2018-09-24

Bank Merger Regulation in Ethiopia: Assessment of the Legal and Institutional Framework

Amin, Tadesse

BANK MERGER REGULATION IN ETHIOPIA: ASSESSMENT OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

AMIN TADESSE ASSFAW

School of Law

Bahir Dar

June, 2018

BANK MERGER REGULATION IN ETHIOPIA: ASSESSMENT OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

Thesis

Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Laws (LLM) at the School of Law, Bahir Dar University

By

Amin Tadesse Assfaw

Advisor

Solomon Abay (Associate Professor of Laws)

School of Law,

Bahir Dar University

June, 2018

The thesis titled "Bank merger regulation in Ethiopia: Assessment of the legal and institutional frameworks" by Mr. Amin Tadesse Assfaw is approved for the degree of Master of Laws (LLM)

Thesis approval page

Board of Examiners

	Name	Signature
Advisor	____________________	____________________
Internal Examiner	____________________	____________________
External Examiner	____________________	____________________

Date: ______________

Declaration page

Declaration

I, the undersigned, declare that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University and can also evoke criminal sanction from the State and civil action from the sources which have not been properly cited or acknowledged.

Signature

Name of Student

University Id. Number

Date

Acknowledgement

First and foremost, I would like to praise God Almighty, without his blessing this work wouldn’t be completed.

Secondly, I would like to thank my beloved #1 father in the world, Tadesse Assfaw and my beloved sister Sara Tadesse for your support and encouragement. Thirdly, my heartfelt thanks, goes to my advisor, Dr. Solomon Abay (Associate Professor of Laws) for his humbly intellectual advice

My intimate thanks also tend to, Liza Tefera for being by my side on those days, I desperately need someone.

I’m also indebted to all my buddies, Belete Addis, Yonas Mekonnen, Theodros Taffes and Aaron Alemseged for your friendly encouragement. Finally, for everyone who contributed in this paper, I don’t let you are not left without being said thank you. Thank you!

Amin Tadesse

“There are many ways to go forward, but only one to stand still”

(F. D. Roosvelt)

List of Acronyms

Art.	*Article*
BBP	*Banking Business Proclamation*
CBB	*Construction and Business Bank*
CBE	*Commercial Bank of Ethiopia*
Comm. Code	*Commercial Code*
IMF	*International Monetary Fund*
M&A	*Mergers and Acquisitions*
NBE'/the Regulator'	*National Bank of Ethiopia*
OECD	*Organization of Economic Cooperation and Development*
PEP	*Public Enterprises Proclamation*
TCCPA/'the Authority'	*Ethiopian Trade Competition and Consumers' Protection Authority*
TCCPP	*Trade Competition and Consumers' Protection Proclamation*

Table of Contents

Titles **Page No**

Abstract

Bank merger regulation is one of a major subject area that attracts the application and enforcement of the relevant laws from both financial sector and the general competition regulation. The current trend of deregulation, liberalization and privatization hastened the proliferation of banking sector mergers, while the inherently sensitiveness of the sector urges tight regulatory and enforcement institutions on bank mergers. This paper employed qualitative approach to assess the existing substantive and enforcement institutions. Accordingly the study find out that the existing Ethiopian bank merger substantive rules and enforcement institutions suffers from various deficiencies that obstruct the effective regulation and execution of the imminent bank mergers (both voluntary and policy-induced bank merger schemes). The substantive legal frameworks roughly outdated, incomprehensive, haphazardly chopped in different legislations and suffer from loopholes which makes it not capable to effectively deal with the complex and alarming bank merger issues. Likewise, the existing enforcement institutions, lacks a clearly defined guide rules and code of conducts on procedures, jurisdictional interaction, transparency, accountability and cooperation platform among them, which pose a potential risk of regulatory uncertainty, parallel decisions and jurisdictional conflict between and among these enforcement organs. Accordingly, the researcher recommends a need to reform the existing bank merger regulatory frameworks, in line with the well adopted principles and concerns in the regime. Similarly, there is a need to strengthen the existing enforcement institutions and develop cooperation platform among these organs in order to regulate the regime in effective and efficient manner.

CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

From legal scholars perspective merger can be defined as a combination of two or more firms in which all but one cease to exist legally; the combined organization continues under the original name of the surviving firm. In other words merger is considered as a transaction in which two or more corporations combine under a state corporation law with the result that all but the one of the participating corporations loses its identity.[1]

Based on nature of economic chain, mergers can be categorized as horizontal, vertical and conglomerate merger. The first one is horizontal merger which takes place between companies in the same line of business, often competitors. The second one is vertical merger where companies are in the same line of production e.g., supplier–customer. The third one is conglomerate merger which takes place between companies which are in unrelated lines of business. Mergers can also be classified as share ownership, asset ownership, joint venture of organizations or persons and securities ownership on the basis of the transaction that business organizations or persons undertake.

In Ethiopia bank merger regulation mainly falls under the concern of the general competition law regime (the Trade Competition and Consumers Protection Proclamation No. 813/2013(TCCPP)), the financial regulation regime under the Banking Business Proclamation No. 592/2008), the 1960 Commercial Code of Ethiopia and the Public Enterprises Proclamation 25/ 1992 only for cases involving mergers of public enterprises. Though these laws shares common objectives, there are different and additional set of objectives that surpass the conventional competition objectives and calls for the involvement of the financial regulator that approaches to ensure healthy, sound and viable of banks.

---

[1] Fox B & Fox E, *Corporate Acquisitions & Mergers*, Vol. 1, Matthew Bender & Co., 2004, p. 1-5, [Here in after, Fox, *Corporate Acquisitions & Mergers*]

The Commercial Code of Ethiopia, which was promulgated around 58 years ago does not use the terms merger and acquisition, instead it preferred to employ the term "amalgamation" which seems intended to address both technically different concepts within a single expression. The code states that two or more firms may amalgamate, either by taking over or by the formation of a new firm and merely urges shareholders approval so that the merger to take effect.

The regulation of merger under the competition law regime was first introduced by the previous Trade Practice & Consumer Protection Proclamation No. 685/2010. Currently, this proclamation has been replaced by the Trade Competition and Consumers' Protection Proclamation No. 813/2013. The TCCPP recount merger occurs when two or more organizations, previously having independent existence, amalgamate or when such business organizations pool the whole or part of their resources for the purpose of carrying on a certain commercial activity.[2]

The current TCCPP encompasses to all economic agents regardless of identity of the owner. However, it confirms application of sector specific regulatory functions and administrative measures over the general competition law.[3] This law guarantees the general competition law provisions not to impede applicability of regulatory functions and administrative measures by sector regulators. Nonetheless, the boundaries between the roles of sectoral regulators and competition authorities are difficult to define and in many countries the issue remains unresolved.[4] Most of emerging economies failed to clearly define the jurisdictional relationship between the general competition authority and industry-specific regulators.[5] Ethiopia is not an exception to this, unlike an attempt made by its predecessor the current TCCPP does not incorporate a provision that define the

---

[2] Trade Competition and Consumers Protection Proclamation, 2013, *Federal Negarit Gazzeta*, Proc. No. 813, 20th year, No. 28, Article 9 (3) (a) & (b). [here in after, Proc. No. 813/2013]
[3] Id, Article 4 (3) of Proc. No. 813/2013
[4] S. Mehta, Competition Policy in Developing Countries, *Bulletin on Asian Pacific Perspectives*, <http://www.unescap.org/pdd/publications/bulletin2002/ch.7.pdf>
[5] Muhammed K. *A Critical Appraisal of the Institution Controlling Competition in Ethiopia: Analysis of the Law and the Practice*, LLM thesis, Addis Ababa University, Law Faculty, 2014, [Unpublished, available at Law library], p. 62 [here in after Muhammed K., *A Critical Appraisal of the Institution Controlling Competition in Ethiopia*]

jurisdictional relationship between the general competition authority and sector-specific regulators.[6]

Of relevance, the Banking Business Proclamation incorporates a few provisions related to bank merger regulation. It requires any bank merger plans to secure the prior written approval of the NBE.[7] The proclamation also empowers the regulator to initiate and execute bank mergers in some specified circumstances when necessary to achieve its objectives as a prudential regulator.[8]

Currently, there are 16 private and one state-owned commercial bank in Ethiopia. Due to the limited numbers of banks, the existing banks are considered financially viable and profitable. However, compared to foreign commercial banks they are small in size and capital which made them unfit and not competitive at the international arena. On the other side the government is endeavoring to join the WTO system by fulfilling its commitment to liberalize the financial service sector of the country.

Accordingly, the government, through the National Bank of Ethiopia (NBE), has officially introduced a national financial inclusion strategy. The strategy undertakes to increase the minimum paid up capital of banks by the end of the GTP II in 2020 to 2 billion birr. The strategy plan recommends informed professionals and corporate governance of banks to contemplate and resort to banking sector merger in case they fail to meet the minimum capital requirement or the regulator would take the compulsive approach. In fact over the past twenty-plus years, the central bank, National Bank of Ethiopia (NBE), has thrice set the capital requirement banks are expected to meet. A few years back, the NBE has signaled the same approach by inclining the paid-up capital of banks from 75 million birr to 500 million urging banks to comply within the time frame till June 2016 or as a way out they would be able to merge vertically or horizontally.[9] To date, at face

---

[6] Trade Practice and Consumers' Protection Proclamation, 2010, *Federal Negarit Gazzeta*, Proc. No. 685, 16th year No. 49, Art. 43 [here in after, Proc. No. 685/2010] tried to define such relationship. However, the current Proc. No. 813/2013 depleted this provision.

[7] Banking Business Proclamation, 2008, *Federal Negarit Gazzeta*, Proc. No 592, 14th year, No 57, Art. 3 (3) (c) & (d) [here in after Proc. No. 592/2008]

[8] *Id.* Art. 40 (1) (b)

[9] Minimum Capital Requirement for Banks Directive No. SBB/50/2011, National Bank of Ethiopia, 2011

value, it is likely that only a few, if any, banks in Ethiopia currently meet that requirement.[10] This makes the compulsory future merger of the banking sector imminent and inevitable.

Except the recent statutory merger of the two state-owned commercial banks (Commercial Bank of Ethiopia and Construction & Business Bank),[11] yet no merger proposal is made from the private banks. A statutory merger is defined as a mechanism in which the acquiring company assumes assets and liabilities of the target in accordance with the statues of the State in which the combined companies will be incorporated.[12] According to the Ethiopian Public Enterprise Proclamation No. 25/1992, two or more public enterprises may amalgamate, up on the decision of the Council of Ministers.[13] As an appointed sector supervisor, the Ethiopian Financial Public Enterprise Agency is vested with power to propose such arrangements to the Council of Ministers.

Amidst, the demanding push by the Ethiopian government to capitalize the banking sector through merger scheme; inadequacy of the existing bank merger legal and institutional framework is considered as imminent challenge.

Beside the anti-competitive effect of merger in general, banking sector merger involves various legal and practical issues arise during banking sector mergers such as incompatibilities in ambition, vision, and corporate governance culture, incivility of employees and shareholders that could lead to hostile mergers.[14]

---

[10] To the end of 2017, only CBE, Awash and Wegagen bank reached the required "Ethiopia: What Does Not Kill the Banking System" at <http://www.addisfortune.com >September 2/2017, [last accessed on 20/12/2017]

[11] Commercial Bank of Ethiopia's Takeover of the Construction & Business Bank Share Company Regulation No. 384/2016, Council of Ministers Regulation. The Council of Ministers has decided that the Commercial bank of Ethiopia to take over the Construction and Business Bank, consequently, through the issuance of this Regulation, it formally amalgamated the Construction and Business Bank Share Company with the Commercial Bank of Ethiopia, instantly repealed Regulation No. 203/1994, which established the Construction and Business Bank.

[12] Donald DePamphilis, *Mergers and Acquisitions Basics: All You Need to Know*, Elsevier Inc. , Burlington, USA, 2011, p. 12 [here in after, DePamphilis, *Mergers and Acquisitions Basics*]

[13] Public Enterprises Proclamation No. 1992, Proc. No. 25, *Federal Negarit Gazzeta*, 51st year, No. 21, Art. 35 [here in after, Proc. No. 25/1992]

[14] Dr. K. S. Adeyemi, 'Banking Sector Consolidation in Nigeria: Issues and Challenges', *Research Gate*, Nigeria, 2014, p. 2. Available at: <https://www.researchgate.net/publication/242780351 pp.11-14> [here in after Dr. Adeyemi, Banking Sector Consolidation in Nigeria] See also Asrat Seyoum, 'Mega Banking: Future of Ethiopian Banks', *The Reporter Ethiopia*, <http://archiveenglish.thereporterethiopia.com/content/mega-banking-future-ethiopian-banks> Last accessed on 22/02/2018

However, there is a prevalent doubt on the sufficiency of Ethiopia's existing laws on bank merger regulation and efficiency of the NBE's structural apparatus. Hence, this treatise seeks to look at the legal and regulatory issues that may be confronted in mergers especially making the case for the banking sector on the backdrop of the new financial inclusion strategy from the National Bank of Ethiopia.

