

**Intellectual Property Rights, And Competition Law**  
**Prof. K D Raju**  
**Rajiv Gandhi School of Intellectual Property Law**  
**Indian Institute of Technology, Kharagpur**

**Lecture - 14**  
**Regulation of Combinations**


Dear students, in the last part of the class we will discuss about the Regulation of Combinations.

(Refer Slide Time: 00:29)





This is the third and last part of the competition law.

(Refer Slide Time: 00:39)



The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011

- “Combination” means and includes combination as described in section 5 of the Act and any reference to combination in these regulations shall mean a proposed combination or the combined entity, if the combination has come into effect, as the case may be;



© IIT Bombay 2011

What are the combinations? And combinations are described in the section 5 of the Indian Competition Act, i.e. with reference to combination of companies. Basically the combinations of entities happens in order to completely eliminate the competition from the market. If two enterprises are joining together for eliminating competition from the market, then it will be considered as violative of the Competition Act and competition provisions, it is against the competition in the market. The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) regulations was passed in 2011 under the Competition Act of 2002.

(Refer Slide Time: 01:25)



## BUSINESS COMBINATIONS

- Section 5 of the Competition Act 2002 provides for Combinations  
“The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises”



© IIT Bombay 2011



And specifically the business combinations are mentioned under Section 5 of the Indian Competition Act. Acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises. Amalgamation or merger are per se not illegal under the Competition Act.

So, the companies can merge for different reasons, their amalgamation also will be there for business purposes, all these are not violation of the Competition Act, but we have to look into what kind of business combinations are violating the Competition Act and competition law.

(Refer Slide Time: 02:13)



The slide is titled "BUSINESS COMBINATIONS" and features a list of four bullet points. At the bottom, there are three logos: the Indian Institute of Technology (IIT) logo on the left, the NPTEL logo in the center, and a portrait of a man on the right. The background is a light green to yellow gradient.

- In a merger, the legal effect of which is that the merging company will lose its corporate status as a company and will be owned by the company with which it has merged.
- The merging companies autonomy is lost in its entirety.
- Acquisition for eliminating competition.
- The interest of the society which may have to be examined.

If you look into merger you can see that two companies merge together to form a new entity. So, it means that one company completely loses its character, its legal character, and it merge with another company. So, it means that the competition can be between the competitors, it can be subsidiaries, it can be with some other business competitors.

Especially if mergers are happening between business competitors, then definitely it has to be under the scanner of the Competition Commission of India to see what are the objectives of this particular merger. So once merging companies are merged, their autonomy is completely lost or ends. And the acquiring company is going to take charge

of the affairs of that particular company. So, basically if the acquisition is for eliminating competition from the market, then it is definitely against the provisions of Competition Act or competitive process in the market.

So, the interest of the society always has to be examined in business combinations. In the first class I mentioned the objective of the Antitrust Law in the United States which was mainly to eliminate the trust which has become huge entities. To have a monopoly power they undergo mergers and acquisitions again and again for making huge business entities in order to eliminate competition from the market.

(Refer Slide Time: 04:01)



The slide is titled "Combinations" and features a list of three bullet points. At the bottom, there are logos for IIT Bombay and NPTEL, along with a small portrait of a man in a white shirt. The background is a light green to yellow gradient.

- Broadly, combination under the Act means acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise
- Such person should have direct or indirect control over another enterprise engaged in competing businesses, and
- Mergers and amalgamations between or amongst enterprises when the combining parties exceed the thresholds set in the Act.

We can say that it is basically to acquire control of another company, it can be through the share purchase, it can be through the voting rights, it can be purchase of assets, it can be the acquisition, it can be various methods of the acquisitions controlling power of a particular company elaborately mentioned under the Companies Act. At the same time, our point of discussion is that whether these mergers or acquisitions or amalgamations are affecting competitive process, this we have to look very closely.

(Refer Slide Time: 05:01)

The slide features a light green background with a dark green header area containing the title "THRESHOLDS FOR COMBINATIONS UNDER THE ACT". Below the title, there are two bullet points. At the bottom of the slide, there are three logos: the IIT Bombay logo on the left, the NPTEL logo in the center, and a small photo of a man in a white shirt on the right. The NPTEL logo includes the text "NPTEL" and "© IIT Bombay 2015".

