger (Tiwari, 2011). This imposes a regulatory hurdle to deal making and business activity, but is also beneficial to parties, as unscrambling an M&A deal (if ordered by the competition regulator) post consummation, would be costly. Thus, as pointed out by the ICN, the importance of merger control lies *inter alia* in the facts that: (a) Mergers reduce competition that existed between merging firms and can reduce the number of players in the market. This can render the market 'less oriented to consumer and efficiency goals, even in the absence of breaches of competition law'; (b) Anti-trust enforcement (that operates post facto after anti-competitive behavior has manifested itself) is not perfect. Detecting and proving infringements of the ant-trust prohibitions after they have occurred is complicated. '[It is therefore preferable to] maintain competitive conditions so that the incentive and opportunity for collusion, abuse of market dominance[etc.]is prevented from arising, at least insofar as they result from mergers' and (c) the socio-economic costs of unscrambling a merger after it has been consummated would be high (ICN, 2002).

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[7] This is unlike *ex post* 'prohibition of anti-competitive agreements and abuses of market power' (ICN, 2002). These are commonly referred to as anti-trust law prohibitions.

2.3 Merger Review Regulation in India

The introduction of modern competition law in India by virtue of the enactment and enforcement of the Act was one of the path breaking regulatory reforms of the post 1991era and an indicator of the nation's faith in market driven growth. However, as pointed out by Shroff and Uberoi (2014), on account of 'legal challenges' and considerable 'opposition from industry', the law came into effect in phases. Thus, the sections regulating anti-competitive agreements and abuse of dominance came into effect in 2009. However, the sections relating to merger review came into effect later in June, 2011 (p.1). While the resistance to merger review was more from domestic stakeholders who viewed it as yet more of Government regulation, there were also other concerns that led to stakeholders opposing the merger review regime, including *inter alia* apprehensions of delay in business transactions and doubts about CCI's ability to review complicated mergers as it was a new competition authority (Kovacic, 2102; Sharma, 2013).

Sections 5 and 6 of the Act lay down a mandatory and suspensory merger review regime wherein all mergers and acquisitions that meet a certain threshold in terms of assets and turnover are required to be notified to CCI for review, before they can be consummated[8]. By way of notification issued by the Central Government in March 2016, in exercise of powers vested in it under Section 54 of the Act, proposed transactions involving acquisitions where the assets or turnover of the target do not exceed Rs. 350 crore or Rs. 1000 crore respectively, are exempted from notification This is generally referred to as the *De Minimis* exemption[9]. Further, Schedule I to Regulation 4 of the Combination Regulations details categories of transactions which would ordinarily not require

[8] Details on merger review provisions are available in FAQs (Appendix I).

[9] As per Notification No. S.O. 674(E) dated March 4, 2016, acquisitions where enterprises whose control, shares, voting rights or assets are being acquired (i.e. the target enterprise), have assets of not more than Rs. 350 crore in India or turnover of not more than Rs. 1000 crore in India, are exempt from Section 5 of the Act for a period of 5 years (i.e., up to March 3, 2021). Accordingly, a notice for such acquisitions need not be filed with CCI. It may be noted that this *De Minimis* exemption is applicable only to acquisitions and is not applicable to mergers or amalgamations.

notification as they are generally presumed not to cause an 'appreciable adverse effect on competition'(AAEC) in India.

The Act prescribes a mandatory filing regime wherein a Combination must be notified to the CCI within 30 days of executing a binding definitive agreement or other document[10] (in case of acquisitions) or within thirty days of the board approval (in case of mergers and amalgamations). These are commonly known as filing triggers / trigger events. The suspensory regime prohibits parties from consummating or giving effect to the Combination until receipt of the CCI's approval or lapse of 210 days from date of notification and failure to do so attracts penalty under Section 43A. of the Act. This is known as 'gun-jumping' in competition law parlance and the penalty for the same may extend to 1% of the total turnover or assets, whichever is higher, of the Combination.[11]Section 20 of the Act provides the substantive basis of assessment of the competitive impact of the Combination in terms of likely AAEC. Sections 29 to 31 of the Act detail the manner in which the Commission is to investigate Combinations including formation of *prima facie* opinion on likely AAEC and issue of orders to either (a) approve the Combination in absence of AAEC or (b) direct that the Combination will not take effect on account of likely AAEC or (c) approve the Combination subject to modification to eliminate likely AAEC. [12] The procedure to carry out investigation in respect of Combinations where CCI forms a *prima facie* opinion on likelihood of AAEC, as laid out