1.2. Statement of Problems

There are several problems that arises firm suspicion on the appropriateness and sufficiency of the current merger laws of Ethiopia relevant to bank merger regulation.

First, the current Banking Business Proclamation No. 592/2008 incorporates limited provisions on bank merger regulation that arise the question of sufficiency to deal with bank mergers. It only requires compulsory prior notification of merger proposals, requirement of a written approval of the regulator[15]and consequences to failure to notify (receivership and penalty clause).[16] Even more the fate of such banks transferred to the receivership is not clear under the proclamation.[17] Currently, neither the Council of Ministers nor the regulator (NBE) issued any law as to regulation of bank mergers.[18] Amidst these the sufficiency of the provisions of the Banking Business Proclamation to regulate and execute bank mergers by defining regulatory reviews, areas, considerations and procedures is questionable which requires a research to be undertaken.

Second, the provisions of the TCCPP in relation with regulation of merger are crafted from competition perspective thus cannot be fully compatible to deal with specific bank mergers from financial regulation objectives perspective. Studies show that merger control legislations have far reaching impact on mergers transcend combating anticompetitive transactions and can affect merger activity

[15] Art. 3 (3) (c) & (d), Art. 33 & Art. 40 of Proc. No. 592/2008
[16] *Id.* Art. 33 (1) (n) & Art. 58
[17] *Id*. Art. 40 (1) (b)
[18] Art. 59 (1) & (2) of Proc. No. 592/2008, empowers both the Council of Ministers and the NBE

even in heavily regulated sectors such as the banking sector.[19] Otherwise, if competition control legislations are missing, banks and even the sectoral regulator may approach to undertake anticompetitive mergers to create national champions or economic nationalism.[20]

The OECD recommends national regulators to proactively and clearly specify conditions requirements and procedures of bank mergers and ensure coordinated and joint enforcement with the general competition authorities.[21] Apart from competition review, there is a defined regulatory review by the regulator which considers financial and managerial resources, future prospects, convenience and needs of the communities, anti-money-laundering records and compliance to banking laws.[22] However, the appropriateness of the provisions of the TCCPP to regulate bank mergers and its consistent applicability on bank merger reviews to be made by the NBE is disputed.

Third, there is a serious doubt as to the relevance of the provisions of the Commercial Code on amalgamation to deal with the complex issues arise in bank mergers. Because, the Commercial Code provisions, has been crafted 58 years back and suffers from lack of comprehensiveness as to modalities, forms and procedures.[23] Most argue that they are too old to fit and such legal gap would pose a potential challenge in banking sector merger.

---

[19] Jan-Peter Siedlarek, 'Merger Control in the Banking Sector', *Federal Reserve Bank of Cleveland*,<https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2017-economic-commentaries/ec-201710-merger-control-in-the-banking-sector.aspx > Last accessed on 20/12/2017

[20] Carletti, Elena, *et al.* 'The Impact of Merger Legislation on Bank Mergers,' Working paper, *Federal Reserve Bank of Cleveland,* 2016, pp. 16-14 [here in after, Carletti, The Impact of Merger Legislation on Bank Mergers]

[21] OECD, , *Mergers in Financial Services*, Directorate for Financial, Fiscal and Enterprise Affairs Committee on Competition Law and Policy, 2000, p. 33 Available at: <http://www.oecd.org/daf/clp>[here in after, OECD, *Mergers in Financial Services*]

[22] Peter Lim Felton, Too Big to Manage: A Case for Stricter Bank Merger Regulation, *Santa Clara Law Review,* 2012, Vol. 52, No.3, PP. 1081-1109 , at p. 1089 <http://digitalcommons.law.scu.edu/lawreview/vol52/iss3/11> [here in after, Peter Lim, *Too Big to Manage: A Case for Stricter Bank Merger Regulation*], *See also,* Brian W. Smith and Laura R. Biddle, 'Is the Bank Merger Regulatory Review Process Ripe for Change?', *CCH Incorporated,* 2005, p. 9 [here in after, Brian & Laura, Is the Bank Merger Regulatory Review Process Ripe for Change?] some also consider the "needs and convenience of the community to be served" and preservation of employment

[23] Commercial Code of the Empire of Ethiopia, 1966, *Negarit Gazzeta*, Extraordinary issue, Proc. No. 166, 19th year, No. 3, Arts. 549-554, referred under Art. 60 (3) of Proc. No. 592/08. [here in after, Comm.Code]

Fourth, problem originates from the absence of clearly defined jurisdictional relationship between the general Competition Authority and sector-specific regulators. In addition, there is no legal framework that calls for cooperation between the Competition Authority and sector-specific regulators. Absence of cooperation between the general competition authority and sector specific regulator could lead to conflict of jurisdiction, dilatoriness and inefficiency.[24] To alleviate such problems developed countries have adopted detailed rules on competence, procedures and priorities of the institutions.[25] They also conferred the regulator with a veto authority on bank merger proposals though the competition authority may seek block the latter's decision and they need to act in coordination for timely actions.[26] However, in Ethiopian case, neither the TCCPP nor the Banking Business Proclamation contains a clause that defines the jurisdictional relationship between the Competition Authority and the NBE creating potential conflict.

The existing jurisdictional hurdle in banking sector merger is more prevalent from the recent state-owned banks merger experience between the CBE & the CBB. The absence legal framework that deals with statutory mergers and absence explicit exclusion of public enterprises merger cases from the domain of the TCCPP or the Banking Business Proclamation[27] attracts some challenges. First, it is not clear as to whether the highest executive organ's (Council of Minister) decision to merge state-owned banks should be approved by its subordinate Competition Authority and the NBE. Second, absence of legally defined procedures and jurisdictional interaction in statutory merger could affect competition. Yet neither NBE nor the Council of Ministers has distinct procedures for managing the approval of the mergers of banks.[28]

---

[24] Muhammed K., *A Critical Appraisal of the Institution Controlling Competition in Ethiopia*, p.68

[25] Strategic Priorities of Competition and Regulatory Agencies in Developing Countries, at <http://www.circ.in/pdf/strategic%2520priority > Last accessed on 02/02/2018

[26] John V. Austin, Esq., 'The Role of Supervisory Authorities in Connection with Bank Mergers', *in IMF Conference*, Washington, D.C., May 7-17, 2002, p. 8 [here in after, Austin, *The Role of Supervisory Authorities in Connection with Bank Mergers*]

[27] Art. 4 (1) of Proc. No. 813/2013

[28] Solomon Abay Y. *Financial Market Development, Policy And Regulation: The International Experience and Ethiopia's Need For Further Reform*, PhD. thesis, FdR, University of Amsterdam, 2011, [unpublished file with the author], p. 530

The other problem emanates from the general permission made by the TCCPP for possible application of sector specific regulatory functions and administrative measures.[29] This provision is general and do not put any conditions to ensure sector specific regulators compliance to the general competition law objectives. This could open a room for excessive abuse of discretionary power by regulators based on a broad construction of the provision. Exacerbated by the absence of detail rules, jurisdictional cooperation and checks and balance mechanism poses potential danger on competition while the regulator take adverse measures in regulating bank mergers.

Lastly, there is a prevalent doubt as to the efficiency of the NBE's structural apparatus to properly regulate the future bank mergers and post merger banks. Since, mergers in financial sector pose particular challenges to understand and supervise effectively;[30] regulation of banking sector mergers requires efficient regulatory and institutional frameworks.

1.3. Objective of the Study

The study aims at achieving the following general and specific objectives.

1.3.1. General Objective

The general objective of the research is to critically assess the current substantive bank merger laws and enforcement institutions of Ethiopia and identify the potential legal and regulatory issues in bank mergers.

1.3.2. Specific Objectives

The following will be the specific objectives of the study;

- Examining appropriateness, relevance and sufficiency of the current merger laws of Ethiopia, particular to banking sector merger;
- To find out what types of procedures and reviews will be undertaken in deciding on bank merger proposals;

[29] Article 4 (3) of Proc. No. 813/2013
[30] IMF, *Financial Sector Regulation: Issues and Gaps-Background Paper*, Monetary and Financial Systems Department, 2004, p. 6 [here in after, IMF, *Financial Sector Regulation: Issues and Gaps-Background Paper*]

- Evaluating the institutional efficiency of the National Bank of Ethiopia in enforcing and handling bank mergers proposals;
- Determining the jurisdictional interaction between the NBE and the TCCPA in reviewing bank merger proposals and

1.4. Research Questions

1.4.1. Central Research Question

The central question of the study is should the current bank merger regime of Ethiopia be reformed?

1.4.2. Specific Research Questions

- Are there sufficient laws in regulation of bank merger in Ethiopia?
- Are the existing merger laws relevant and appropriate to bank mergers?
- What are the procedures to be followed in authorizing bank merger proposals in Ethiopia?
- What the jurisdictional interaction between the general Competition Authority and the NBE looks like in enforcing bank mergers plans?
- What kinds of assessments and reviews will be conducted in proposed bank mergers?
- Is the current NBE's institutional apparatus is effective to handle future bank mergers proposals?

1.5. Significance of the study

This research will be important for both practical and further researchers. The research will show the legal gaps and hopefully, will contribute to the government (legislators, the regulator and any concerned government organ) to know as to the sufficiency of the existing bank merger regulatory frameworks and act proactively and take corrective measures.

On the other hand, the study will show the potential effects of defective regulation and policy induced bank mergers on competition. Lastly, the study can be a positive input and source of knowledge for potential researchers to undertake further study.

1.6. Methodology

The researcher utilized qualitative approaches. Because the researcher aimed to investigate the existing laws related to bank merger regulation and assess the institutional efficiency of the NBE in terms of quality and nature. The qualitative approach is suitable to achieve the objectives set that require deep assessment of the existing merger laws specifically relevant to bank mergers incorporated under the Commercial Code, the Trade Competition and Consumers' Protection Proclamation No. 813/2013 and the Banking Business Proclamation No. 592/2008. The study examined the appropriateness and adequacy of these substantive laws to regulate potential bank merger proposals and execution of policy induced bank mergers program adopted by the Ethiopian government.

1.6.1. Sources and methods of data collection

The researcher used both primary and secondary sources of data.

1.6.1.1. Primary sources of data

Primary documentary sources such as the Commercial Code of Ethiopia, Proclamations which are relevant and related with (financial regulation, competition regulation, and public enterprises), Directives, Strategy instruments, and other relevant primary sources of data will be utilized.

Among the primary data collection methods the study used interview.

i. Interview

The researcher employed a semi structured personal interview with management staff of the Ethiopian Trade Competition Authority and Legal Service vice Director of the NBE. This allowed the researcher to know the awareness of the concerned officer/s of the NBE and the Competition authority as to regulation of bank mergers and the jurisdictional relationship of one another. It also enabled to explore their perception as to the sufficiency of the existing bank merger regulatory frameworks. Particularly, it is suitable to know the view of concerned management staffs of the NBE's as to its institutional efficiency regulate and carry out the intended government led bank merger program. The management staffs perception as to the potential effect of the bank merger program intended by the government on the banking sector competition. The researcher required some degree of flexibility and semi structured interview would give the required degree of flexibility and the chance to modify or add or omit some of questions if necessary and would borne plenty of time it may require. The researcher employed purposive sampling because it is better to allocate specific samples for the purpose intended to be met by the research.

1.6.1.2. Secondary sources of data

The study also used books, articles, journals, case study, reports, guidelines and internet sources. In particular the study will use the case of merger of CBE and CBB as an up-to-date illustrative case.

1.6.2. Data analysis method

The researcher employed qualitative method. Particularly since it used qualitative approach to collect data and principally aims to analyze the law, the researcher used descriptive data analysis method so that to analyze the data in depth and appropriate manner.

1.7. Ethical considerations

The researcher has complied with all ethical conducts expected from researcher. Particularly, the researcher been confidential to person and information according to the standard ethics and during data analysis the researcher as much as possible will try to avoid from imposing one's biased knowledge in the raw data to be analyzed.

1.8. Limitation of the study

The primary limitation of the study was unavailability or generally absence of relevant domestic literatures on bank merger in particular. While conducting this research the researcher has been encountered with the problem of information and access to top officials denied giving explicit information.

1.9. Scope of the study

The research confined to assessment of bank merger regulation and does not excessively extend to merger regulation in general. In this case only relevant provisions on general merger regulation frameworks have been investigated in light of bank mergers. Since, bank merger regulation is the concern of both Competition Authority and the financial regulator (NBE) it examined the jurisdictional relationship between these authorities.