### THRESHOLDS FOR COMBINATIONS UNDER THE ACT

- The Act provides for sufficiently high thresholds in terms of assets/turnover, for mandatory notification to the Commission
- The Act also provides for revision of the threshold limits every two years by the Government in consultation with the Competition Commission of India

IIT Bombay NPTEL © IIT Bombay 2015

And the competition regulations, 2011 regulations put certain threshold limits of mergers and acquisitions. Beyond those threshold limits if there is a merger or acquisition, one has to inform the Competition Commission of India and the Competition Commission will look into the merger and you have to take a prior permission.

So the basic objective of why you should inform Competition Commission to take a clearance from Competition Commission is that Competition Commission will very closely look into whether it is going to affect the society at large or whether the consumers are going to be benefited. And also these threshold limits prescribed by the 2011 regulations will be revised every 2 year by the Competition Commission of India.

(Refer Slide Time: 05:41)

**OBLIGATION TO NOTIFY  
COMBINATION BEFORE CCI**

- Section 6(2) of the Act provides that an acquisition, merger or amalgamation which meets the threshold limits mentioned will need to be notified for approval, to the Competition Commission of India

The slide features a green and yellow background with a navigation bar at the top. At the bottom, there are logos for IIT Bombay and NPTEL, and a small inset image of a man in a white shirt pointing.

And Section 6(2) of the Act clearly says that acquisition, merger and amalgamations beyond these threshold limits must get a notified approval from the Competition Commission of India.

(Refer Slide Time: 05:57)

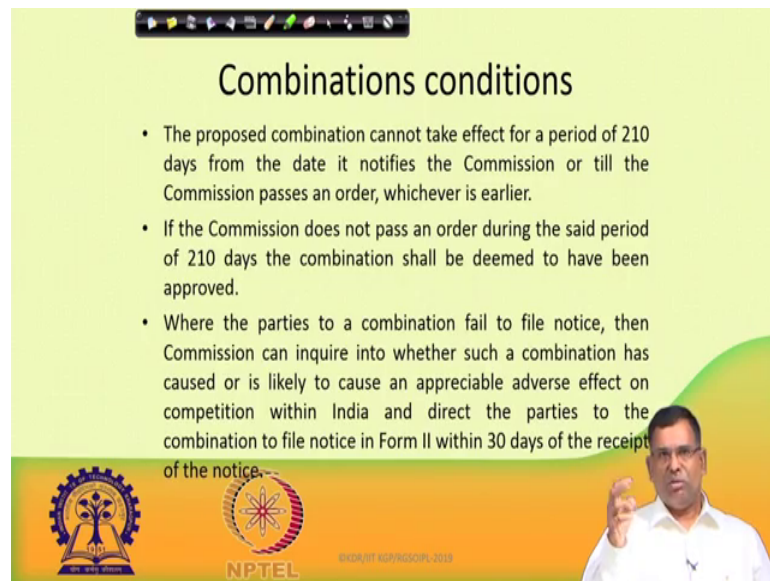
**TIME LIMIT FOR GIVING NOTICE TO  
THE COMMISSION**

- Any person or enterprise proposing to enter into a combination shall notify the Commission in the specified form disclosing the details of the proposed combination within 30 days of the approval of such proposal by the board of directors or of the execution of any agreement or other document.

The slide features a green and yellow background with a navigation bar at the top. At the bottom, there are logos for IIT Bombay and NPTEL, and a small inset image of a man in a white shirt gesturing.

There is a notice period within which you can inform to the Competition Commission. So, for proposed combination within 30 days of approval by the board the board of directors have to inform the Competition Commission of India.

(Refer Slide Time: 06:15)



