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AN ANALYSIS OF THE INTERFACE OF CORPORATE GOVERNANCE AND COMPETITION LAW IN INDIA - WITH SPECIFIC REGARDS TO INTERLOCKING DIRECTORS

Samanwita Mishra[1]

ABSTRACT

With an emphasis on the topic of interlocking directors, the research seeks to investigate how corporate governance and competition legislation interact in India. When a person holds directorships in several rival businesses, this is referred to as having interlocking directors. The paper examines the legal framework in India that governs corporate law and competition law, identifying pertinent rules and their effects. Additionally, it examines the difficulties and conflicts that could develop because of directorships that overlap, focusing on how they affect market dynamics, competitiveness, and the broader governance environment. The research also highlights various case laws, and regulatory standards. Additionally, it offers policy ideas and best practices to help the Indian business environment strike a balance between encouraging good corporate governance and guaranteeing fair competition.

Keywords: Interlocking directors, Corporate governance, Competition, Legal, India

INTRODUCTION

Corporate governance is the system of rules, practice, and processes by which a firm is directed and controlled[2]. Corporate governance is about the internal operation of a firm. And, on the other hand, competition law seeks to ensure and promote fair competition within the market. It is more of an external operation of the firm. The primary purpose of corporate governance is to create agreements that outline the rights and responsibilities of the organization and its shareholders. Specific rules,

1. Associate-Legal QC, Alliant Group, Hyderabad
2. James Chen, 'Corporate Governance', 4 July 2021 <https://www.investopedia.com/terms/c/corporategovernance.asp>

regulations, policies, and resolutions put in place to direct company behavior are referred to as corporate governance. While promoting competition and controlling practices that can limit it, competition policy's main goal is to improve consumer welfare. Consumer prices decrease as markets become more competitive. While new businesses enter the market and invest, product quality and variety increase, and innovation increases. Overall, more competition is anticipated to result in higher levels of economic growth, transparency, and welfare.

The antitrust laws thus regulate relations among firms, and corporate governance governs relations within the firm[3]. The relation between these two subjects is not very common, however, it is important to understand and acknowledge the interface between the two. There are many issues which go untreated because of the lack of laws in that aspect and that vacuum of law in that area can be associated to the lack of understanding of the relation between these two subjects. The subjects are different as well as wide in their scope and application, but there are certain instances where the interface of the two becomes significant. For example, the director's duty in respect to anti-competitive behavior. The directors are ultimately the decision makers of the firms and the anti-competitive conduct by the firms are somehow the decisions of the directors. However, action taken by CCI penalizes the firm and not just the directors, which is the money of the shareholders and in this regard, the agency's cost problem arises.

The common investors of different companies can also appoint directors who might act in their interest and this in turn might reduce the competition. Apart from this, there is another problem, which this paper seeks to address, that is, interlocking directors. Section 165 of the Companies Act, 2013, allows the directors to hold the position of directors in 20 companies, which in turn creates the possible situation where the directors can involve in cartels without entering into a cartel or anti-competitive agreement. In such situations, the CCI cannot even take any action, as it happened in the case of Ola and Uber, where Meru was the complainant, and Softbank was a common investor for both Ola and Uber. However, on lack of evidence, the case was dismissed[4]. This problem can typically arise in cases where the director holds the position in firms which are competing in the same market. The lack of recognition of interface of corporate governance and competition law is the problem behind this. Thus, it is important to understand this problem and come up with possible suggestions regarding the same.

The Companies Act allows interlocking directors, which is a threat to the competition in the market if the director holds that position in firms within the same market. Competition law is silent about this. There are no express provisions in this regard. Cartels are forbidden by the Competition Act; as a result, competitors cannot join to regulate prices, share markets, determine quantities, etc. As a result, the Competition Act will apply to any transfer of private information between competitors that results in cartelization.

It is required to understand and acknowledge the interface of corporate governance and competition laws, as the vacuum in this aspect leads to some anti-competitive behaviour which lacks proper legal treatment.

Corporate governance and competition law may be seen as powerful associates in the fight to hold businesses accountable for their actions and prevent them from engaging in unethical business practices.