1.10. Overview of chapters

Chapter Two discusses the theoretical and regulatory concepts related with mergers and acquisitions particularly on bank mergers. Under different sections and sub sections definitions, types, motivations and needs for mergers and acquisitions discusses. Late, the institutional and regulatory principles, concerns and considerations in bank merger will be elucidated.

Chapter Three discusses on the substantive rules on bank merger and the limits. This chapter studies the current merger laws of Ethiopia related to bank mergers. Under different sections and sub sections it analyzes these laws in light of various substantive bank merger issues including requirements, conditions and other considerations. Finally it finds out the limitations of the current merger laws of Ethiopia in regulating bank mergers in particular.

Chapter Four discusses on the institutional arrangement for enforcement and the limits. Particularly it will discuss on the institutional arrangement of Ethiopia in regulation of bank mergers. Under this chapter the procedures and regulatory reviews to be made in enforcing bank mergers are discussed. This chapter elucidates and examines issues related with competence and jurisdictional interaction between and among different concerned organs to bank merger regulations. Lastly, it exposes various institutional and jurisdictional limitations in enforcement of bank mergers.

Chapter Five contains conclusion and recommendation based on the finding of the research.

CHAPTER TWO

THEORETICAL AND REGULATORY CONCEPTS OF MERGERS AND ACQUISITIONS

2.1. General Overview

Mergers and Acquisitions has been a key area for many researchers in various field of studies including corporate, management, banking and law and economics field of studies, because these transactions plays a vital role in restructuring different economies. The emergence and proliferation of the process globalization, privatization and liberalization which has been adopted and adhered by the Ethiopian government since 1991, has reorganized the performance and supervision of the Ethiopian banking industry.

The progressively liberalized and competitive business atmosphere has continuously influenced policy makers and regulatory agencies to reconsider and revise their respective function in `alignment with a greater effort to accomplish efficiency and growth of the economy by devising various business and corporate restructuring including consolidation, mergers, acquisitions and corporate takeover. At international arena, mergers and acquisitions have been considered as an intermediate to achieve various economic objectives including increasing asset and product portfolios, access to technological innovations and integrations, access to new researches, and development, access to diversified market and resources that finally contribute to corporate growth and efficiency.[31]

The Ethiopian banking sector is now on the edge for merger strategy to obtain potency by immersing the size of the existing banks so that to enable them to convene at the international financial market which host a high level of competition from the entire corner of the globe.

The majority of existing mergers and acquisitions literature opt to interchangeably utilize terms such as merger, amalgamation, take over, acquisition and

---

[31] Yadav, A.K., and Kumar, B. R, 'Role of Organization Culture in Mergers and Acquisitions', *SCMS Journal of Management*, 2005, Vol. 2, No. 3, PP. 51-63, at p.53 [here in after, Yadav, *Role of Organization Culture in Mergers and Acquisitions*]

consolidation. This chapter is committed to concisely elucidate the theoretical and regulatory concepts of the above mentioned technically divergent terminologies. Accordingly there is a need to grasp the terms painstakingly through contextual elucidation of the legal and regulatory/institutional framework for merger and acquisition of banks in the current Ethiopia. The present chapter also devoted to discuss the definition, classification, distinction, motives and needs, advantages of mergers and the regulatory concerns of bank merger review and processes.

2.1.1. Definition of Merger

Literally, merger can be defined as a medium of fusion between two firms into single entity. It is a process by which two business entities are combined and blended to form a collective ownership. In the wording of the well renowned Dictionary of Oxford, *"Merger means combining two commercial companies into one."* Particularly, bank merger is an occurrence when formerly separate banks are unified into one body.[32] A bank merger happens when an autonomous bank relinquishes its very existence to form part and parcel of a bank by unifying its functions, operation and branches under a single headquarter.[33] Through merger transaction the assets and liabilities of a target bank will be transferred to a bidder bank and the former will attain the name of the latter through serious official and managerial processes. According to Weinberg, "Merger is a marriage between two companies roughly of same size."[34]

In common parlance, merger is a combination of two companies wherein at least one loses its corporate existence. The surviving company, also called the merged company, acquires both the assets and liabilities of the company that loses its

---

[32] Steven J. Pilloff & Anthony M. Santomero, , *The Value Effects of Bank Mergers and Acquisitions*, Wharton School Center for Financial Institutions, University of Pennsylvania, 1999, p.99 [here in after, Steven &Anthony, *The Value Effects of Bank Mergers and Acquisitions*]

[33] Dario Focarelli , Fabio Panetta and Carmelo Salleo, 'Why Do Banks Merge?', *Journal of Money, Credit, and Banking* Vol. 34, No 4, 2002, PP. 1047-1066, at p. 1051 [Here in after, Dario, *Why Do Banks Merge*]

[34] Weinberg M. A and Blank M. V., *Take-Overs and Mergers*, Sweet & Maxwell, ed. 5th, 1989, [here in after, Weinberg, *Take-Overs and Mergers*] as cited in HCL, Theoretical concepts of Mergers and Acquisitions, p. 23 <https://www.google.com/url?q=http://shodhganga.inflibnet.ac.in/bitstream/10603/100632/10/10_capter%25202.pdf&sa=U&ved=2ahUKEwiB2TViK3bAhXC2qQKHb0LA9sQFjAAegQICBAB&usg=AOvVaw2PgPbMyTDm8UqUXOnRTdFC > (Accessed on 22/03/2018)

existence.[35] Legal scholars define a merger as a combination of two or more firms in which all but one cease to exist legally; the combined organization continues under the original name of the surviving firm.[36] In typical mergers, there are two companies. The first is the acquirer (bidder/acquiring company) and the second one is the target/passive company. Here it should be noted that in merger scenarios at least one of the companies should cease to exist. In theory, would be merging companies are comparable in terms of wealth and capital, though acquirer company is the one that survives and succeed the demised company's(target company's) asset and liabilities.

As a principle, the bidder bank is thought to be bigger in size and its financial stance than the passive bank which usually considered suffering from poor managerial, financial or corporate governance, though the latter is usually relatively comparable to the former.[37] In nutshell, merger arrangement is considered as a means to complete convergence between two firms (the bidder/active or the acquire firms and the target or passive firm). Accordingly, merger is a mechanism by which a less important firm is absorbed by a more important one.[38]

The notion of statutory merger which is originally emerged from the U.S signifies to a major liberalization policy to impetus restructuring of business entities in order to promote economic growth and protect the interest of shareholders to preserve their holding and simultaneously aims to protect minority shareholders from the majority.[39]

---

[35] Agarwal, M. *Analyses of Mergers in India*, University of Delhi, 2002,[Unpublished thesis], as cited in Priya Bhalla, 'Mergers & Acquisitions in India: A Sectoral Analysis', *A International Journal of Business and Economic Development*, 2014, Vol. 2 No. 2, PP. 119-134, at p.120

[36] Fox, *Corporate Acquisitions & Mergers*, pp. 1-5

[37]HCL, Theoretical concepts of Mergers and Acquisitions, p. 23 <https://www.google.com/url?q=http://shodhganga.inflibnet.ac.in/bitstream/10603/100632/10/10_capter%25202.pdf&sa=U&ved=2ahUKEwiB2TViK3bAhXC2qQKHb0LA9sQFjAAegQICBAB&usg=AOvVaw2PgPbMyTDm8UqUXOnRTdFC > [Accessed on 22/03/2018], [here in after, HCL, Theoretical concepts of Mergers and Acquisitions]

[38] "Mergers and Acquisitions" at <ahref=http://legal-dictionary.thefreedictionary.com/M%26A>Mergers and Acquisitions [last accessed on 28/02/2018]

[39] Maleka Femida Cassim, 'The Introduction of the Statutory Merger in South African Corporate Law: Majority Rule Offset by the Appraisal Right, University of the Witwatersrand, 2008, No. 20, *South Africa Merc. Law Journal*, PP. 1–32. p.2[here in after, Maleka, *The Introduction of the Statutory Merger in South African Corporate Law*]

A statutory merger is defined as a mechanism in which the acquiring company assumes assets and liabilities of the target in accordance with the statutes of the state in which the combined companies will be incorporated.[40] Maleka Femida explained statutory merger as;

> "…a simple, uncomplicated and effective procedure by which two or more companies may merge by agreement, with the approval of the prescribed majority of their shareholders, and without the need for any court approval. Instead of recourse to a court, dissenting shareholders have the right to opt out, by withdrawing the fair value of their shares in cash which they do by exercising their appraisal rights."[41]

Accordingly, in statutory merger between two independent companies one of the two companies will continue to exist after the process has concluded. The accontrario understanding is that always one of the firms will be submerged and vanished. All the rights and duties and all assets and liabilities of the predecessor firm will be transferred to the surviving firm. The ceased firm embanks to operate under the name of the surviving firm that swallowed the former. Statutory merger is a typical form of unification in the mergers and acquisitions world. In statutory merger the entire process of merger will commence and undergo pursuant to the corporate law provisions crafted by the state. Hence any violation to the obligations dictated under the statutory provision is considered as unlawful.

2.1.2. Classification of Merger

From an economic chain perspective merger can be roughly categorized into following:

2.1.2.1. Horizontal Merger

According to the current merger directive horizontal merger is "a merger between competitors active in supplying actually or potentially competing products, typically at the same level of the production or supply chain and in the same geographic market."[42] Horizontal merger engage two banks or firms functioning in same product or market and exist within the same row of industrial arrangement. It is undertaken between and among firms or banks allocated to similar industry. A merger is considered to be horizontal when it is arranged to unify two independent

[40] DePamphilis, *Mergers and Acquisitions Basics*, p. 12
[41] Maleka, *The Introduction of the Statutory Merger in South African Corporate Law*, p. 2
[42] Art. 9 (A) of the Merger Directive, Ministry of Trade, 2016 [herein after Merger Directive]

companies generating or provision of basically similar product or services and are or could be a direct rivals competing to the same product or geographic market.[43]

Principally horizontal merger is instigated enjoy the positive gain of economy of scale production by avoiding redundancy of facilities, operations and reducing cost of transactions. This enables a firm to enhance its operational efficiency by minimizing costs and transaction. Nonetheless, there are counter arguments that contest the sufficiency of the theory of economy of scale propounded by proponents of horizontal merger. There are other accompanying impacts of horizontal merger which reduce the number of firms and boost the market power of firms which could result critical vulnerability for abuse of such dominant market power and the threat of monopoly.[44] Moreover there are some studies that argue that the economy of scale reported in previous literatures are over amplified and show a possible diseconomy of scale especially in larger firms[45]

Accordingly, governments opt to regulate these types of merger since they are considered to have potential adverse impact of the competition regime.

2.1.2.2. Vertical Merger

The merger Directive defines vertical merger as "a merger between businesses which operate at different levels of a supply chain in a given industry, such that the different levels in the production chain at which the merging parties are active, are complementary."[46]

Vertical merger engages the merger of two or more firms or banks, which are uprightly related to each other at different ladder of production. It can be taken as a fusion of banks or firms having complementary linkage at any stage of market chain. In such mergers, the two banks or firms are in similar chain of industry; in particular to banks they share the same and well-built buyer-supplier connection. For instance a bank could acquire a marketing company that render marketing

---

[43] HCL, Theoretical concepts of Mergers and Acquisitions, p. 24
[44] *Ibid*
[45] Tadesse, S. 'Consolidation, Scale Economics and Technological Change in Japanese Banking', 2005, U*niversity of South Carolina,* Columbia, available at http://ideas.repec.org/p/wdi/papers/2005-747.html,[Un published thesis], [here in after, Tadesse, Consolidation, Scale Economics and Technological Change in Japanese Banking], as cited in Dr. Adeyemi, Banking Sector Consolidation in Nigeria p. 8
[46] Art. 9 (B) of the Merger Directive

services, which is deemed to be vertical merger. In nutshell, vertical merger is activated when there is flawed market intermediary product. A certain merger is considered as "*vertical where one of the two firms is the actual or potential supplier of goods or services to the other, so that the companies are both engaged in the manufacturing or provision of the same goods or services, but at different stages in the supply route.*"[47] Mostly, vertical mergers are employed to enhance efficient by hastening the flow of production and minimizing cost by integrating constituent stakeholders.