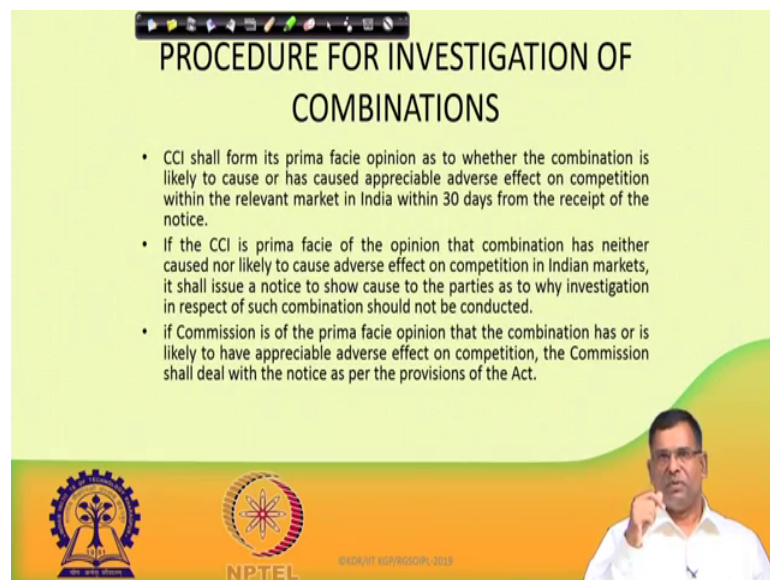
**Combinations conditions**

- The proposed combination cannot take effect for a period of 210 days from the date it notifies the Commission or till the Commission passes an order, whichever is earlier.
- If the Commission does not pass an order during the said period of 210 days the combination shall be deemed to have been approved.
- Where the parties to a combination fail to file notice, then Commission can inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition within India and direct the parties to the combination to file notice in Form II within 30 days of the receipt of the notice.

© DR. JYOTI KUMAR, 2018

The combination conditions must be for a definite period of time which will benefit society at large, benefit the consumers at large. That means, the parties of combination have to report to the Competition Commission of India.

(Refer Slide Time: 06:39)



**PROCEDURE FOR INVESTIGATION OF COMBINATIONS**

- CCI shall form its prima facie opinion as to whether the combination is likely to cause or has caused appreciable adverse effect on competition within the relevant market in India within 30 days from the receipt of the notice.
- If the CCI is prima facie of the opinion that combination has neither caused nor likely to cause adverse effect on competition in Indian markets, it shall issue a notice to show cause to the parties as to why investigation in respect of such combination should not be conducted.
- if Commission is of the prima facie opinion that the combination has or is likely to have appreciable adverse effect on competition, the Commission shall deal with the notice as per the provisions of the Act.

© DR. JYOTI KUMAR, 2018

Otherwise the Competition Commission will look into or investigate if the Competition Commission of India has a prima facie opinion that this combination is likely to cause or

has caused an *appreciable adverse effect on competition* of the market. They can start an investigation into such kind of combinations.


(Refer Slide Time: 07:01)



The slide features a light green background with a dark green header bar at the top containing navigation icons. The title 'INQUIRY INTO COMBINATIONS' is centered in bold black text. Below the title is a bulleted list of three steps. At the bottom, there is a dark green footer bar with three logos: the Indian Institute of Technology (IIT) logo on the left, the NPTEL logo in the center, and a small copyright notice on the right. A photograph of a man in a white shirt is visible in the bottom right corner of the slide.

**INQUIRY INTO COMBINATIONS**

- Combination evaluation involves the following process:
  - a. Identification of the relevant market, consisting of relevant product market and relevant geographic market
  - b. Consideration whether the Combination has appreciable adverse effect on competition in the relevant market in India
  - c. Approval, rejection, or approval with modification of the Combination

  © IIT KGP/NDG/CPIL 2013

And this inquiry into the combinations involves evaluations of certain factors, these factors include identification of the relevant market, consisting of the relevant product market, and relevant geographical market, then whether these combinations have an *appreciable adverse effect on competition* in the relevant market i.e. in India. According to the approval of the Competition Commission of India modifications can be made by the enterprises for the mergers or acquisitions.



(Refer Slide Time: 07:45)



**IDENTIFICATION OF THE RELEVANT MARKET**

- The concept of relevant market is clearly defined in the Act. It consists of the relevant product (including goods and services) market and the relevant geographic market.
- Relevant Market: “the market that may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets”.

The slide features a green and yellow background with a navigation bar at the top. At the bottom, there are logos for IIT Bombay, NPTEL, and a copyright notice for 2019. A man in a white shirt is visible in the bottom right corner, pointing towards the text.

And how to make these relevant market and product market.

(Refer Slide Time: 07:53)



**Combinations**

- Relevant Product: “a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use.”
- Relevant Geographic Market: “the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas”



The slide features a green and yellow background with a navigation bar at the top. At the bottom, there are logos for IIT Bombay, NPTEL, and a copyright notice for 2019. A man in a white shirt is visible in the bottom right corner, making a hand gesture.

The relevant product market as well as the geographical market and the product market are very important because the product may not be available in other parts of the geographical area.