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[10] The Act also requires filing of notice pursuant to the execution of 'other document' for acquisition. CCI's FAQs explain that, 'the 'other document' means any binding document, by whatever name called, conveying an agreement or decision to acquire control, shares, voting rights or assets. In cases where a public announcement has been made in terms of the SEBI Takeover Code, regarding an acquisition (of shares, voting rights or control), the public announcement shall be deemed to be the "other document". In cases of hostile acquisitions, the 'other document' shall be any document executed by the acquiring enterprise, by whatever name called, conveying a decision to acquire control, shares or voting rights.' agreement or decision to acquire control, shares, voting rights or assets. In cases where a public announcement has been made in terms of the SEBI Takeover Code, regarding an acquisition (of shares, voting rights or control), the public announcement shall be deemed to be the "other acquiring document." In cases of hostile acquisitions, the "other document" shall be any document executed by the enterprise, by whatever name called, conveying a decision to acquire control, shares or voting rights.' (FAQs, Appendix III).

[11] Section 43 A of the Act states that, 'If any person or enterprise who fails to give notice to the Commission under sub-section (2) of section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one percent, of the total turnover or the assets, whichever is higher, of such a combination'.

[12] Sections 31(1), 31(2) and 31(3) of the Act, respectively.

in Sections 29 to 31 of the Act involves various, formalities including issue of a show cause notice (SCN) to parties and seeking of public opinion.

When merger review regulation was introduced in India, it was praised by OECD for being ‘close to state-of-the-art’ and WTO observed that the Indian law is comparable with the law of other jurisdictions (Sharma, 2013). These have been amended five times since 2011[13] to simplify and streamline merger review in India.

2.4 International Best Practices

The most authoritative and widely accepted source of best practices in merger regulation is the recommended practices of the ICN. The ICN is an informal forum that promotes international cooperation in ‘enforcement of merger control through informal dialogue and exchange of best practice.’ ICN encourages ‘the adoption of best practices in the design and operation of merger review regimes in order to enhance the effectiveness of each jurisdiction’s merger review mechanisms, facilitate procedural and substantive convergence, and reduce the public and private time and cost of multijurisdictional merger review’ (UNCTAD, 2010, p.8).

The ICN Merger Working Group’s first set of Recommended Practices, the Recommended Practices for Merger Notification and Review Procedures (“RPs”), were drafted and adopted between 2002 and 2005 based upon consultations with member nations’ competition authorities and Non-Governmental Advisers (NGAs)[14]. As regards procedural matters, ‘The Notification & Procedures (N&P) subgroup developed eight Guiding Principles and thirteen RPs, which the ICN adopted at its annual conferences. The Practices address 13 issues: (i) nexus between the merger's effects and the reviewing jurisdiction; (ii) clear and objective notification thresholds; (iii) timing of merger notification; (iv) merger review periods; (v) requirements for initial notification; (vi) conduct of merger investigations; (vii) procedural fairness; (viii) transparency; (ix) confidentiality; (x)

[13] Amended in 2012, 2013, 2014, 2015 and 2016.
[14] These are mostly law firms.

interagency coordination; (xi) remedies; (xii) competition agency powers; and (xiii) review of merger control provisions.' (ICN, 2005a, p.6; ICN, 2011). ICN uses questionnaire based self-assessment tools to help jurisdictions gauge their level of convergence with recommended practices and the most recent such survey in respect of the RPs was conducted in 2016. India was not one of the respondents.