2.1.2.3. Conglomerate Merger

Conglomerate merger engrosses unification of two or more firms involved in distinct business activities. It is "a merger between suppliers of goods or services which do not operate within the same market."[48]

The business of two firms are firmly distinguished in both horizontal line which is determined by sharing the same production line or directly competing in the same product and geographic market or vertically identified based on the connection of buyer and supplier or potential buyer and supplier of the firm.[49]

The merger directive distinguishes mergers between/among firms which generate unlike and yet interrelated products and between/among firms which generate dissimilar products considered as conglomerate merger.[50]

In such merger, there are no middle universal factors between and among the companies in production, marketing, research, and development technology.[51]

2.1.2.4. Congeneric Merger

It occurs when the bidder and target companies are connected through essential production, technological, product processing methods or markets.[52] The target firm stands for "an extension of product line, market participants, or technologies of acquiring companies."[53] In congeneric merger the bidder firm enjoys several

[47] Weinberg M Weinberg, *Take-Overs and Mergers*, as cited in HCL, Theoretical concepts of Mergers and Acquisitions, p. 24
[48] Art. 9 (C) of the Merger Directive
[49] HCL, Theoretical concepts of Mergers and Acquisitions, p. 25
[50] Art. 9 (C) of the Merger Directive
[51] HCL, Theoretical concepts of Mergers and Acquisitions, p. 25
[52] *Ibid*
[53] *Ibid*

gains by utilizing the tactical resources and access to a connected market and receives a greater reward than it would otherwise receive.[54]

Further categorization of mergers can be extended based on how the merger is funded:

2.1.2.5. Purchase Merger

This type of merger happens when one company purchases another.[55] The purchase is undertaken through effecting cash payment or through issuance of debt instrument.[56]

2.1.2.6. Consolidation Merger

In this type of merger a genuinely new entity with distinct legal personality will be commenced.[57] Accordingly both the bidder and the target company will cease to exist and lastly fused under the new firm which has distinct existence.

On the basis of the transaction that business organizations or persons undertake, mergers can also be classified as share ownership, asset ownership, joint venture of organizations or persons and securities ownership.

Share ownership engages an acquisition by business organizations or persons having independent existence of shares from themselves or other organizations through purchase or any other means. Asset ownership includes a transfer of a firm by organizations or persons of a particular asset to another organization through sales or any other means. Joint venture of organizations or persons is the creation of a coalition by business organizations or persons who pool the whole or part of their resources for the purpose of carrying on a certain commercial activity. Securities ownership consists of the transfer of financial instruments through purchase or any other means.[58]

2.1.3. Acquisition and Takeover

Acquisition may be defined as mechanism employed by one firm to obtain an active control of the assets and/or management of another company without a legal

---

[54] Weston, J. F. and Mansinghka, K. 'Test of Efficiency Performance of Conglomerate Firms', *Journal of Finance*, 1971, as cited in HCL, Theoretical concepts of Mergers and Acquisitions, p. 25

[55] "Mergers and Acquisitions – M&A", at <https://www.investopedia.com/terms/m/mergersandacquisitions.asp> Last accessed on 20/02/2018

[56] *Ibid*

[57] *Ibid*

[58] Art. 10 of the Merger Directive

or material fusion between the firms.[59] An acquisition is the purchase by one company of controlling interest in the share capital of an existing company. Mostly acquisitions in the banking industry occurs when a bank purchase the voting right of another bank without a material unification or amalgamation. Following an acquisition, the two banks will operate independently, but possibly they mainstream their operation policies and plans.[60] In other words acquisition can be paraphrased as a takeover of relatively small firms by larger firms.[61]

Similar to some merger transactions, acquisitions takes place when a firm purchase another firms through effecting cash payment, share or a blend of the two.[62] Alternatively, it is effectuated through dealing a firm to obtain the entire assets of another firm.[63]

By the time a firm acquires another firm there are two possible options available to the acquirer. These are either to merge both firms and run as a single legally incorporated unit or to allow the acquired firm to proceed running independently with altered management and corporate policy. The former alternative technically constitutes merger while the latter constitutes acquisition or takeover.[64]

Alternatively acquisition may be undertaken through a reverse merger that occurs when a private firm is enabled to get publicly-listed and get the chance to be merged in to public companies.[65] Generally, "[a] reverse merger occurs when a private company that has strong prospects and is eager to acquire financing buys a publicly-listed shell company, usually one with no business and limited assets."[66] Once the private company reverse merged to the public company the two

---

59 HCL, Theoretical concepts of Mergers and Acquisitions, p. 26

60 Dario, *Why Do Banks Merge*, p. 1053

61 Sobek, O., *Bank Mergers and Acquisitions*, 2000, as cited in HCL, Theoretical concepts of Mergers and Acquisitions, p. 25

62 "Mergers and Acquisitions – M&A", at <https://www.investopedia.com/terms/m/mergersandacquisitions.asp> Last accessed on 20/02/2018

63 *Ibid*

64 Gurminder Kaur, *Corporate Mergers and Acquisitions*, Deep & Deep Publications, 2005, as cited in HCL, Theoretical concepts of Mergers and Acquisitions, p. 25

65 "Mergers and Acquisitions – M&A", at < https://www.investopedia.com/terms/m/mergersandacquisitions.asp> Last accessed on 20/02/2018

66 *Ibid*

companies will be fused to the later and considered as a public company that can issue negotiable stocks to the public.[67]

A takeover can be defined as "a series of transactions whereby a company or bank or group of individual acquirers control over the assets of a bank or a company, either directly by becoming owner of those assets or indirectly by obtaining the control of management of the company."[68]

2.1.3.1. Conceptual Distinction between Merger and Acquisition

In plain language, there is no difference between merger and acquisition. However, in the eyes of law the operational processes have a big difference. Albeit "acquisitions achieve the same economic result as mergers (concentration of resources), the legal technique to achieve that result is completely different: in an acquisition, a company acquires shares in another company for a percentage sufficient to provide control."[69] On the other hand a merger transaction requires the dissolution of at least one of the participating companies, with the transfer of the whole estate of the dissolved company to another existing company (which constitute merger by absorption) or to a newly created company (merger by creation of a new company or consolidation merger).[70]

In merger as a principle the merging companies are deemed to have hypothetically comparable size to create joint institution.[71] In contrast, principally acquisition is deemed to take place between a small and large firm where the former acquire the latter.[72]

In merger arrangement firms unify their resources and commitments to attain a shared purpose and both entities remain to be joint owners of the newly created company.[73] However, in acquisition a new company does not appear from the

[67] *Ibid*
[68]HCL, Theoretical concepts of Mergers and Acquisitions, p. 26
[69] *Ibid*
[70] *Ibid*
[71] *Ibid*
[72] *Ibid*
[73] Sudarsanam, P.S, *The essence of mergers and acquisitions*, Prentice Hall, London, New York, 1995, p. 122

transaction, instead the target firm often vanishes and its assets turnout to be the properties of the acquirer's.[74]

Acquisitions are sometimes deemed to be synonyms to takeovers. Unlike merger the term takeover mostly related to give an unenthusiastic association and meaning to and hostile acquisition of a firm.[75]

The central difference between a takeover and merger is that in a takeover, the capacity of managerial control of a firm including its direct or indirect controlling power will be vested to the acquirer while in case of merger; such controlling power will be dispersed to the blended shareholders of the new firm.[76]

In a merger transaction, two firms are fused into a brand new unit with new ownership and administrative setup, while acquisition occur when a firm snatched all the operational and administrative decision making power of another firm.[77] Typically they are given the connotation of merger as friendly and acquisition as hostile.[78]

However often the two terms are being used interchangeably because mergers are infrequent and takeovers are attached to negative connotation. Present-day corporate literatures usually utilize merger and acquisition instead of separate usage of merger o acquisition.[79]

2.1.4. Amalgamation

Amalgamation is "a legal process by which two or more firms join together to form a new entity or one or more firms are to be absorbed or blended with another."[80] In amalgamation, similar to merger transaction, the bidder/acquirer firm will survive while the target/passive firm comes to an end. According to Halsbury's Law of England, amalgamation evolves from fusion of two or more

---

[74] "What is the difference between mergers and acquisitions?" At <https://www.investopedia.com/ask/answers/021815/what-difference-between-merger-and-acquisition.asp> [last accessed 20/02/2018]
[75] *Ibid*
[76] Weinberg, *Take-Overs and Mergers*, as cited in HCL, Theoretical concepts of Mergers and Acquisitions, p. 26
[77] "What is the difference between mergers and acquisitions?" At <https://www.investopedia.com/ask/answers/021815/what-difference-between-merger-and-acquisition.asp> [last accessed 20/02/2018]
[78] *Ibid*
[79] *Ibid*
[80] HCL, Theoretical concepts of Mergers and Acquisitions, p. 26

entities in to a single unit and the stockholders of the constituent companies appears to be the stockholders of the newly formed entity and proceed to run the firm in their interest.[81] Technically, in an amalgamation, both of the constituent firms are dissolved and a new firm is flourished which is typically known as 'amalgamated company', that assumes all the right s and liabilities previously held by the constituents or amalgamating companies.[82] The transfer of such assets and liabilities to the newly emerged amalgamated company will be mechanically took place up on the finalization of the merger or simply by the virtue of law.[83] Thus, the technical difference between a merger and an amalgamation is that in a merger of an acquiring company, Company Z, and a target company, Company S, Company Z survives and continues in existence while Company S is the vanishing company and is ceased to exist. In contrast, in an amalgamation between Company F and Company X, both Companies F and X are ceased and a new company, Company M, is emerged. The notion of amalgamation is technically a slight analogous to consolidation because in both scenarios, both merging firms cease to exist and a new legal entity is flourished. Accordingly, merger results in the fusion of one constituent company into the other, but an amalgamation results in the fusion of all the constituent companies into a new company.[84]

2.1.5. Consolidation

Consolidation is a mechanism by which two or more companies/banks are unified to create a brand new firm/bank. In other words, it is "the fusion of two existing companies into a new entity in which both the existing companies extinguish."[85] The Harold Sloan and Arnold Zurcher Dictionary of Economics (1970) conceptualized consolidation as a fusion of the assets and liabilities, in whole or in part, of two or more business establishments to form an entirely new

[81] *Halsbury's Law of England*, 1907, Vol. 3, Butterworth, United Kingdom ,

[82] There is varying usage of the terminology used in different jurisdictions. For instance, in Canada the term 'merger' is not a term of art but is used to describe every form of business combination, *See* FH Buckley, Mark Gillen & Robert Yalden, *Corporations Principles and Policies,* 3 ed ,1995, p. 991

[83] Stephen Kenyon-Slade, *Mergers and Takeovers in the US and UK Law and Practice*, 2003, p. 29 *See also* Stephen M Bainbridge, *Corporation Law and Economics,* 2002, p. 628 as cited in Maleka, *The Introduction of the Statutory Merger in South African Corporate Law*, p. 3

[84] Maleka, *The Introduction of the Statutory Merger in South African Corporate Law,* p. 3

[85] HCL, Theoretical concepts of Mergers and Acquisitions, p. 26

establishment.[86] This definition reveals that consolidation is a notion of investment and the convergence of business entities or companies to a distinct entity or undertaking. [87]

The combined assets of the firms are branded by a fresh trade name, and the shareholders of two firms become shareholders of the newly created entity.[88]

2.2. Motivations and Need to Mergers and Acquisitions

Bank or any corporate consolidation could be achieved by way of mergers and/or acquisition, recapitalization and proactive regulation. Bank merger is not mere process of decreasing of the number of banks in a given banking industry, rather it is required to improve synergy, promote efficiency, and instigate investor hub and prompt production and welfare gains.[89] Regardless of their category or structure, all mergers and acquisitions have a common ambition that is to produce synergy that enhance value of the united firms greater than the sum of the two parts and ultimately the success of a merger or acquisition is contingent on the accomplishment of this totality.[90] The central motivation behind mergers and acquisitions is to enhance the shareholders' interest. The interest of shareholders can be promoted through merger and acquisitions that strengthen the market power of a firm and enhancing efficiency and even reinforcing the safety net of the firm.