(Refer Slide Time: 08:07)

**Factors**

- Section 19(7) of the Act provides an indicative list of factors which ought to be taken account by the CCI while determining the definition of relevant product market
  - I. Physical characteristics or end-use of goods
  - II. Price of goods or service
  - III. Consumer preferences
  - IV. Exclusion of in-house production
  - V. Existence of specialized producers
  - VI. Classification of industrial products

  © IIT Bombay 2019

Section 19(7) of the Competition Act provides an indicative list of factors that has to be take into consideration by the Competition Commission while determining the definition of the product market. And these factors are physical characteristics, the end use of the products, then price of the goods and services, consumer preferences, then exclusion of in-house production and exclusion of existence of specialized producers, then classification of industrial products. All these are the factors to be considered by the Competition Commission of India when considering the combination.

(Refer Slide Time: 08:43)

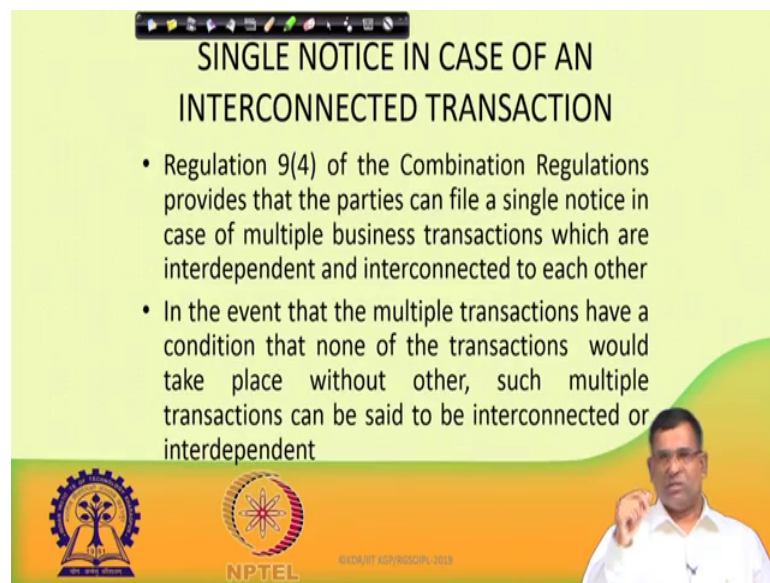
**APPRECIABLE ADVERSE EFFECT ON  
COMPETITION IN INDIA**

- According to Section 6 of Competition Act, 2002 “No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void”
- A combination between competitors can produce an AAEC in the relevant market in India if the competitive restraints that the combined firms exercised upon each other increases the combined firm’s market power

  © IIT Bombay 2019

Also it is the duty of the Competition Commission of India to look into the *appreciable adverse effect on competition*. Under Section 6, it is very clearly said that no person or enterprise shall enter into a combination which causes or is likely to cause an *appreciable adverse effect on competition* within the relevant market in India and such a combination shall be void. So, it is very clear that if there is any *appreciable adverse effect on competition* in India, then it is going to be a void combination.

(Refer Slide Time: 09:29)



The slide features a green and yellow background. At the top, there is a navigation bar with various icons. The main title is "SINGLE NOTICE IN CASE OF AN INTERCONNECTED TRANSACTION". Below the title, there are two bullet points. At the bottom, there are three logos: the Indian National Emblem, the NPTEL logo, and a small portrait of a man in a white shirt. The text "© IIT KGP/SCIP/2019" is visible at the bottom right.

### SINGLE NOTICE IN CASE OF AN INTERCONNECTED TRANSACTION

- Regulation 9(4) of the Combination Regulations provides that the parties can file a single notice in case of multiple business transactions which are interdependent and interconnected to each other
- In the event that the multiple transactions have a condition that none of the transactions would take place without other, such multiple transactions can be said to be interconnected or interdependent

© IIT KGP/SCIP/2019

Regulation 9(4) provides that the parties can file a single notice in case of multiple business transactions which are interdependent or interconnected to each other in the case of mergers or amalgamations. And definitely we must ask why there should be combinations or amalgamations.