Subsequent to 'ICN's adoption of the Recommended Practices, the OECD Council adopted a Recommendation Concerning Merger Review that closely follows the Recommended Practices and further supports the ICN's work. Thus, the ICN's and OECD's work have been mutually reinforcing in establishing benchmarks for multijurisdictional merger review' (ICN, 2005b). The OECD also carries out questionnaire based country studies on merger review from time to time. It may be noted that OECD has made only fleeting references to Indian merger review and there is no comprehensive study on merger review in India. OECD has also developed some questionnaire based Competition Law and Policy (CLP) indicators which have recently been 'used to measure the strength and scope' of 49 competition regimes including India (Alemani *et al.*, 2016). These however do not go into much depth as far as the regulatory framework of merger review is concerned. ICN and OECD recommended / best practices are widely used by competition authorities to benchmark their performance (ICN, 2005b). Though some countries have placed their position vis-à-vis ICN's RPs online, there is no publicly available document which states India's official position as regards compliance of its regulatory framework with the RPs.

Askin (2013) has commented that ICN's recommended practices for merger review indicate that that, a competition regime's 'strength' lies 'in its transparent, predictable, and consistent enforcement' and that, the ICN's recommendations played a very important role in encouraging 'the convergence of merger review laws, policies, and procedures among the ICN's nearly 100 members with merger laws.' India is an active member of the ICN and has in fact, co-chaired the ICN merger working group (ICN MWG) in 2013 and 2014. CCI hosted the ICN MWG Workshop held in December, 2014 at New Delhi. However, not much is available in the public domain about the extent to which the Indian regulatory framework for merger review is aligned to the RPs.

2.5 Merger Review in Developing Countries

Until recently, the World Bank classified economies as developing based on per capita income and in the current, more nuanced system[15], India, is classified as a lower middle income economy (World Bank, 2016). Regardless of the modalities of classification, what is important from a competition enforcement perspective, is to understand the challenges faced by developing jurisdictions and how these should be factored into procedural and substantive aspects of legal design of competition law.

In the context of competition, it has been said that the mere introduction of economic and social reforms does not necessarily establish an understanding of the nature of competition and the acceptance of competitive markets and that market players in developing economies do not 'automatically imbibe' the 'spirit of competition' just because reforms have been initiated especially when historically they have been 'centrally planned' and state organized' economies. (Budzinki and Beigi, 2015, pp. 232-237). The same authors have also observed that there may be a 'resistance to privatization' and 'de-concentrating markets' and that, the coexistence of traditional economy based on 'religion, culture, political regimes' etc., with the 'modern' economy imposed in response to globalization and trade' makes competition enforcement difficult on account of problems of heterogeneity between these two parts. According to them, in such markets, politically connected and powerful public and private incumbents often resort to anti-competitive behavior, abusing their dominance through anti-competitive practices such as 'predatory pricing, deterrence, foreclosure and raising rivals' costs' (2015, pp. 232-237).

Amine Mansour cited in Gulati (2015) highlights that even enacting competition a law can be difficult in a developing country on account of vested interest of dominant firms who

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[15] For the current 2017 fiscal year, low-income economies are defined as those with a GNI per capita, calculated using the World Bank Atlas method, of $1,025 or less in 2015; lower middle-income economies are those with a GNI per capita between $1,026 and $4,035; upper middle-income economies are those with a GNI per capita between $4,036 and $12,475; high-income economies are those with a GNI per capita of $12,476 or more (World Bank, 2016).

would prefer to maintain their undeserved profits arising from lack of competition. This is especially so when economic and political power is concentrated in the same entities. The same author points out that this very concentration can also make the enforcement of competition law very challenging and therefore, on 'one hand, while addressing the concentration of economic and political clout is critical from a competition law, policy and economic development standpoint, on the other, it is this very concentration that can also make competition law and policy ineffective in most developing countries'(p.1)