In particular there are bunch of rationales behind merger and acquisitions in the financial world. These rationales determined by Imala, which include: cost savings which is gained from economics of scale and proficient allotment of resources, revenue improvement, that come out of the enlargement of the size of a bank, its scope and market dominance, risk minimization through efficient organizational restructuring and focus, new improvements that entail elevated fixed cost and the necessity to disperse these costs to a large customer base, and the need to spread

---

[86] Sloan, H. and A. Zurcher, *Dictionary of Economics*, Barnes and Noble Books, New York, 1970

[87] Dr. Adeyemi, Banking Sector Consolidation in Nigeria p.5

[88] Deshpande,N.V., 'Mergers Consolidating the Banking Industry: A Legal Perspective', *IBA bulletin*, 2005, as cited in HCL, Theoretical concepts of Mergers and Acquisitions, p. 27

[89] Nnanna, O. J. 'Beyond Bank Consolidation: The Impact of Society', *A Paper Presented at the 4th Annual Monetary Policy Conference of the Central Bank of Nigeria*. Abuja, 18th – 19th November, 2004, as cited in Dr. Adeyemi, Banking Sector Consolidation in Nigeria, p. 6

[90] "Mergers and Acquistions – M&A", at <https://www.investopedia.com/terms/m/mergersandacquisitions.asp> Last accessed on 20/02/2018

these costs across a large customer base, emergence of deregulation, that avoid many legal and regulatory taboos, globalization, that stimulate a financial conglomeration and convergence throughout the globe , impetus, wholesale financial services and spatial extension of banking services, the promotion of financial steadiness through coherent and stable running of the financial system that are responsive to crisis and the influence of shareholders on the management so that to increase profitability and investment returns which emerged through the increase of influential block shareholder.[91]

There are fundamental synergies acquired through the mechanism of merger of firms within the banking industry, including; the ability to enjoy economies of scale, revenue enhancement, cost reduction, technology and skill transfer, access and diversification of market and the potentials for tax gain. These synergies are discussed briefly hereunder:

2.2.1. Economies of scale

One of the primary advantages of the banking sector mergers that are mostly raised is due to its ability for firms in the sector to benefit from economies of scale.[92] Regardless of the things to be purchased including purchase of stationery or a technological apparatuses, a larger firm placing the orders can save more on costs and energy.[93] Mergers confers a company with immense purchasing power to buy various office equipments and infrastructure as larger firms will have a better bargaining power in price negotiation with suppliers or sellers.[94]

At the international arena, size has become a central component for success by which for instance, a greater capital-base, even if all things being equal, is deemed to grant competitive advantage to a bank.[95] "Many banks suffer from a lack of depth in management and, when two banks merge, the best personnel of the banks

---

[91] Imala, O. I. 'Consolidation in the Nigerian Banking Industry: A Strategy for Survival and Development' *A Paper Presented during the Visit of the Nigerian Economics Students' Association (NESA)*, University of Abuja, 2005, as cited in Dr. Adeyemi, Banking Sector Consolidation in Nigeria, p. 6

[92] Dr. Adeyemi, Banking Sector Consolidation in Nigeria, p. 7

[93] "Mergers and Acquistions – M&A", at <https://www.investopedia.com/terms/m/mergersandacquisitions.asp> Last accessed on 20/02/2018

[94] *Ibid*

[95]Dr. Adeyemi, Banking Sector Consolidation in Nigeria, p.7

can be used to manage and develop the larger assets of the combined bank. Furthermore, the larger size of the bank and larger salaries that it can afford can be used to attract new talent."[96] Mergers and Acquisitions enable a bank to obtain significant technology, trained and high quality personnel and resist financial distress.[97] It gives the opportunity to offer improved and diversified services and enhance profitability. Generally, Mergers and Acquisitions can be a devise to empower banks to compete at local, regional and international arena.[98]

Having the above perceived benefit of bank mergers to economies of scale in mind, there are however, a bunch of studies showing the possibility of diseconomies of scale is possible.[99] Some studies also argue that the degrees of economies of scales depicted by many previous literatures are excessively amplified and there are instances of diseconomies of scale mainly in larger size banks. Again there is a study that stress on technological change of banks due to merger scheme that enhanced the efficiency gain of bigger banks.[100]

2.2.2. Becoming Bigger

The other motivation of Mergers and Acquisitions may be the aspiration to enlarge the capital assets of a company.[101] Many entities utilize mergers to grow in size using a short cut since through organic growth it can take a prolonged period of time to double its size, hence can be attained through mergers and acquisitions mechanism within a short period of time.[102]

2.2.3. Revenue Enhancement

Through mergers and acquisitions companies can strengthen their capacity through a unified form and receive more revenue than two distinct entities. "Improved

---

[96]Earl W. Kintner & Hugh C. Hansen, 'A Review of the Law of Bank Mergers', *Boston College Industrial And Commercial Law Review*, 1972, Vol. 14, No. 1, p. 217 Available at: http://lawdigitalcommons.bc.edu/bclr/vol14/iss2/1 >[here in after, Earl, '*A Review of the Law of Bank Mergers*]

[97] Dr. Adeyemi, Banking Sector Consolidation in Nigeria, p. 7

[98] *Ibid*

[99] *Id.* p.8

[100] Tadesse, Consolidation, Scale Economics and Technological Change in Japanese Banking, as cited in Dr. Adeyemi, Banking Sector Consolidation in Nigeria, p. 8

[101] Earl, '*A Review of the Law of Bank Mergers*, p. 217

[102] "Mergers and Acquistions – M&A", at < https://www.investopedia.com/terms/m/mergersandacquisitions.asp> Last accessed on 20/02/2018

revenue may come from marketing gains, strategic benefits and market power…[f]or instance, instead of advertising separately, the consolidated firm pulls its resources together to market the products and services of the firm, thereby reducing the unit cost of production."[103]

2.2.4. Diversified Competition

The other aspiration of bank merger is 'the desire to diversification its deposits and services'.[104] Through merger, a bank can increase the number of its branches, and or can unify its area of expertise with another bank.[105] In some occasions even a large sized bank could persuade potential competitors to merge.[106] Hence this is one of a very influential impetus for mergers and acquisitions, and it is the main cause that pushes Mergers and Acquisitions to happen in different sequences.[107]

2.2.5. Staff reductions/Cost cutting

It is clear that mergers tend to mean job losses and companies are keen save plenty of money from reducing the number of staff members from various sections including from accounting, marketing and other departments and even sometimes including the former managements.[108]

2.2.6. Acquiring new technology

In order to keep on competitive, firms need to possess top of technological and business appliances and through mergers and acquisitions, a firm can transfer technologies possessed by a certain company. And stay competitive in the market.[109]

2.2.7. Domination

Banks also employ mergers to be leader within their sector. Nonetheless, such motive could pose potential threat on the market hence it should be firmly

[103] Dr. Adeyemi, Banking Sector Consolidation in Nigeria, p. 7
[104] Casson & Burrus, Federal Regulation of Bank Mergers, *Am. U. L. Rev.*, 1969, Vol. 18, p. 681, as cited in Earl, '*A Review of the Law of Bank Mergers*, p. 217
[105] Earl, '*A Review of the Law of Bank Mergers*, p. 217
[106] Earl, '*A Review of the Law of Bank Mergers*, p. 217
[107] "Mergers and Acquisitions – M&A", at < https://www.investopedia.com/terms/m/mergersandacquisitions.asp> Last accessed on 20/02/2018
[108] *Ibid*
[109] *Ibid*

scrutinized from anti-competition perspective by the competition and regulatory authorities.[110]

2.2.8. Improved market reach and industry visibility

Firms can buy other firms so that to access new markets and increase their revenues. Mergers can be a mechanism to enlarge and extend the company's marketing and distribution and grants a better and easy access to raise capital within the investment society than small separate firms that would face harder challenges.[111]

The above discussed factors are not the only motivations for mergers and acquisitions in general and bank mergers in particular. Instead they are in fact the major ones. "Yet while these considerations may provide ample justification for the banks' stockholders and the Comptroller, they may not, as we shall see, withstand the test of judicial review."[112]

2.3. Enforcement Institutions and Regulatory Concerns in Bank Merger

2.3.1. Determining Application and Enforcement of the Competition Law to Bank Mergers

In deciding as to which organ should enforce the competition law in bank merger raised two competing arguments. At first hand, the regulator is deemed to have sector specific information and knowledge which is useful in deciding on bank mergers and is considered as prudential regulator claimed to be appropriate and legitimate since it is vested with task of monitoring the behavior and conduct of the sector. On the other side, the general competition authority is deemed to have a specific analytical skills and judgment in merger review that should pass series of processes. The OECD attempts to tradeoff between these competing peculiarities as follows

[110] *Ibid*
[111] *Ibid*
[112] Earl, '*A Review of the Law of Bank Mergers,* p. 217

> "It is unlikely that sector information is as crucial to merger review as are the economics based skills required to define markets, assess market power and devise appropriate remedies. As for the sector regulator's edge in applying behavioral remedies, such an advantage might well be insufficient to make behavioral superior to structural remedies, hence could be basically irrelevant to the question of who should review bank mergers. Finally, and perhaps most importantly, sector specific knowledge is probably more transferable through inter-agency co-operation than are analytical skills and judgment.[113]

Some jurisdictions gave concurrent powers to the general competition authority and the sector regulators to enforce competition laws however deny the power to enforce competition law to the sector regulator.[114] "Bank merger review will be considerably facilitated if competition agencies establish clear lines of communication and means of cooperating with other government bodies intervening in the banking sector, especially the prudential regulator."[115]

However, throughout the globe there is a divergence experience in the application of the competition law to bank mergers[116] and enforcement institution of the competition law on ban mergers. All in all, the OECD recommends, that the application of the general competition law to bank merger and the competition agency should be able to review bank merger proposals so long as the absence of public interest reason.[117] Though this is not to mean the regulator cannot conduct separate bank merger review from prudential regulatory perspective.

---

[113] OECD, *Mergers in Financial Services*, p. 35

[114] Cruikshank, Don, 'Competition and Regulation: An Interim Report', *and accompanying letter sent by Mr. Cruikshank, on July 22, 1999, to Gordon B. Brown, Chancellor of the Exchequer,* p.2, as cited on OECD, *Mergers in Financial Services,* p.36. *Cf.* For instance in UK, it confers concurrent jurisdiction, however, oust the Financial Service Authority from enforcing competition law on bank mergers.

[115] Robinson, Constance K. 'Bank Mergers and Antitrust', *allocution prononcée lors de la 31e rencontre annuelle du Banking Law Institute*, Washington, D.C., 1996, p.2 as cited in OECD, *Mergers in Financial Services,* p. 36

[116] Canada-The Minister of Finance has the option to remove the Competition Tribunal's power to block an anti-competitive merger s/he certifies to be, "...in the best interest of the financial system in Canada."

France-Bank mergers are exempt from application of France's general competition law and formal review by its competition authorities.

Italy-The Bank of Italy applies the country's general competition law to bank mergers. In doing so, it is required to consider, but not necessarily follow, the opinion of the Italian competition agency.

Switzerland-The Swiss competition law is applied by the general competition agency, but there is one potentially important exception. If the country's Federal Bank Commission (FBC) deems it necessary to take action to protect creditors (depositors), the FBC effectively replaces the Competition Commission as regards those actions. The FBC might therefore have to balance creditor protection and competition concerns in mergers involving failing banks. *See* table figured in OECD, *Mergers in Financial Services,* p. 35

[117] OECD, *Mergers in Financial Services*, pp. 36-37

2.3.2. Regulatory Principles in Bank Mergers

2.3.2.1. The Core Principles for Effective Banking Supervision ("Core Principles")

The Core Principles for Effective Banking Supervision were issued by the Basel Committee on Banking Supervision in 1997. Each of the following principles that have a demeanor on reconstructions, mergers and acquisitions:

i. Basle Core Principle 5

Principle 5 states that: "banking supervisors must have the authority to establish criteria for reviewing major acquisitions or investments by a bank and ensuring that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision".

The Supervisor/Regulator should evaluate the financial and managerial capability of the bidder bank. Subsequently it should check that if the intended investment by the acquirer bank is allowed pursuant to the existing banking laws. "Banking, by its nature, entails taking a wide array of risks hence, the supervisors/regulator, need to understand these risks and need to be satisfied that banks are adequately measuring and managing the risks."[118]

ii. Basle Core Principle 20

Principle 20 asserts that "an essential element of banking supervision is the ability of supervisors to supervise the banking group on a consolidated basis". By this principle, the banking sector supervisors/regulators are required to appraise both banking and non-banking activities of banking groups which can engage through an outright participation or indirectly through subsidy and affiliates and locally or at the international level.

[118] Gill Marcus, '*Issues for consideration in mergers and takeovers from a regulatory perspective*', Speech at the Institute for International Research 9th Annual Conference held in Johannesburg on 18 July 2000, p.2 [here in after, Marcus, '*Issues for Consideration in Mergers and Takeovers from a Regulatory Perspective*]

iii. Basle Core Principle 4

This principle provides that: “Banking supervisors must have the authority to review and reject any proposals to transfer significant ownership or controlling interests in existing banks to other parties.”

The above principle calls the supervisor as a prudential regulator to have a veto power on the ultimate approval or disapproval of bank merger regulation.[119] Regardless of the involvement of other authorities or the general completion authority, the ultimatum of bank merger proposals should be at the hand of the prudential regulator. In fact, this agencies could undertake merger review (the competition authority usually conduct merger review from competition perspective) and if they find an adverse result they may resort to blockade. However, the supervisor is deemed to have a sectoral expertise hence should be conferred with the power to decide on the final fate of bank merger proposals.

iv. Basle Core Principle 3

This principle states that: “The supervisor must be able to ensure that the entity resulting from the merger satisfies licensing criteria; and be authorized to review major acquisitions and investments of the constituent banks”. Accordingly, in construing this for both to initial licensing procedures as well as to changes in structure such as those associated with a bank merger provides that:

> The licensing authority must have the right to set criteria and reject applications for establishments that do not meet the standards set. The licensing process, at a minimum, should consist of an assessment of the banking organization’s ownership structure, directors and senior management, its operating plan and internal controls, and its projected financial condition, including its capital base; where the proposed owner or parent organization is a foreign bank, the prior consent of its home country supervisor should be obtained.