(Refer Slide Time: 09:45)



**WHY COMBINATIONS**

- To combat competition and sustain in the relevant market, firms may engage in different combinations
- Mergers as well as Acquisitions are the two typical combination strategies firms adopt for expanding their market
- Merger occurs when two separate entities combine forces to create a new, joint organization
- Acquisition refers to the takeover of one entity by another.
- Combinations of firms can have negative impact on the competitive structure of the relevant market in certain situations

The slide features a green background with a white title and a list of five bullet points. In the bottom right corner, there is a photograph of a man in a white shirt pointing upwards. At the bottom of the slide, there are logos for IIT Bombay and NPTEL, along with the text '© IIT Bombay 2019'.

So, there will be different reasons for merging. This may be to acquire a new market, may be to eliminate a competitor in the relevant market. These mergers and acquisitions may be expanding strategies of the dominant player.

These entities can be considered as a joint organization, the merged one and the merging one. Takeover of this entity by the other, if it is for elimination of competition from market, will be considered as affecting the market, violation of the competition provisions.

(Refer Slide Time: 10:41)

**PURPOSE OF COMBINATION REGULATION**

- Appropriate legal structure is essential to ensure that combination are not anti-competitive in nature
- The Competition Regulatory Authority will have to do a “Forward Looking Analysis” and analyse whether the combination will raise any competition law concerns in the relevant market.
- The core concept of any competition test is a comparison of competition with and without combination
- The Competitive situation without combination is sometimes referred to as the “Counterfactual”

© IIT KGP/IGIPR, 2019

The slide features a green and yellow background with a wavy pattern at the bottom. It includes logos for IIT KGP and NPTEL. A small inset image of a man in a white shirt is visible in the bottom right corner.

The purpose of the appropriate legal structure essentially is to ensure the combination. That means, if it is exclusively following all the legal parameters then it cannot be considered as anti-competitive in nature. But forward looking analysis has to be done by the Competition Commission of India in every case and look into each and every factor involving in particular mergers whether these combinations are anti-competitive in nature or not.

(Refer Slide Time: 11:11)

**TYPES OF COMBINATIONS**

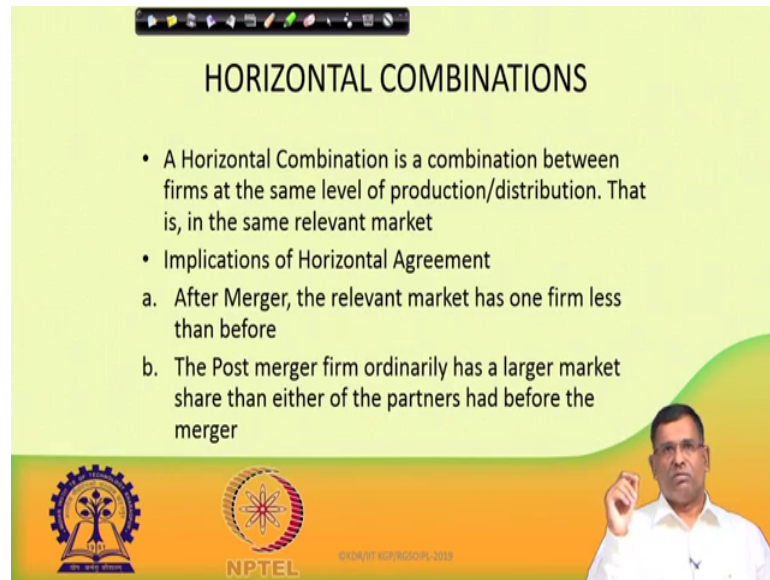
```
graph TD; A[Combination] --> B[Horizontal Combination]; A --> C[Non-Horizontal Combination]; C --> D[Vertical Combination]; C --> E[Conglomerate Combination];
```

© IIT KGP/IGIPR, 2019

The slide features a green and yellow background with a wavy pattern at the bottom. It includes logos for IIT KGP and NPTEL. A small inset image of a man in a white shirt is visible in the bottom right corner.

So, if you look into the combination, it can be horizontal combination, it can be non horizontal combinations and it can be vertical combination and also it can be conglomerate combination as well.

(Refer Slide Time: 11:33)



The slide is titled "HORIZONTAL COMBINATIONS" and features a list of bullet points. At the bottom, there are logos for IIT Bombay and NPTEL, along with a copyright notice for IIT Bombay, 2019. A small inset image of a man in a white shirt is visible in the bottom right corner of the slide.