According to Budzinki and Beigi (2015), developing economies may demonstrate certain common features to varying degrees which affect market competition and its enforcement. These include domination by state enterprises particularly incumbents, as well by legacy, family owned businesses, which distorts the level playing field. They also state that developing country markets tend to exhibit a high degree of preexisting concentration. Further, their capital markets are often inadequate, making funding a problem unless firms are well established or powerful. According to them, this coupled with limited economic capacity in terms of available human and financial resources and existence barriers to entry and exit, would deter effective competition. The authors believe that other features that make competition law enforcement challenging in developing countries are, (i) the prevalence of a high degree of corruption and regulatory capture, (ii) the existence of 'social ties favouring collusion and discouraging its detection,' (iii) relatively large informal economy (wherein a large part of the economy is outside the ambit of regulation which also makes it difficult to measure market size and market impact of business actions; something that is off direct relevance to competition law), (iv) 'barriers to mobility and sclerotic society structures' such as the caste system and existence of backward communities and (v) lack of a competition culture and spirit of competition. (Budzinki et al., 2015, pp. 230-231). The work of Gulati (2015) also suggests that, many developing economies face the problem of regulatory capture which reduces 'the incentive of regulated firms to comply with regulation and to compete in the market through productivity & efficiency rather than rent seeking, thereby imposing a social cost' (p.98).

This view has been ratified by other commentators such as Gal and Fox (2015) who have stated that most developing countries suffer from ‘scarce human and financial resources, malfunctioning markets, poor infrastructure, systemic poverty, cronyism and corruption’(pp.298,299). They have also pointed out that an effective competition policy regime requires a proper institutional framework wherein the competition regulator is independent and is afforded protection from vested and powerful interests and their influence on the government. They state further that the need for ensuring independence of the regulator and actual, and not just theoretical, separation between the executive arm of the government and regulators, including the competition regulator, is often a problem in developing economies and that in such economies, it is necessary to generate the spirit of competition *inter alia* through advocacy and fair, credible, transparent regulation by the competition authority.

Chowdhury (2012) has analysed the problem of enforcement of competition law in developing countries in terms of gaps in (i) the supply of enforcement which in turn depends on the jurisdiction’s resources, experience and ‘supporting institutions,’ and (ii) the demand for enforcement which would depend on public, i.e., industry and consumers’ recognition of the beneficial effect of competition. The author notes that both types of shortages and mismatch between supply and demand could exist in developing countries (pp.68-69). As regards the demand for enforcement, Gulati (2015) has opined that there is a ‘lack of public support’ for the activities of the competition regulator on account of ‘general ignorance of or indifference towards, its mandate…. The latter is particularly true of a subject like competition whose impact on everyday lives and economic development is not easily understood by even the intelligentsia in a developing nation’ (p.87). The same author has pointed out that, as far as merger review is concerned, this makes the role of the regulator difficult as even its well-meaning and bonafide actions taken by it as a part of merger review enforcement (which may well be criticized unfairly by affected parties for inconvenience associated with compliance), do not find much public support. In the context of supply of competition law enforcement, Paul Cook’s work cited in Gulati (2015) explains that that,

> 'Theoretical literature on regulatory capture indicates that given the political implications of regulation, economic policy rather than being guided entirely by 'benevolent' planning (or pure public interest) would attempt to balance the loss of favour with powerful producers/the regulated (as a result of regulation) with loss of votes from consumers at large (who benefit from regulation). Thus, "regulation (would) typically entail less than 100 percent producer protection but also less than perfect protection of consumers against market power." This also implies that the 'regulatory entry' or intervention is likely to be more politically feasible when there is near monopoly or near perfect competition as in the former case, the 'political gain' from grateful consumers would outweigh 'losses with producers' and in the latter case, marginal loss from angry consumers can be offset by political gains from grateful producers' (p.98).

According to Gulati (2015), 'this may also explain why action by the competition regulator in cases of abuse of dominance or anti-competitive collusion, where the benefits to the consumers as a class are patently clear, are tolerated better than the enforcement of competition law in merger cases where such benefits are not easily discernible.' (p. 98).