Accordingly, the supervisor should not approve a bank merger proposal unless the proposal fulfils the required licensing criterion. The Supervisor is required to make accessible application forms to be filled by those who need to propose bank merger. Such application form needs to be comprehensive so that the supervisor is able to get sufficient information as to the merger proposal. After the attainment of sufficient information as to the proposal, the supervisor needs to make a subjective assessment in light of the objective criterions set under the prudential

[119] Austin, *The Role of Supervisory Authorities in Connection with Bank Mergers,* p. 8

requirements. This includes the potential efficiency gains and cost saving of the proposed bank merger scheme.[120] However, the supervisor should take a caveat not to excessively rely only on the information provided by the proponents of bank merger.

v. Basle Core Principle 23

The last relevant core principle 23 states that "banking supervisors must practice global consolidated supervision over their internationally active banking organizations, adequately monitoring and applying appropriate prudential norms to all aspects of the business conducted by these banking organizations world-wide, primarily at their foreign branches, joint ventures and subsidiaries."

The above principle requires home supervisors to assume responsibility for the internationally active banks and such responsibility should be manifested through accommodation of various risks encountered by this internationally active banks.[121]

2.3.3. Regulatory Concerns on Bank Mergers

The following are regulatory concerns, because they could impact on the stability of the financial system as a whole:

2.3.3.1. Contagion risk

Bank contagion can be explained as the risk that a trouble in one or more connecting entities contaminate the bank, and resulting an adverse implication on the bank. The risk may be far reaching to failure of the bank. Even if contagion risk is hard to measure it should be well recognized by management of every bank.

Banks run in a very competitive environment, impetuses by the creations of new markets, instruments and techniques and though this enables them to diversify risks, they also permit greater risks assumed. The major problem faced by the regulator is to strike a balance between risk and stability in the financial system.[122] Hence, the regulator should function in the way to promote efficiency within the

[120] *Id*. p. 10
[121] Marcus, *'Issues for Consideration in Mergers and Takeovers from a Regulatory Perspective,* p.2
[122] *Ibid*

financial system and at the same time build public trust to the monetary system as a whole.[123]

2.3.3.2. Systemic risk

"Systemic risk is the possibility that the failure of one bank to settle net transactions with other banks will trigger a chain reaction, depriving other banks of funds and, in turn, preventing them from closing their positions."[124] This could erode the public confidence on the system. Hence, conglomeration through mergers and acquisitions within the banking industry should be managed seriously. If not, it could place the entire financial institutions at risk. The regulator's capability to observe and oversee the group risk management practices within banks becomes an important concern.[125]

2.3.3.3. Lender of Last Resort Assistance

Principally the regulator is required to combat potential instabilities within the financial system. However, in cases when the pressures cannot be eliminated the regulator should directly intervene and try to stabilize the situation. "This should never be seen as an automatic facility available to all banks in distress, but should be used only when the failure of a bank would pose a serious threat to the financial system as a whole."[126] The central aim of "lender of last resort" measure is to rescue the banks from crisis and failure and protect the system from contagion.[127]

2.3.3.4. Other Considerations

In some situations merger may be set up to rescue a certain bank at stake. This can considered as a crucial way to deal with such problem and alleviate risk in the financial system. In such instance both the general competitions agency and the prudential regulator need to work in cooperation. Hence numerous jurisdictions have a "failing firm defense" from being subjected to the application and process of competition law review.[128] Similarly some other jurisdictions, have a "regulated

[123] *Ibid*
[124]*Ibid*
[125] *Ibid*
[126] *Ibid*
[127] *Ibid*
[128] OECD, *Mergers in Financial Services*, p. 33

conduct" defense in cases when the prudential regulator impel the banking sector to merge, what is known as government-led or policy induced merger program.[129] There are other bank merger review considerations widely adopted in different jurisdictions including recounting the potential effect of bank merger proposals on the public policy particularly on the employees' of the institutions and generally to the employment regime and also its effect on the credit flow of the country.[130] This is because; there are several literatures that shown big banks have the tendency reducing their loan portfolios to small businesses.[131]

[129] *Id.* p. 34

[130] *Id.* p. 24, *See also,* Austin, *The Role of Supervisory Authorities in Connection with Bank Mergers*, p. 11

[131] *Id.* pp. 24, 241 *See also,* Austin, *The Role of Supervisory Authorities in Connection with Bank Merger,* p. 17

CHAPTER THREE

BANK MERGER REGULATION IN ETHIOPIA

3.1. Substantive Rules on Bank Merger and the Limits

3.1.1. Legal Frameworks behind the Process of Bank Mergers and Acquisitions in Ethiopia

The problem of market concentration has not been entirely neglected in Ethiopian policy. Even, during the Imperial regime, the enactment of the 1960 Commercial Code of Ethiopia came across with the provisions that aimed to control amalgamation of businesses. Later, after the adoption of a free market economy model in 1991, commenced with a policy for a greater liberalization of businesses. In 2003, the government enacted a Trade Practice and Unfair Competition Proclamation to regulate competition but omitted regulation of merger from the ambit of the proclamation. For the first time, the 2010 Trade Practice and Consumer Protection Proclamation No. 685/2010 introduced regulation of merger with in the ambit of competition law regime. Afterwards, with the aim of filling its gaps and insufficiencies the 2010 proclamation has been amended with, the currently ruling Trade Competition and Consumer Protection Proclamation No. 823/2013. In particular the Banking Business Proclamation No. 593/2008 also incorporates provisions attempting to deal with mergers within the banking sector.

In Ethiopia, the current substantive legal framework governing mergers between banks is built in upon main legislations namely the Ethiopian Commercial Code of 1960 which is the piece of legislation most relevant to M&A transactions, the Banking Business Proclamation No. 592/2008 and the Trade Competition and Consumer Protection Proclamation No. 813/2013 (TCCPP). There are also other legislations that are applicable to M&A transactions in Ethiopia, including: the Civil Code of 1960; Commercial Registration and Licensing Proclamation No. 980/2016; Commercial Registration and Licensing Council of Ministers Regulations No. 392/2016 and the Public Enterprises Proclamation No. 25/1992.

The following sections scrutinize the adequacy and appropriateness of the currently living substantive merger legislations of Ethiopia.

3.1.1.1. The Ethiopian Commercial Code of 1960

i. Relevance and adequacy of the Commercial Code to bank mergers

Book II, Title VIII of the 1960 Commercial Code of Ethiopia, is entitled to deal with conversion and amalgamation of business organizations. From the very entitlement, the code does not employ the term merger and acquisition which is presently most familiar technical terms; instead it preferred to employ the term "amalgamation". To reiterate with the very notion of amalgamation which is immaculately defined in the previous chapter, it is "the combination or union of two or more corporate entities, which traditionally take up either of the following forms: merger, as when two or more constituent companies combine to become a single entity, with the surviving company being one of the constituent companies."[132] In a contrast, consolidation comes in to picture when two or more constituent companies unite to form an entirely new company which is separate and distinct from any one of the consolidating companies. Amid to this attempt by scholars to contemplate a virtual distinction between the notion of merger and consolidation it can be grasped that the term employed under the Commercial Code i.e. "amalgamation" lacks technical compatibility and can substitute neither "merger" nor "consolidation" in our current legal or economics appreciation of business combination. The preferred term used in the Code seems holistic and literal since amalgamation is very close synonyms to merger but conventionally the term "amalgamation" could be literally used even in case where the end result may be creation of entirely new entity which constitutes consolidation. Hence, the preferred term under the Code lacks technical interface and haphazardly employed without due consideration to the end result of business combination. Technically speaking, using such general terminology in the current financial era could be confusing and paves the way for opportunistic abuse of the gap in the terms. For instance, it allows banks to emerge Janus-faced or a constituent bank may allege to

[132] Kelvin CHIA, A Memorandum on Amalgamation, Singapore, 2016

retain its trade name using such terminology misnomer in certain amalgamation arrangement or analogous transactions.

Because, the practice witnesses, the choice between a merger and an amalgamation would be determined by various factors and considerations, including;

> "the desire to portray the transaction as a true merger of equals, in which case an amalgamation may be preferred; the need to preserve the goodwill or the identity of one of the constituent companies, necessitating the use of a merger into the relevant company; based on the material provisions of the memorandum of the constituent companies, which may determine whether the relevant company must survive or disappear under the transaction; and the change-of-control provisions in governing material contracts between a constituent company and third parties."[133]

Amidst the above differences between mergers and amalgamations, the two procedures are substantially similar in all other respects. However, the Commercial Code seems literalistic which does not render due consideration for these factors in utilizing technical terms.

As to the basic requirements to merger the 1960 Commercial Code of Ethiopia sets the consent of shareholders, amendments of memorandum and articles of association as requirements to undertake mergers (amalgamations). The provision of the code states "*two or more firms may amalgamate, either by taking over or by the formation of a new firm*".[134] Such assertion of the code shows the possibility of amalgamation through take over or consolidation. Again technically speaking the notion of merger is not addressed under this provision since merger end up with the survival of at least one of the firm. Surprisingly, the above provision fused the very different concepts of takeover and consolidation without further explanation to the terms. Incidentally it left the concept of merger at all. Regarding to the decision procedure of proposed amalgamation, Art. 550 of the code assert: "*[a]decision to amalgamate shall be taken by each of the firms concerned. Special meetings of shareholders of different classes or meetings of debenture holders shall approve the taking over or being taken over*"

As per the above provision, special meeting of shareholders is required to approve the takeover or being taken over. In the absence of agreement to the contrary by the shareholders of a target in the bylaws of a target or a shareholder agreement,

---

[133] Arthur R Pinto & Douglas M Branson, *Understanding Corporate Law*, 1999, p. 122; Stephen Kenyon-Slade *Mergers and Takeovers in the US and UK Law and Practice* , 2003, p. 7, as cited in Maleka, *The Introduction of the Statutory Merger in South African Corporate Law*, p. 3

[134] Article 549 (1) of the Comm. Code

the Commercial Code confers a right of preemption on shareholders.[135] Hence, the express waiver of this right by all shareholders is required before a transfer of shares, or before issuing any shares, to an acquirer.

Hence as a legitimate resort to resist change of control to the target company and in the absence of a prior agreement to the contrary by the existing shareholders, shareholders have the right of first refusal on any share transfer and issuance by a target of new shares. By exercising their preemptive rights, shareholders can resist a change of control by an acquirer.

In addition to the target's shareholders' acceptance and approval of the merger transactions, the principal consent required will be regulatory (such as Ministry of Trade, competition/merger approval and tax clearance from the tax authorities). If there is a possibility of a change of name to the land lease holding title as a part of structuring a merger transaction, the consent and approval of the local land management office is required to transfer title over land lease holding rights.

After a decision to amalgamation is approved by shareholders, the Commercial code requires the new company to draw up a deed of amalgamation and such modification to the memorandum of association required to be deposited, pursuant to Art. 551 *cum*. 224 of the Commercial Code. Again such modification of memorandum of association that updates the capital, number of shareholders, name and other substance of the entire memorandum of association have a ramification and the newly merged company is obliged to require registration at the office of registration for such alteration within 60 days after its authentication by notary (Document Authentication & Registration Office) and seek written confirmation for acceptance of the commercial registration.[136] At a company level the provision obliges notices of the amalgamation to be published at the head office of the firm taking over or of the new firm resulting from the amalgamation, as well as at the head offices of firms ceasing to exist on amalgamation.[137] This is designed to give due notice for creditors of the merged companies. After, such endorsements made

[135] Article 470 (1) of the Comm. Code

[136] Art. 108 of the Comm.Code which is amended by Art. 10 of the Commercial Registration Proclamation, 2016, *Federal Negarit Gazzet*, 22th year, No. 101, Proc. No. 980 [here in after, Proc. No. 980/2016]

[137] Article 551 (2) of the Comm. Code

on the alteration and amendment of the company's profile, all the rights and duties of the predecessor company will be transferred to the new company.[138] Article 552 (1) of the Code confers creditors of either of merging companies and whose claim came in to being before the deed of amalgamation has been publicized on official commercial gazette may object before a court the amalgamation within a defined timeframe i.e. within three months from the date of the deed of amalgamation is publicized on the official commercial gazette. However, the court is at discretion to reject such objection in case where it satisfied that such creditors have given their consent unanimously or if it find out that the claims of such dissenting creditors have been paid or the sum corresponding such debt have been deposited in special block account with the National Bank of Ethiopia.[139] Beyond this, the court is at discretion to up hold the amalgamation contested by the creditors by ordering payment to be effectuated to the creditors from the amalgamation or by ordering sufficient guarantee to be adduced by the newly merged company.[140] However, in case where debenture holder meeting end up with disapproval of the amalgamation plan, unlike the creditors of the companies they have no right to object the amalgamation. Instead the amalgamated company is obliged to redeem the debentures of the holders who claim within three months from the deed of amalgamation has been publicized on official commercial gazette.[141]

ii. Limitations of the Commercial Code

The main hurdles are related to the inadequacy of the legal frameworks that regulate M&A transactions and local partners' limited exposure to M&A transactions. The Commercial Code of Ethiopia is the main piece of legislation that regulates M&A transactions. However, this Code was enacted in 1960 and has several gaps on corporate governance, protection of minority shareholders and exit rights.[142] For instance, the Code requires that only a shareholder can be appointed

[138] *Id.* Art.551 (3)
[139] *Id.* Art.551 (2)
[140] *Id.* Art.551 (3)
[141] *Id.* Art.552
[142] For instance there is only a single provision on exit right of shareholder which is too general i.e. Article 463 (1) of the Comm. Code

as director. Accordingly, an acquirer that wants to have more than one seat on a board is required to have more than one shareholder in a company.