3. Edward B Rock, 'Corporate Law Through an Anti-trust Lens', Faculty Scholarship at Penn Law 723, (1992) <https://scholarship.law.upenn.edu/faculty_scholarship/723?utm_source=scholarship.law.upenn.edu%2Ffaculty_scholarship%2F723&utm_medium=PDF&utm_campaign=PDFCoverPages>

4. *Re: Meru Travel Solutions and ANI Technologies (2017).*

The primary purpose of corporate governance is to create agreements that outline the rights and responsibilities of the organisation and its shareholders. Specific rules, regulations, policies, and resolutions put in place to direct business behaviors are referred to as the governance framework. Shareholders and proxy advisors are significant stakeholders that indirectly influence governance, but they are not instances of governance in and of themselves. The board of directors is essential for governance, and its decisions can have a significant impact on the amount of stock is worth[5].

While the main goal of competition policy is to improve consumer welfare by fostering competition and regulating in actions that can limit it, consumer prices decline because of increased market competition, as do entry and investment levels, product quality and variety, and innovation[6].

Therefore, theoretically, we can see that corporate governance aims to enforce internal systems for balancing the interests of shareholders and management within the company, whereas competition law aims to address anti-competitive behaviours of the enterprises in the market[7]. The subjects are different when it comes to their nature and scope of application, however, there has been an increase in the number of studies that focus on developing meaningful interaction between the two subjects. There are many scholars who have realized the need to have a meaningful interaction between the two subjects whereas there are few who do not think there is any need for this.

This paper tries to establish that there is a need to develop the link between the two subjects. The three major aspects of competition law viz., the abuse of dominance, collusive behavior and combinations that can have adverse effect on competition, will be discussed and the interaction of the two subjects on these three issues will be discussed.

ABUSE OF DOMINANT POSITION

No entity in a position of power or dominance in the relevant market may misuse its position by harming its competitors, new entrants, and customers, according to Section 4(1) of the Competition Act[8]. In order to establish an entity liable for abuse of dominance, it must be proved that the entity has a dominant or a greater market share and for that a relevant market has to be delineated. Ultimately, the factors involved in this provision are external factors, but the abuse of dominant position is a result of the decision of the board. A firm achieving a dominant position depends on several external factors, but the abuse of such position is not involuntary but rather is a decision of the board of directors of the firm or entity.

The existence of numerous “red flags” signaling abuse of dominance, such as potential investigations or notices by antitrust agencies and penalty orders passed by antitrust authority in one jurisdiction, must therefore be the focus of shareholder derivative actions against the Board alleging breach of fiduciary duty[9]. The Court concluded in Re Intel Corp. Derivative Litigation that merely identifying “red flags” was insufficient

5. James Chen, “Corporate Governance”, (2021) <https://www.investopedia.com/terms/c/corporategovernance.asp>
6. OECD Report on Competition and Corporate Governance (2010) <https://www.oecd.org/daf/competition/prosecutionandlawenforcement/46824205.pdf>
7. Sahithya Muralidharan and Chaitanya Deshpande, “Scope for intersection between antitrust laws and corporate governance principles vis-à-vis cartel deterrence in India”, (2016) <http://nujslawreview.org/wp-content/uploads/2017/01/2016-9-1-2-Sahithya-Muralidharan-and-Chaitanya-Deshpande-Scope-for-Intersection-Between-Antitrust-Laws-and-Corporate-Governance-Principles-Vis-A%CC%80-Vis-Cartels-Deterrence-in-India.pdf>
8. Section 4(1) of the Competition Act 2002.
9. Spencer Weber Waller, “Corporate Governance and Competition Policy”, 18 Geo. Mason L. Rev. 833 (2011) <https://lawecommons.luc.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1167&context=facpubs>

to impose responsibility for breach of fiduciary duty since constructive awareness of these red flags by directors must be established. U.K. has implemented a system of director disqualification for antitrust offences in response to realising the potential for interaction between board decisions and abuse of dominance. The Office of Fair Trading may ask the appropriate court to declare a director unsuitable for management of the firm or any other company for the following fifteen years if the company is found to have violated antitrust laws.[10]

Thus, the abuse of a dominant position if seen as a decision of the board, certain guidelines and laws can be made to the point wherein the whole process of proving and then imposing fines or making the company de-merge will not arise. The fines imposed or consequences that are faced when anti-competitive behavior of the company is proved are not born by the directors in their personal capacity. It is the funds of the company that ultimately belong to the shareholders. The interaction of corporate governance and competition law can be understood here. If the duty of the directors includes a duty or obligation to not take any decision, which will lead to abuse of dominance, the situation will not arise and the burden of the CCI will reduce.