Given the above the approach to competition law enforcement has to be different in developing countries. Thus while in a developed economy, where competition is an accepted idea and way of life and which does not have many of the characteristics described above, including limited regulatory capacities, a more nuanced case by case approach could be possible, in developing countries where competition regulators suffer from limitations of resources and capacity as well as relative inexperience, a 'rule based' approach to enforcement is preferable, especially as in addition to being perceived as fairer and less prone to interference (by vested interests) and limiting discretion in the hands of the competition regulator, such an approach also offers more predictability and guidance to stakeholders (Budzinki and Beigi, 2015, p.241). Further, for the same reasons, in the context of merger control it has been suggested that developing countries should follow a simplistic approach to assessment of mergers based on relatively few criteria such as market shares (Gal and Fox, 2015, pp.339-340).

Another view point is that given their limited capacities and budgets, competition authorities in developing countries should focus on important cases that have an obvious potential anti-competitive effect and greater 'probability of enforcement success' and avoid/not prioritize complex cases or resource intensive cases (Budzinki and Beigi, 2015, p.241). At the same time, there seems to be a general view that mandatory notification of mergers (*ex ante* review of all notifiable mergers) would be preferable to a voluntary regime. The latter places the onus of judging notifiability on merging parties and runs the greater risk of parties deliberately not notifying-which given its weak enforcement capabilities may damage the respect for and credibility of the competition regulator (Gal and Fox, 2015, pp.340-341). Further designing and implementing remedies post consummation of a transaction is a very difficult task. In USA for example, before a mandatory premerger notification regime was introduced in 1976, remedial action was often inadequate even if a consummated merger was successfully challenged by the competition authorities (Kovacic, 2012).

Thus, it would appear that the appropriate design of regulatory framework for merger review in developing countries would need to be based on international best practices but also their common as well as unique characteristics and challenges. Needless, to say many of the above-mentioned characteristics and challenges that would impact merger review in developing countries would be applicable in the Indian context too.

2.6 Merger Review in India-Challenges

Indian merger regulation has been recognized to be patterned on international best practices (Tewari, 2011; Sharma, 2011) and CCI has been praised for its efficient merger review, its openness and receptivity to feedback and for making the effort to continuously update and modify its regulation (Uberoi, 2015). However, CCI's merger review regulation and implementation has also been criticized for being less than transparent and clear, as also for being slow and unpredictable. Some of the areas of criticism are delays, caused *inter alia* by requests for information issued to parties (Defect letters) by the Combination

division of CCI to make good gaps in information submitted by parties (Defects) and the lack of guidance on procedural and substantive issues (Tewari, 2011; Reeves and Harrison, 2011; Shroff and Uberoi, 2014; Sharma, 2015; Bhattia, 2016). It is evident that CCI as a young regulator operating in a developing country faces the predictable problems of capacity, inexperience, information asymmetries and regulatory capture (Chawla, 2014a, Gulati, 2015, Dhall, 2016).

Certain commentators such as Kovacic, 2012 have rightfully pointed out that when judging the performance of a new merger review regime like India's, one must keep in mind that even advanced jurisdictions like USA faced challenges in their early years and made mistakes. Even USA's Federal Trade Commission (FTC) in its early years struggled with having to process huge amounts of information to arrive at timely decisions and faced challenges as regards interpretation of the statue and implementing regulations. Kovacic highlights how in the early years, case teams in FTC faced a dilemma as to how broad or narrow a detailed merger investigation should be. In his words, 'investigate too broadly and the parties chafe at you, but they get over it. Investigate too narrowly and you can lose your career' (p.20). The other important problem according to Kovacic is that of providing guidance to the parties on procedural and substantive issues of law. Thus, while logically, guidance from the competition authority is a must, there are daunting practical difficulties in initial years when internal clarity and confidence are lacking. The author's description of FTC's experience also reveals that while fuller disclosure about processes and procedures and rationale for decisions is highly beneficial for development of jurisprudence, especially in initial years, yet the agency was reluctant to do so due to under confidence. He underscores the inevitability of young and inexperienced regimes being relatively more dependent on large amounts of information from parties and points out that it takes many years of dealing with merger cases before the case teams can amass the requisite sector experience which allows them to quickly decide cases with minimal dependence on additional information requests. This has been echoed in the Indian context too (Gulati, 2015). Kovacic (2012) also stresses the importance of focusing on important cases with likely competition implications rather than frittering away time and resources on unnecessary scrutiny of unimportant cases. As a learning for a young merger review