- A Horizontal Combination is a combination between firms at the same level of production/distribution. That is, in the same relevant market
- Implications of Horizontal Agreement
  - a. After Merger, the relevant market has one firm less than before
  - b. The Post merger firm ordinarily has a larger market share than either of the partners had before the merger

IIT Bombay  
NPTEL  
© IIT Bombay, 2019

So, horizontal combinations is the combination between firms at the same level of production and will be always at the same level of production or distribution. And the implication is that one firm, one enterprises will be going out of the market by this horizontal combination so post merger firm has a larger market, larger size and a larger influence on the market.

(Refer Slide Time: 12:05)



**NEGATIVE EFFECTS OF HORIZONTAL AGREEMENTS**

- Coordinated Effects: It arises where under certain market conditions, the combination increases the probability that, post combination, combining parties and their competitors will successfully be able to coordinate their behaviour in an anti-competitive way
- Unilateral/Non-Coordinated Effects: It arises where, as a result of the combination, competition between the products of the combining firms is eliminated and allows the combined entity to unilaterally exercise market power

The slide features a green and yellow background with a navigation bar at the top. At the bottom, there are logos for IIT Bombay and NPTEL, along with the text '© IIT Bombay 2019'. A presenter is visible in the bottom right corner, pointing upwards.

And the negative effects of the horizontal agreements is a coordinated effect. So, the coordinated effect increases the probability of less competition in the market. It can raise the competition between the products of the combining firms and allows the combined entity to unilaterally exercise the market power, that means, the product choices will be eliminated from the market.

(Refer Slide Time: 12:37)



**NON-HORIZONTAL COMBINATION**

- Non-Horizontal Combinations do not entail loss of direct competition and are generally not anti-competitive in nature
- Non-Horizontal Combinations generate substantial scope of efficiencies (Both Consumer and Administrative)
- Non-Horizontal Combinations are of two types
  - a. Vertical Combination
  - b. Conglomerate Combination

The slide features a green and yellow background with a navigation bar at the top. At the bottom, there are logos for IIT Bombay and NPTEL, along with the text '© IIT Bombay 2019'. A presenter is visible in the bottom right corner, pointing upwards.

And in the case of non-horizontal combination, it does not entail the loss of direct combination and it is generally not anti-competitive in nature.

(Refer Slide Time: 12:57)



The slide features a title 'VERTICAL COMBINATION' at the top center. Below the title is a bulleted list of six points. At the bottom left, there are two logos: the IIT Bombay logo and the NPTEL logo. At the bottom right, there is a small inset image of a man in a white shirt gesturing with his hand. The background of the slide is a light green to yellow gradient.

- Vertical Combination is a combination between firms that operate at different but complementary levels in the chain of production/distribution.
- In a Vertical Combination, the firms are located at different stages of production/distribution with one producing an input which is used by the other
- Vertical Combinations are generally between parties that do not currently compete in the same relevant market
- Competition Law generally do not have any objections to vertical combinations
- But, in cases where the combining parties have market power at one or more market levels, such vertical combination might result in foreclosure of the market or a source of important supply to its competitors

The vertical combinations and conglomerate combinations are also important case of combinations. We saw that the vertical combination will be always operating at different levels, but complimentary combination can be at complimentary levels in the chain of production or distribution.

So, vertical combinations maybe at different stages, they may operate at different stages and generally between parties that do not currently compete in the same relevant market. They may be in the different market product market or geographical market. Generally in vertical combinations you do not have any kind of objections.

But if these vertical combinations affect the markets or try to eliminate competition from the market then this kind of combination may result in the foreclosure of the market or to eliminate the competitors from the market, then definitely vertical combination also will come under the purview of the competition law.



(Refer Slide Time: 14:03)



**SPECIFIC OBJECTIONS TO VERTICAL INTEGRATION**

- The High Level Committee on Competition Policy and Law (Raghavan Committee) identified 3 specific objectives for vertical integration
  - a. Fear of Foreclosure
  - b. Entry Blocking
  - c. Price Squeezes

The slide features a green and yellow gradient background. At the top, there is a navigation bar with various icons. The title is centered in bold black text. Below the title, a bullet point lists the Raghavan Committee's findings, followed by three sub-points labeled a, b, and c. At the bottom, there are logos for IIT Bombay, NPTEL, and a small video inset of a man in a white shirt pointing.

So what are the objections to the vertical combinations? The Raghavan Committee instrumental in drafting this particular law identified three problems with a vertical integration that is the fear of foreclosure, entry blocking and price squeezes.