COLLUSIVE BEHAVIOR

Another significant area for interplay between competition law and corporate governance is cartels. Cartels deal with corporate collusion, which affects the market and customers. Cartels are defined as "associations of producers, sellers, or service providers who, by agreement, restrict, control, or attempt to control the production, distribution, sale, or price of goods or services" in Section 2 of the Competition Act."[11] Section 3 of the Competition Act prohibits anti-competitive agreements "including cartels having an appreciable adverse effect on competition."[12]

The effects of cartel are on the market and to the company internally, but the conduct is completely internal. It is the coordinated behavior of the members of the constituent companies. As there is no interaction between the two subjects, issues like cross ownership or cross management go untreated. Cross-ownership or cross-management mainly refers to common owners or interlocking directors in the companies. The common owners or directors are not anti-competitive, but if the companies that the directors hold the position are competing companies then it is a threat to competition.

Thus, we can see as there is no link between the two subjects, these kinds of issues go untreated as there are no laws to this regard and CCI comes into the picture only when collusive behavior is proved. And, in such cases proving collusion is not easy.

COMBINATIONS

Concerns about mergers and acquisitions are another issue that competition law attempts to address. Section 20 gives CCI the authority to investigate any noticeable negative effects that a combination may have when it exceeds the financial threshold allowed by the Competition Act[13]. Mergers and acquisitions often prove to have anti-competitive effects thus, unlike other issues, CCI takes an ex-ante approach in this regard. The companies applying for combinations should seek permission from the CCI and the CCI checks whether the combination can be allowed based on the thresholds already mentioned under the Act.

10. Sahithya Muralidharan and Chaitanya Deshpande, "Scope for intersection between antitrust laws and corporate governance principles vis-à-vis cartel deterrence in India", (2016) <http://nujslawreview.org/wp-content/uploads/2017/01/2016-9-1-2-Sahithya-Muralidharan-and-Chaitanya-Deshpande-Scope-for-Intersection-Between-Antitrust-Laws-and-Corporate-Governance-Principles-Vis-A%CC%80-Vis-Cartels-Deterrence-in-India.pdf
11. Section 2(c) of the Competition Act 2002.
12. Section 3 of the Competition Act 2002.
13. Section 20 of the Competition Act 2002.

The CCI investigates the factors which matter to the market in which the companies operate. The main concern of CCI is to ensure the combinations do not affect the competition in the market. Thus, it looks at the external side of it. But the decision and planning regarding the combinations and amalgamations are with the board of directors and the management. The assumption is that the directors will keep the shareholder's value in mind and take decisions. CCI does not investigate these aspects, rather it just checks whether the combination will cause any adverse effect on competition or not.

The concern arises when the merger is between two equal firms or companies, where the shareholders of each company must give up on their shares and then acquire the shares of the new single entity[14]. Sometimes the directors overestimate the value of the single merged entity. In such cases the shareholders incur a loss. The issue of whether the competition agencies should consider aspects like "value destruction by the merger" and enact a harsher review process for value-destructive mergers emerges in the context of mergers that destroy value.[15].

The companies acting in concert or forming collusions help them with certain advantages, but at the cost of the customers. The collusions or cartels are thus, illegal according to the Competition Act of 2002[16]. However, companies are always in search of innovative ways to evade the laws and reduce competition. Cartels are detectable easily in cases of direct collusion, but indirect connections are hard to detect. Indirect connections between businesses due to the connections of their directors or other key management personnel give businesses a platform to engage in anti-competitive behaviour as the private information shared with these individuals becomes public knowledge. An interlocking director is one example of this link.

The goal of prohibiting anti-competitive agreements, according to the court in the case of Excel Crop Care Limited v. CCI[17], is to create a "level playing field" for all market participants and promote competition.

Competition law deals which enforcement of laws to curb the anti-competitive practices that harm consumers. The practices can be in the form of charging higher prices, offering lower quality or bad quality products, limiting options or choices for the customers, limiting or restricting innovation or any scientific development.