Indeed even in case of policy induced bank mergers the NBE employs the Commercial Code provisions related to amalgamation to give background legal meaning to the provisions of Banking Business Proclamation No.592/2008 dealing with bank mergers (mainly in cases of private bank mergers).[143] However, the provisions of the Commercial Code have been promulgated 58 years back this creates uncertainty as to its compatibility to nowadays bank mergers. The code contains scarce provisions that fail to include at least a proper definitional provision, modalities, forms and procedures in executing mergers.[144] On the other hand we are living and witnessing a highly dynamic, tough and sensitive financial markets especially the banking sector. Present day bank mergers require a comprehensive set of rules and procedures specified by the law. Hence, these generally crafted provisions of the Commercial Code on amalgamation are capable to address the detail issue of bank mergers and they are too old to fit which would pose a potential challenge in banking sector merger.

. The Commercial Code does not contain specific provisions that deal with on how the target shall be approached for a potential transaction and again no specific rules that regulate the fate of failed merger scheme. Principally, the agreement between the parties regulates what happens if a contemplated M&A transaction fails. Instead there are only requirements related to regulatory approvals. Furthermore, there are no specific provisions that are designed to regulate hostile acquisition or hostile bidding in merger transactions.

3.1.1.2. The Trade Competition and Consumers' Protection Proclamation No.813/2013

i. Relevance and Limitations of the TCCPP

The third world economies need a competition policy and law in this highly escalating era of financial conglomeration, domestic and international bank merger

[143] According to Art 60 (3) of Proc. No. 592/2008 and for state-owned banks the Proc. No. 25/92 would be applicable.

[144] Only six (6) Articles 549-554 of the Comm. Code

trends and due to the progressing privatization, deregulation and liberalization measures is in turn proliferating and fueling up local bank merger within their local economies.

In context to the present day Ethiopia's substantive merger law, the TCCPP under Part Two, Section II, deals with regulation of mergers in general. Under the TCCPP merger is deemed to have occurred when two or more business organizations previously having independent existence amalgamate, or when such business organizations pool the whole or part of their resource together to carry on business activity.[145] According to the proclamation, a merger may also takes place by directly or indirectly acquiring shares or securities or assets of a business organization or taking control of the management of the business of another person by a person or group of persons jointly or the business of another person through purchase or any other means.[146] Hence it is clear that under the proclamation the term merger now describes and includes the term and concepts of acquisition and consolidation in its definition. One of the inherent problems of this proclamation emanated from its fusion of far different transactions within a single provision and its failure to distinctly regulate merger from other neighboring transactions such as acquisition/takeover and consolidation.

Under the TCCPP, similar to abuse of dominance, merger is not a prohibited per se instead, a merger could be prohibited if it is established that it causes or is likely to cause a significant restriction against competition or eliminates competition.[147]

The proclamation prohibits no merger to be undertaken without the prior notification and approval of the Authority.[148] The law obliges any business person to give prior notification and disclose detail of proposed merger to the Authority.[149] A failure to notify a merger to the Authority will be consequence a fine penalty pursuant to Article 42(4) of the TCCPP. For a detail determination and implementation of the TCCPP the Ministry of Trade has issued a Merger Directive No. 1/2016. This directive introduced a number of alternative modes of merger

[145] Art.9(3)(a) of Proc. No. 813/2013
[146] *Id.* Art 9(3)(b)
[147] *Id*. Art 9(1)
[148] *Id*. Art 9(2) of the *TCCPP*
[149] *Id.* Art 10(1) of the TCCPP

application, which allows business persons to file their proposal through various mediums including in person, fax, post and email.[150] However, in practice, the only medium available for business persons is to submit its proposal in person this is due to the absence of currently active online delivery system. Moreover the proclamation requires publication of a proposed merger in newspaper of widely circulation, inviting third parties affected by a proposed merger to file their objections within 15 days of publication.[151]

There is a general consensus an outright prohibition of any potential merger regardless of its effect on competition is not desirable, in contrast assessing each and every merger proposals would be so costly and requires efficient resource. The TCCPP explicitly confers the power to investigate and authorize merger proposals and this simultaneous task requires the Authority to undertake investigation and make prior assessment on the potential adverse effects of a proposed merger on trade competition.[152] In assessing the competitive effect of a certain merger proposal, the Authority will be required to determine the specific relevant product and geographic market where a particular product or service is available.[153]

As a principle, in pre merger assessment, the Authority will consider a competitive effect of proposed merger on the market, including its effect on entry of new businesses to the market and its impact on micro industries and finally its impact on public interest.[154] As a general competition authority it is wise to limit its scope of the review and factor to be considered by the Authority, but could be taken as one of the ground not to fully rely on the TCCPP in case of bank mergers. because, the TCCPP is not a perfectly and exclusively adequate legal instrument (is not expected to be) in case of bank mergers, since it does not incorporate other traditional banking factors due to its general spatial application to all sectors and cannot address particular sector specific issues.

---

[150] Art. 12.1 of the Merger Directive

[151] Art. 10(3)(b) of Proc. No. 813/2013

[152] *Id.* Art 10(1 & 2), Art 30 (3)

[153] *Id*. Art 10.2 (E)

[154] Interview with Ato Neyou Bellete, Director of Merger and Acquisition Directorate in the TCCPA, on may 04/2018 at 8:30am

If the Authority's assessment found a proposed merger is not likely to harm trade competition in the relevant market it shall approve the merger or conditionally approve the merger attaching certain conditions to be fulfilled in advance.[155] Otherwise, if the Authority found any proposed merger to likely affect or lessen trade competition it shall prohibit the merger.[156] In some exceptional instances the Authority may permit merger proposal which are anticompetitive but the applicant justifies gains from merger outweigh its anticompetitive effect.[157] These justifiable grounds that could supersede positive anticompetitive result mentioned under the Art. 11 (2) states *"…where the merger is likely to result in technological, efficiency or other pro-competitive gain that outweigh the significant adverse effects of the merger on competition, and such gain may not otherwise be obtained if the merger is prohibited."* These enumerated grounds are very susceptible to interpretation which allows the authority to stretch it discretionary power through broader construction of the provision. However, it can be considered as a provision that oust policy-induced bank merger schemes from being subjected to the general competition authority's review on the ground of its efficiency gain. In conducting its assessment, the Authority may require additional documents to be adduced and examine those documents in order to reach the decision of granting or denying a merger application.[158]

The proclamation requires mergers to be registered by the concerned government authority that have the mandate to commercial registration.[159] In this case the concerned commercial registration office should require the presentation of the approval of the Competition Authority before registering the alteration of a company that undergone merger.[160]

The proclamation empowers the Authority to revoke any approved merger on certain specified grounds. Pursuant to Art. 13 of the proclamation, the authority

[155] Art. 11 (1) & (2) of Proc. No 813/2013
[156] *Id*. Art.11(1)(b)
[157]*Id* Art.11(2)
[158] *Id.* Art.10(3)(a)
[159] *Id.* Art.12, Art.10 of Proc. No. 980/2016 and Art. 108 of the Comm. Code set the same requirement to registration of alterations and amendments of commercial registrations with in the period of 60 days in case where changes made by a company
[160] Art. 12 of Proc. No. 813/2013

may cancel any approved merger, in case where it found that such approval is obtained fraudulently or in case where it is conditional merger approval and such condition is not fulfilled.

The Merger Directive emerged with detail rules on requirements, conditions, procedure that should be met by business persons and the Authority. Particularly, it sets minimum threshold limit based on the asset and turnover of a business. With regard to merger review period, the Authority drawn up different time frames for small and large business entities merger proposal, from 15 days to 30 days. The Authority is executing merger proposal for free. This is on the assumption to prevent potential adverse response from the community and to encourage business persons to dully comply with proper merger procedure in advance.[161]

a. Liability for wrong information and changes under the TCCPP

Generally liabilities such as breach of contract and indemnity can emanate from the agreement of the parties to the merger transaction, while compliance-related liabilities like administrative penalties,[162] civil liabilities and criminal liabilities[163] can arise from failure to seek and obtain necessary approvals.

In relation to a merger filing, if wrong information is submitted, the Trade Competition and Consumer Protection Authority can impose a fine from 5 to 10 percent of a target's annual turnover.[164] This 5 to 10 percent fine is too much and over exaggerated penalty in context to developing countries where merger is treated with a leniency.

3.1.1.3. The Banking Business Proclamation No. 592/2008

The current Banking Business Proclamation No. 592/2008 is one of the relevant substantive legislation which introduced provisions that specifically attempt to regulate bank mergers even before emergence of merger regulation under the general competition law of the country. Nevertheless, the proclamation only asserts few provisions that compel banks to secure the written approval of the regulator

[161] Interview with Ato Neyou Bellete
[162] Art. 42(4) and (5) of Proc. No. 813/2013
[163] For instance under Art.43 of Proc. No. 813/2013 impose criminal liability for failure to comply with administrative measure
[164] Article 42(4) of Proc. No. 813/2013

prior to executing any merger or amalgamation.[165] Let alone the absence of separate bank merger legislation in the country, the Banking Business Proclamation No.592/2008 do not contain separate section to deal with bank mergers. From the proclamation on can easily observe that the haphazard and scattering method employed by the legislator in incorporating provisions with regard to bank merger under the proclamation, since it is inserted under the Section titled as "Licensing of Banking Business." The assertion of bank mergers under this Section seems incidental. In a true sense such general prohibition of unnoticed merger could not be a sufficient legal instrument to regulate bank mergers which includes a sophisticated transaction. Beside these loosen provisions in the proclamation on bank merger regulation, the government policy heading to capitalize the existing banks through mergers.

Generally, the dearth provisions of the Banking Business Proclamation No. 592/2008 that have a bearing on mergers and acquisitions are the following:

Article 10 of the proclamation provides that prior permission must be obtained from the NBE if a shareholder wishes to increase its shareholding that makes any person influential shareholder. Hence any transfer of share that constitute influential shareholder shall be priorly approved by the National Bank before such transfer is recorded in the register of share.[166] Accordingly the NBE issued a directive that marks the status of a shareholder to be considered as influential under Directives No. SBB/54/2012.[167] This directive defines *"Influential shareholder" means a person who holds directly or indirectly two percent or more of the total subscribed capital of a bank*[168] and subject them to differential treatments, the banking business proclamation also proscribe influential shareholders from acquiring shares in other banks[169] and impose stricter requirement on this category of shareholders. Furthermore it provided maximum share holding limit to 5 percent for private persons.[170]

---

[165] Art. 3 (3) (c) & (d), Art. 33 & Art. 40 of Proc. No. 592/2008
[166] *Id*. Art.10 (3)
[167] Requirements for Persons with Significant Influence in a Bank Directives No.SBB/54/2012, National Bank of Ethiopia, 2012
[168] *Id*., Art. 2.6
[169] Art. 11 (4) of Proc. No. 592/2008
[170] *Id*. Art. 11 (1)

To reiterate Part two of the Banking Business proclamation, Art. 3 which deals particularly with the licensing procedure of banking business the law provides prohibition of any plan or arrangement to merger between banks without securing the prior written approval of the regulator (NBE). This provision is primarily crafted to deal with licensing of banking business and not the particular concern of merger procedure of banks.