(Refer Slide Time: 14:27)



**Combination**

- **Fear of Foreclosure:** Through vertical integration, a firm can create captive distribution channels. This will foreclose the rival firms from the market.
- **Entry Blocking:** If through vertical integration, firms are able to internalise different levels of production, artificial barriers to entry could be created
- **Price Squeezes:** Vertical integration internalise the process of production and enable a firm to perhaps reduce costs. This will result in reduction in output prices which is generally known as Price Squeeze

The slide features a green and yellow gradient background. At the top, there is a navigation bar with various icons. The title is centered in bold black text. Below the title, three bullet points provide detailed explanations for each of the three objections. At the bottom, there are logos for IIT Bombay, NPTEL, and a small video inset of a man in a white shirt pointing.

And the fear of foreclosure can create captive distribution channels. This may foreclose the rival from the market and ultimately they may go out of market. Then entry blocking: so by entry blocking through vertical integration the firms are able to internalize different

level of production, and the artificial barriers can be put in the market for the entry of the new entrant. And price squeezes: the firm always looks into reducing the cost. So, this will result in the reduction of output prices and will be considered as eliminating the competitors from the market.

(Refer Slide Time: 15:13)



**CONGLOMERATE COMBINATION**

- Conglomerate Combination is a combination between firms that operate in different product markets, without any vertical relationship
- Combinations between firms that produce different but related products or pure conglomerate combinations
- Three way classification for conglomerate combinations
  - a. Combinations between complimentary products
  - b. Combinations between neighbouring products
  - c. Combinations between unrelated products

The slide features a green and yellow background with a wavy line at the bottom. On the left, there are logos for IIT Bombay and NPTEL. On the right, a man in a white shirt is shown from the chest up, pointing towards the text.

In the case of conglomerate combination, it is a combination between firms that operate at the different markets without any vertical relationship. And these kind of combinations or firms produce different, but related products or purely conglomerate combinations. And we can look into these conglomerate combinations. There are three ways of classification i.e. the combinations between complimentary products, combination between neighbouring products and combination between unrelated products. All these can be different categories of conglomerate combination.

(Refer Slide Time: 15:55)

The slide features a title 'OBJECTIONS TO CONGLOMERATE MERGER' at the top. Below it is a bulleted list of five points. At the bottom left are the logos for IIT Bombay and NPTEL. On the right side, there is a small inset image of a man in a white shirt pointing upwards. The background is a light green to yellow gradient.

- They create deep pockets which enables that firm to devastate the rivals
- Lower costs below the marginal cost of the industry
- Raise barriers to entry
- Engage in reciprocal dealing to the disadvantage of the rivals
- Eliminate potential competition

And what are the objections or the negativity about conglomerate merger. They create deep pockets which enable the firm to devastate the rivals. They have a deep impact in the market. Then lower cost, they can push the industry through very marginal cost. They can make barriers to the entry of new entrants. Then reciprocal dealings to the disadvantage of the rivals also can eliminate the potential competition. So, the combination can be merger, acquisition or amalgamations.

But if it is for the purpose of eliminating competition from the market, it is definitely going to be under the purview of the Competition Commission of India. And the threshold in India under the Competition Law are mentioned under the 2011 Regulations. Each and every merger, acquisitions, amalgamations and other form of joining entities are under the purview of Competition Commission of India, especially if it is for the purpose of eliminating competition from the market, if the objective is to eliminate the competition from the market.

So, if you summarise the whole week we were talking about the basics of Competition Law which we started from the historical perspective especially in India, then how it started, where it started. And the developments in the post independent India, the constitutional provisions and various committees appointed by the government leading to the formation of a bill and then that bill become an Act in 2002 and the enforcement

from 2007 onwards. And then we looked into the developments of the court, the cardinal principles of the Competition Law, all the three cardinal principles we covered in this particular week.

So, in the first week we talked about the introduction to intellectual property law, we looked into all categories of intellectual property. The second week we looked into the basics of competition law. And the third week we are going to look into the interface between competition law and intellectual property law, and then we have to look into the US jurisdiction as well.

So, in order to understand the interface properly, the students have to complete these two realms, one is intellectual property and other one is the Competition Law, then it will be easy for you to understand the interface between these two areas in the coming classes. So, we will come with the interface area from next week onwards.

Thank you.