In the case of CCI v. SAIL[18], the Court stated that the threefold advantages of perfect competition are allocative efficiency, which ensures the effective allocation of resources; productive efficiency, which ensures that costs of production are kept at a minimum and dynamic efficiency, which promotes innovative practices. Thus, we can clearly understand the purposes of the competition law and the possibility of information exchange and indirect coordination between the companies due to the common owners or interlocking directors can disrupt the whole purpose of the competition law.

Interlocking directors should not be prohibited per se, but the companies which are in the same horizontal market, or which should compete against each other should not have interlocking directors or common owners.

14. Matthew Curtin, *"A Merger of Equals is more Fragile",* The Wall Street Journal (2015) <https://www.wsj.com/articles/a-merger-of-equals-is-more-fragile-1426554128>
15. OECD Hearings on Competition and Corporate Governance (2010) <https://www.oecd.org/daf/competition/prosecutionandlawenforcement/46824205.pdf>
16. Section 3 of the Competition Act 2002.
17. Excel Crop Care Limited v. Competition Commission of India, (2017) 8 SCC 47.
18. Competition Commission of India v. Steel Authority of India, (2010) 10 SCC 744.

INTERLOCKING DIRECTORS

A director who serves on the boards of two or more businesses that compete with one another is said to be interlocked. The idea of interlocks also applies to directors appointed to the boards of rival companies by a common investor.

Even though the Companies Act of 2013 permits a director to hold office in up to twenty different companies at once, with the restriction that only ten of them can be publicly traded corporations, it creates antitrust issues. And the Competition Act, 2002 does not provide anything expressly to this extent.

On the contrary, the Clayton Act, a US antitrust law, expressly forbids the appointment of a person as a director or officer of two competing companies, provided that certain requirements are met. The Sherman Act also opposes the benefits of interlocking directorates, but only in certain situations, such as demergers and spin-offs[19].

The problem due to the interlocking directors happens mainly when the companies where the director serves are competing companies or are in the horizontal market. Even in the vertical market, sometimes anti-competitive issues due to interlocking directors might occur.

The two major anti-competitive concerns that stem from the situation of interlocking directors is 'exchange of information' and thus, acting in 'collusion'. They can provide access to sensitive information on prices, costs, future strategies, and other key competitive decisions which, in turn can lead to competing companies acting collusively, that is, making similar strategies, pricing products similarly, thus, eliminating competition out of the market and this in turn will affect the consumers.

The objective of this research is not to establish that interlocking directors should be prohibited or is per se illegal, rather the research seeks to throw light on the negative impact on competition due to interlocking directors. The OECD 2008 Policy Roundtable also concluded that although there is no per se illegality of structural links between competitors, interlocking directors (and minority shareholdings) can have negative effects on competition by reducing the individual incentive to compete or by facilitating collusion[20].

The anti-competitive concerns around interlocking directors also arise when there are common investors in the competing companies[21]. Common ownership or the groups of large institutional investors that have significant ownership in horizontal competitors also raise competition issues. In *Re: Meru Travel Solutions and ANI Technologies*[22], the CCI *inter alia* discussed the effect of common ownership including interlocks in competing cab aggregators (i.e., Ola and Uber) on competition in the Indian market. In this case, Softbank (amongst others) was a common investor and had directors on the Boards of both Ola and Uber. The CCI noted that interlocks could lead to potential harm to competition in terms of coordination among competitors and exchange of sensitive information, which could facilitate price collusion or capacity or volume restriction. While the CCI found no such evidence of price sharing or collusion in the case, it observed that it would not hesitate in acting if it did. Here, it is important to note that CCI did understand the potential threat to competition in the market due to common ownership and interlocking directors.

The situation of having common owners is like that of having interlocking directors because the indirect common link in both the cases is much

19. Section 1 of Sherman Act 1890.

20. Directorate for Financial and Enterprise Affairs Competition Committee, "Antitrust issues involving minority shareholding and interlocking directorates" (2008) <https://www.oecd.org/competition/mergers/41774055.pdf>

21. Asaf Eckstein, 'The Virtue of Common Ownership in an Era of Corporate Compliance', 105 Iowa L. Rev. 507 (2020) <https://ilr.law.uiowa.edu/print/volume-105-issue-2/the-virtue-of-common-ownership-in-an-era-of-corporate-compliance/>

22. *Meru Travel Solutions Pvt. Ltd. v. Uber India Systems Pvt. Ltd., Case no. 81 of 2015.*

capable of making the corporations compete less vigorously against each other, thus reducing competition and ultimately affecting the consumers.