regime like India, what Kovacic's work highlights is that even the advanced jurisdictions went through a fairly long period of improvement through trial and error before they could attain the requisite degree of credibility.

However, this does not necessarily justify a new merger review regime having to reinvent the wheel. There are also important lessons to be learnt from the long years of experience gained by advanced jurisdictions. For example, the realization that tighter deadlines for the competition authority to decide a case, while putting pressure on overworked case teams, also acted as a safeguard against parties having the time to apply political pressure (Kovacic, 2012, p.13). What stands out is that firstly, a lot of learning will come from the young jurisdiction's own experience through trial and error, secondly, that by sharing their early experience advanced jurisdictions can help younger ones avoid making the same mistakes and finally, that it would stand to reason that international best practices like the RPs, that have been arrived at as a result of the cumulative experience of several competition jurisdictions, could serve as a valuable method of leap frogging over many potential pitfalls that a young regime may encounter as it ascends the learning curve.

2.7 Gaps in Literature

The above analysis makes it clear that effective enforcement of competition law and merger review is very important for a developing country (Tiwari, 2011; Chowdhary, 2012) and that developing countries faces challenges in enforcement of competition law including that related to merger review (Chowdhary, 2012; Kovacic, 2012; Budzinki and Beigi, 2015; Gal and Fox, 2015). It also appears that India faces such challenges (Tiwari, 2011, Shroff and Uberoi, 2014; Gulati, 2015; Bhattia, 2016). However, much of the commentary on merger review in India is found in the form of short articles written by law firms media reports in response to particular orders (decisions) of CCI or to notification of revised regulations (Tiwari, 2011; Shroff and Uberoi, 2014**;** Bhattia, 2016**).** Occasionally, external experts, regulators and international bodies have commented on challenges of merger regulation in India (Chawla, 2015, Gulati, 2015; Dhall, 2016; Alemani *et al*, 2016). However, there is a lack of any comprehensive study on challenges faced and solutions

thereof as regards merger review regulation in India. The position as regards alignment of the Indian merger review framework with the ICN RPs is not available in the public domain. Nor is there any study that relates challenges faced by CCI and industry, in the context of merger review, with the gaps in its regulatory framework when compared to the RPs. Accordingly, no detailed examination exists of whether the Indian regulatory framework can or should align fully with the RPs, given the challenges it faces as a developing country and a relatively new merger review regime. Consequently, though it is acknowledged that there is scope for improvement in the regulatory framework and that the streamlining of merger review is critical for business activity, FDI and economic growth (Chawla, 2014; Gulati 2015; Dhall 2016), a gap exists in the available body of knowledge about how India fares vis-à-vis Recommended Practices, what are India's unique problems i.e., what are the challenges faced by industry and CCI and what needs to be done in terms of improvements in regulatory framework to tackle these challenges.

2.8 Conclusion

This chapter has presented why inspite of the importance of competition law in developing countries, enforcement of law, especially merger review, is difficult in these jurisdictions. It highlights that in a developing country, the competition regulator must on one hand, cope with an adverse regulatory environment characterized by lack of public support, information asymmetries and threat of regulatory capture and on the other, with its own inexperience and capacity limitations. It has drawn attention to challenges faced by CCI and industry in India given that it a is developing country and a new merger review regime. It has also highlighted the need for improvements in the Indian regulatory framework for merger review by *inter alia* benchmarking the Indian regulatory framework for merger review against international best practices and thus, the need for further study given the gaps in the available body of knowledge on the subject.