In another study conducted on banking companies it was concluded that the owners of the banks matter in how the banks compete[23]. The interest rates, deposit fees, and depositing thresholds vary from bank to bank, and they compete. In certain cases, if the owners are common or they have common investors, then the banks might start having similar interest rates, deposit rates, thresholds etc., thus, indirectly acting in collusion, which in turn eliminates the competition in the banking sector.

The argument that interlocked directors have a major negative impact on competition. There is general agreement and recognition of the problem, even though different jurisdictions recognize it in different ways. The legal responses by different jurisdictions will be dealt with further while discussing the position of CCI regarding interlocking directors in competing companies.

INTERLOCKING DIRECTORS VIS-À-VIS DUTIES OF DIRECTORS

A board of directors, who are chosen by the shareholders, supervises the management of any organization or company. The task of continuing the operations of the business falls on these directors. Between the directors and the company, there is an agency relationship. The directors are therefore in charge of taking due care of the company and its assets.

The duties of the directors are laid down under Section 166 of the Companies Act, 2013, which can be summarized as below:

- to perform in conformity with the rules and regulations of the business, or, in other words, to act within their authority.
- to operate in good faith to advance the company's goals for the benefit of all of its members.
- to act in a way that benefits the business, its workers, shareholders, community, and the environment.
- must use reasonable judgement, skill, and diligence in exercising due and reasonable care.
- so as not to have any direct or indirect conflicts of interest.
- to protect himself, his partners, family members, or partners from unfair gain or advantage; and
- not to transfer his authority to anyone else.

To perform their duties efficiently, the directors often need to have access to certain sensitive information relating to the company or the business such as strategies, future goals, resources, assets etc. The duties of the directors are mostly fiduciary in nature, thus the shareholders or the owners of the company should be able to trust the directors completely and believe that the directors will look after the company's best interest. When such directors hold similar positions in two competing companies, it opens unofficial channels for exchange of information between the companies. The exchange of such sensitive information many times raises anti-competitive concerns.

Moreover, the directors have a duty to act in the best interest of the companies and there is no clear definition as to what is in the best interest and there is no limit or extent of the same provided. A situation here arises that if a director of let us say Company A, who is also a director in another competing company let us say Company B, knows about pricing strategies and certain other information of Company B, which if Company A gets to know will have an

23. Jose Azar, Sahil Raina and Martin Schmalz, "Ultimate Ownership and Bank Competition" (2019) <file:///Users/samanwita96gmail.com/Downloads/SSRN-id2710252.pdffile:///Users/samanwita96gmail.com/Downloads/SSRN-id2710252.pdf>

advantage. In such a situation the director cannot share the information as it would be a breach of duty concerning Company B and if he does not tell Company A he might be deemed to have not acted in the best interest of the company. This issue does not raise any anti-competitive concern unless there is a leak of information between the two companies.

Another effect of interlocking directors in competing companies can be identified in the board meetings. In the board meetings of any company, the directors not only get access to all important confidential information and future strategic plans, but they can also shape those plans and actions of the company due to the voting power, especially the decisions regarding diversification of the business, amalgamations, merger, or reconstruction, taking over a company or acquiring a small or major stake in some company, etc. While taking decisions regarding these aspects, if the companies share any common platform such as common investors or interlocking directors, it opens the gate for companies acting collusively by taking such decisions. The Companies Act, 2013 makes it mandatory for directors to conduct board meetings[24] and adhere to certain rules and regulations prescribed, but all these are from the lens of corporate governance, and not from the lens of competition law. Thus, the decisions taken might be anti-competitive, but they are not prohibited unless they are proved to have an adverse effect on the competition in some relevant market.

POSITION OF CCI WITH RESPECT TO INTERLOCKING DIRECTORS

Interlocking directorates are not expressly prohibited by the Competition Act of 2002 (Act), but the Competition Commission of India (CCI) has acknowledged the idea in merger control instances. Mergers, acquisitions, and de-mergers are the main situations where interlocking directorates appear. Common investors in rival businesses may make acquisitions or investments, or a business may buy shares of rival firms on a horizontal or vertical scale. A de-merger in which corporate groupings are shifting could have anti-competitive implications due to any existing interlocking directorates, whereas mergers can encourage scenarios in which a company's entry into a new industry may form an interlocking directorate. Whether an interlocking directorate is the result of a "combination" or just opportunistic Board nominations, its anti-competitive effects are still present[25].

Despite the lack of jurisprudence in this regard, the CCI has adjudicated and analyzed a few cases that involve the impact of interlocking directors or common ownership on competition.

In the Liner Shipping case, three rivals combined their liner shipping operations to form a joint venture[26]; however, the other businesses were not included in this joint venture. The CCI raised concerns that this joint venture would cause information from the businesses that are not integrated to become accessible. The parties were required to provide information on spill-over protection remedies in its place, whereby they agreed that the directors and executives of the newly formed joint venture would not receive or exchange sensitive information from businesses that are not a part of the venture of the respective parties or disclose information to third parties.

In another similar case of combination named Northern TK / FHL, the CCI noted that the acquirer through a joint venture company and target were competitors in the healthcare services market in

24. Section 174 of the Companies Act 2013.

25. Arihant Agarwal and Aditya Mukherjee, 'Interlocking Directorates and its Relevance to Competition in India', The Indian Review of Corporate and Commercial Laws (2020) <https://www.irccl.in/post/interlocking-directorate-and-its-relevance-to-competition-in-india.

26. Notice under Section 6(2) of the Competition Act 2002, jointly given by Nippon Kabushiki Kaisha Ltd, Mitsui Lines Ltd and Kawasaki Kisen Kaisha Ltd, Combination registration No. C-2016/11/459 (2017).

India. The acquirer had an existing director in the Joint Venture Company and post the proposed acquisition, would have a director on the Board of the target. To address competition concerns arising out of such an interlock, the parties offered certain commitments including to ensure that the acquirer did not appoint the same director on the Board of the target as that of the joint venture company's (that is, no common director); and no exchange of any sensitive information took place between the joint venture company and target. Additionally, the parties also offered to put in place a punishment mechanism in the event of violation of information exchange rules[27].

The most recent decision on interlocks is ChrysCapital/Intas combination. In this case, ChrysCapital, a private equity investor proposed to increase its shareholding from 3 per cent to approximately 6 per cent in Intas, a pharmaceutical company, and acquired the right to nominate a director on its Board. The CCI noted that ChrysCapital already has shareholding, voting rights as well as directors on the Boards of Intas' competitors (that is, Mankind, GVK and Curatio). By virtue of such common interest (that is, interlocking directorates and veto rights), Intas and its competitors will have the ability to pursue anti-competitive goals such as allocation of product or geographic market, or customers; streamlining innovation efforts; price arrangements. To address these concerns, ChrysCapital offered certain commitments including removal of its existing director from the Board of Mankind; and ensuring that the director nominated by ChrysCapital to the Board of Intas has no association with Mankind[28].

The CCI's seriousness about interlocking directorates can be assessed by looking at merger control orders with respect to Item 1 of Schedule I of the regulations, which are exceptions to the required notification under the Indian merger control regime[29]. The CCI has held that investments claimed to be made under this exception should not be made with the intention of "participation in the formulation, determination or direction of the basic business decisions".[30] The CCI went one step ahead of this when it decided that exceptions under this regulation are unavailable to acquirers in the event the target is in the "same, substitutable or competing business" or also when the target is engaged in a vertically related business[31]. The reasoning behind CCI'S orders is justified as such investments that will evade their scanner will affect the competitive landscape in the industry due to the control which the investor will get over the target company and there might arise a situation of interlocking directorate in the future[32].

Further, there is another issue regarding the position of CCI in such cases that is lack of evidence. More often it becomes quite difficult to procure substantial evidence to prove that there has been an exchange of information in cases where there are common owners or interlocking directors. One such example is the Ola and Uber case that we have referred to above as well. In the Ola Uber case[33], Uber and Ola shared a private equity partner, SoftBank, and Meru had accused

27. Combination Registration No. C-2018/09/601 (2019).
28. Combination Registration No. C-2020/04/741 (2020).
29. Item 1 Schedule 1, Competition Commission of India (Procedure in regard to the Transaction of Business relating to Combinations) Regulations 2011
30. Zuari Fertilizers and Chemicals Ltd.- Zuari Agro Chemicals Ltd., Combination registration no. C-2014/06/181
31. New Moon BV- Mylan, Combination registration no. C-2014/08/202.
32. Arihant Agarwal and Aditya Mukherjee, 'Interlocking Directorates and its Relevance to Competition in India', The Indian Review of Corporate and Commercial Laws (2020) <https://www.irccl.in/post/interlocking-directorate-and-its-relevance-to-competition-in-india.
33. *Meru Travel Solutions Pvt. Ltd. v. Uber India Systems Pvt. Ltd., Case no. 81 of 2015.*

them of anti-competitive behaviour. Ola and Uber, according to Meru, engaged in abusive pricing and anti-competitive agreements. It claimed that Ola and Uber have a dominant market share because of Softbank's ownership of both companies.

The CCI observed that anti-competitive practice can be seen in the form of price increase or quality reduction, which might be unprofitable for the firm, but it benefits the common investors, and may soften competition. However, the CCI had ruled that there is no collusion between the parties due to their common investor as there was lack of evidence to show that there was an appreciable adverse effect on competition or that it harms the stakeholders. Thus, we can clearly infer that CCI, even though had reasons to believe they were indulged in anti-competitive behaviour, could not take an action due to lack of proper evidence.

In yet another instance[34], the CCI stated that despite having evidence of information exchange regarding price and sales production, this exchange of data only indicates a possibility of collusion and can be considered as a "plus factor" as it has to be used in conjunction with other evidence provided, to prove violation.

The Indian law do not provide much on the interlocking directors in the competing companies, however, CCI is in the process of developing its jurisprudence through cases related to mergers.

CONCLUSION AND SUGGESTIONS

The interaction between corporate governance and competition law is important especially with respect to some anti-competitive issues where due to lack of the link between the two subjects, the issues go untreated. The concept of interlocking directors, especially in the competing companies, needs more legal analysis and requires laws to that extent. Regarding market competitiveness, transparency, and accountability within corporate structures, the analysis of interlocking directorates has identified both possible benefits and drawbacks. On the one hand, the practice of interlocking directors could promote communication and cooperation between businesses, perhaps resulting in increased productivity, improved decision-making, and knowledge exchange. In fields that demand close cooperation and specific knowledge, this can be very helpful. Furthermore, interlocking directors might be crucial in establishing company synergies, which would promote innovation and growth.

The above analysis does, however, also point out several important risks and problems. The concentration of power in the hands of a small number of people may result in collusion, anti-competitive behavior, and a decline in market competitiveness. This might harm customers, make it difficult for new competitors to enter the market, and inhibit innovation. Furthermore, the possibility of conflicts of interest and biased decision-making in interconnected directorates may weaken corporate governance norms, endangering long-term viability and the confidence of shareholders.

The Indian regulatory authorities need to take a diversified strategy in order to strike an appropriate balance between encouraging healthy competition and guaranteeing good corporate governance. First and foremost, it is important to prioritize strict enforcing of competition laws, closely observing interconnected directorates to stop anti-competitive practices. To ensure greater accountability and improved stakeholder knowledge, interlocking directorships must implement clear disclosure rules.

Additionally, fostering diversity in boardrooms, supporting independent directors, and improving corporate governance standards will aid in reducing the risks brought on by interlocking directorates. Establishing consistent compliance-focused training and awareness programs for directors will help to promote a culture of compliance and responsible decision-making.

34. *Meru Travel Solutions Pvt. Ltd. v. Uber India Systems Pvt. Ltd., Case no. 81 of 2015.*

Thus, it is important for regulators, businesses, and stakeholders to work together to solve the complex interactions between corporate governance and competition legislation in the setting of interlocking directors. For the benefit of its economy and society at large, India can create a business climate that supports sustainable growth, encourages healthy competition, and preserves the rules of good corporate governance by striking the proper balance.