Essentially, Article 3(3) (d) of the banking business proclamation provides that no compromise, amalgamation or arrangement that involves a bank as one of the principal parties to the relevant transaction, and no arrangement for the transfer of all or any part of the assets and liabilities of a bank to another person, shall have legal effect unless the consent of the National Bank of Ethiopia conveyed in writing. However, the proclamation follows a holistic approach in prohibiting any plans or arrangements that combine the assets and liabilities of banks. Article 3 of the proclamation reads as follows:

> *c) merge with or take over the banking business of another bank;*
>
> *d) enter into any arrangement or agreement for the sale or disposal, by amalgamation or otherwise, of its business, or effect major changes in its line of business.*

From the above sub articles, it can be grasped that the legislators were not cognizant or at least interested in going to the bottom by distinguishing the different modalities of bank to bank transactions including acquisitions and takeovers. Moreover it does not incorporate details types of merger transactions that could be direct or indirect. In contrast, in this regard the TCCPP have attempted to firmly distinguish the possible types of transactions that are deemed to be merger.

The banking business proclamation abstained from going further and addresses the various modalities and transactions that are deemed to amount bank merger. Primarily it does not incorporate a definitional provision that give meaning to the term merger in context to the banking sector mergers. In addition it does not set conditions, requirements and procedures to be complied by banks and considerations to be recounted by the regulator. In this respect, several considerations worth statutory dictations at least considerations and limitation on the NBE to refuse bank merger plans that are detrimental to the public interest in general and depositors in particular.

i. Procedure and Factors in Bank Merger Authorization

The Existing Banking Business Proclamation No. 592/2008 lacks comprehensive provisions as to how the regulator conducts and procedures in authorization of bank merger proposals. In authorizing bank merger proposals whether voluntary or policy induced bank merger schemes; the regulator has to consider two sets of factors, competitive and banking.[171] The banking factors include (1) the financial history and condition of each of the banks involved; (2) the adequacy of its structure; (3) its future earnings prospects; (4) the general character of its management; (5) the convenience and needs of the community to be served; and (6) whether or not the bank's corporate powers were consistent with the purpose of the law.[172] On the other hand, the competitive factor was simply defined as the effect of the transaction on competition including any tendency toward monopoly.[173] As regard to the second factor, the regulator is not expected to conduct a sharp competitive litmus test since it doesn't confer an expertise on the area which intimately belongs to the general competition authority. In this respect the banking business proclamation lacks such considerations to be recounted by the NBE in authorizing bank merger proposals nor the NBE come up with directives or any other working guideline to this effect. The absence of such substantive rules and legislations cannot be justified under the pretext which recommends lenient approach to bank mergers in developing countries since it could have a very far ramification on the future destiny of the sector in specific and the entire economy in general.

a. Liability to Failure to Notification of Bank Merger

The possible consequence provided under the banking business proclamation on default banks failed to notify and secure the regulator's approval would be

[171] Peter Lim, *Too Big to Manage: A Case for Stricter Bank Merger Regulation,* p. 1089
[172] *Ibid*
[173] *Ibid*

subjecting to receivership[174] and subjected to penalty.[175] Article 33 (1) of the proclamation states that: *"The National Bank shall appoint a receiver to take possession and control of a bank if it determines that one or more of the following circumstances exist in respect of the bank"…"(n) The bank is merged with another bank without the prior written authorization of the National Bank"*

The above assertion leads that the NBE will subject any default bank that transcend the red line by failing to notify its ambition to merge with another bank and merge without securing the blessing of the NBE. A closer inspection of this provision that blend various omissions or commissions by banks to a single destiny i.e. subjecting them to receivership lacks a meaningful end in case of non-notified bank mergers. As a principle the ultimate fate of banks that are subjected to receivership could be winding up and termination. Though there is no a clear assertion to this, an implied meaning of Article 41 which states 'Alternative measures to winding up' reveals that the firsthand measure to be taken by the receiver pursuant to its powers and duties vested under Article 39 of the proclamation would be winding up and termination. However, these provisions lack clear measures to be taken on banks that merged without securing the prior written approval of the NBE. By the same token, the alternative measures lined up under Article 41 of the proclamation would be irrelevant to unnoticed bank mergers. Hence, an attempt to trace the possible and ultimate outcome of bank mergers without notifying to the regulator through the channel of receivership via Article 33 of the proclamation could lead to nowhere and end up with a deadlock. Through a broader construction of Article 25 (1) (b) and (d) and (2) of proclamation No. 591/2008, also reveals that there is a chance of being considered as a criminal offence.

ii. Limitations of the Banking Business Proclamation

The very first problem emanates from the absence of a clear approach on regulation of bank mergers. This approach may be crafting separate bank merger law or similarly regulating bank mergers through the general merger provisions of the general competition law. The current bank merger regulatory frameworks are

[174] Art. 33 (1) (n) of Proc. No. 592/2008
[175] *Id*. Art.58

very few, general and haphazardly scattered in different legislations. The assessment of the BBP reveals that it lacks comprehensiveness, as it mingled various provisions or failed to address bank merger issue in detail. Generally the proclamation does not separately allocate a specific section to deal with bank merger. Essentially the existing provisions incorporated in the Banking Business Proclamation No. 592/2008 does not make a distinction between volunteer and non volunteer/compulsory bank merger schemes that may be introduced by the central bank. Among the various differences, mostly in case of policy induced bank merger schemes there is no vigorous competition review process and blockade by the general competition authority.[176] This is due to the fact that it is considered as part of a country's economic strategy which is initiated by the government. In fact one may invoke Article 11 (2) of the TCCPP which recognize efficiency gain as a legitimate ground to get rid of the competition authority blockade even though it showed an anticompetitive effect. However, such provision cannot be a proactive solution to exclude government-led bank merger programs since this sub article is subjected to the interpretation of the Competition Authority. Hence, the BBP need to incorporate its own specialized provision or at least the regulator would have required to issues a directive. Because, the absence of such distinction could inhibit the central banks as a prudential regulator from employing compulsory merger schemes in pre planned and organized manner. Accordingly, the unintended provisional fusion between voluntary and non-voluntary bank mergers can be taken as a basic defect of the BBP in particular.

The proclamation does not specify the timeline for processing applications for mergers. Absence of statutory specification of time frame with in which merger applications should be processed and examinations, decisions are passed and communicated could yield dilatory effect which increases the cost of merger transaction which is raised as of the prominent downside of merger.

[176] For instance when five Korean banks were in serious financial difficulty in 1998, the Korean Financial Supervisory Commission issued decrees mandating consolidation and restructuring of those banks. Hence such legally, mandated merger was excluded from any review requirement under the competition law. *See* OECD, *Mergers in Financial Services*, p.46

3.1.2. Merger of State-owned banks

Merger of state-owned enterprises is unchecked in Ethiopia. The Ministry of Public Enterprises (successor of Privatization and Public Enterprises Supervisory Agency) has been privatizing public enterprises. These public enterprises were nationalized in 1974/75, by the previous communist government. After the adoption of market oriented economic policy in 1991, the government began the privatization process. Recently, there was a merger between the two major state-owned banks (the CBE and CBB) which sparked arguments on the adequacy of the existing substantive legal frameworks to address such events.

3.1.2.1. Relevance of the Public Enterprises Proclamation No. 25/1992 in Authorization of State-owned Bank Mergers

Currently, the relevant legal framework that regulate merger of state owned banks fall under the ambit of the Public Enterprises Establishment proclamation No. 25/1992. Up on a proposal made by the Public Enterprises Supervisory Authority (in case of bank mergers the Financial Public Enterprise Agency), public enterprises may be amalgamated or divided.

The exact wording of a provision in the proclamation states that *"two or more enterprises may be amalgamated by the decision of the Council of Ministers, either by the taking over of one enterprise by the other or by the formation of a new enterprise."* [177] Accordingly the Council of Ministers is the organ that decides on merger of public enterprises including government-owned banks.[178] Before deciding on amalgamation of public enterprises, the only prior mandatory consent that should be secured is the consent of creditors and the guarantor of the public enterprises proposed to be merged.[179] Moreover, if the enterprise is deemed to have obligation towards its creditors, it should be financially able to meet its obligations towards its creditors.[180]

The above conditions set under the common provisions of the proclamation reveals that the Council of Ministers is not statutorily compelled to secure approval of

[177] Art. 35(1) of the Proc. No.25/92
[178] *Id*. Art.35 (1) & Art.47(1)(d)
[179] *Id.* Art. 36(1)
[180] *Id*. Art.36(2)

other authorities such as the general Competition Authority and other sector-specific regulators (if their approval is made mandatory, for instance in case of bank mergers).

In statutory merger, the target (acquired) entity will be treated as being dissolved and all rights and obligations will be transferred to the newly amalgamated enterprise. Similarly, once the amalgamation is executed by the decision of the Council of Ministers through the issuance of Regulation,[181] "*the rights and obligations of an enterprise that ceases to exist as a result of amalgamation shall be transferred to the enterprise taking over or to the new enterprise resulting from the amalgamation.*"[182]

The above provision of the proclamation is a replica to the notion of statutory merger. Accordingly, all the assets and liabilities of the predecessor enterprise will be handed over to the newly merged enterprise.

3.1.2.2. Limitations of the Public Enterprises Proclamation No. 25/1992

The provisions which deal with amalgamation of public enterprises under Proclamation No. 25/92, suffers from various problems. The proclamation lacks a clearly defined rules as to the substantive hierarchy and applicability of other relevant substantive merger laws such as the TCCPP and in particular the Banking Business Proclamation merger provisions. Hence, the provisions are not comprehensive to deal with the conditions, requirement and procedures to be followed in public enterprises merger authorization.

In order to elucidate the confusion, the TCCPP defined the scope of its application. According to the reading of Art 4 (3) "*this proclamation shall apply to any commercial activity or transaction in goods or services conducted or having effect within the Democratic Republic of Ethiopia.*"The assertion of this provision is clear that the TCCPP is encompasses to all business entities regardless of the identity of their owners, including both private and public enterprise and to all business sectors including transaction of goods or provision of services. Such

[181] *Id*. Art.35(3)
[182] *Id*. Art.37(1)

indiscriminate applicability of the TCCPP is intended, at first hand to foster competition in the market which is deemed ultimately to bring about efficiency and to protect consumers.[183] Moreover the TCCPP guarantees the provision of the proclamation not to impede the functions and administrative measures of sector specific regulators to be undertaken pursuant to other laws.[184] This sub article lacks precision and it is subjected to interpretation on which specific law prevails and what types of sector specific functions and administrative measure are guaranteed under this proclamation.

Likewise, proclamation No. 592/2008 is a specific proclamation promulgated to regulate the banking sector. Its scope of application stretches to all banks including private and state-owned banks. The proclamation indiscriminately prohibits any bank mergers between and among banks without prior notification to the Regulator and compels any banks regardless of the identity of ownership to secure the prior written approval of the latter.

On the other hand, the Proclamation No. 25/92 confers the ultimate authorization power to the Council of Ministers and does not proclaim the need to secure the approval of the competition Authority or the NBE. Such an implied disregard made by this proclamation, complicated the merger of public enterprises in general and merger government-owned banks in particular. This substantive contradiction among these equal hierarchies of laws needs to be resolved as it could be susceptible to interpretation by each organ.

---

[183] The objective set under Article 3 of Proc. No. 813/2013

[184] *Id*. Art.4(3)

CHAPTER FOUR

INSTITUTIONAL AND REGULATORY BODIES FOR ENFORCEMENT OF BANK MERGERS

4.1. Institutional Framework and Procedure of Bank Merger Authorization under the NBE

In bank merger transactions, the relevant institutional frameworks in Ethiopia are the Ministry of Trade, The Ethiopian Revenue and Customs Authority, the Trade Competition and Consumer Protection Authority, the National Bank of Ethiopia and the Document Authentication and Registration Agency and in case of state-owned bank mergers the Council of Ministers is an essential organ. Contemplation of regulatory procedures regarding bank mergers is timely and important. Merger in the banking industry, if poorly imagined or deficiently undertaken, it can pose menaces to the involving banks, to the banking sector and to the entire economy. Bank mergers can have prolonged impacts, positively or negatively on the organization and efficiency of the financial market. Hence, promotion and maintenance of competition within the banking sector need to be a pillar of the national policy and law of every free market oriented economies that need a pragmatic bank merger review to be conducted through well established organs and legally well defined factors on potential competitive and other traditional banking factors.

4.1.1. Institutional and Regulatory Hurdles Suffered by the NBE in Enforcement of Bank Mergers

4.1.1.1. Absence of Explicitly Mandated Structural Apparatus within the NBE to Authorize Bank Mergers

In fact the Banking Supervision Directorate is an office established within the internal institutional apparatus of the NBE, customarily mandated to undertake bank merger authorization process.[185] The directorate set three main objectives to achieve. Ensuring safety and soundness of the banking sector, promotion of efficiency and ensuring compliance of banks with rules and regulations and protection of depositors' interest.[186] This office is entrusted with various mandates including; issuance of banking business license, approval to commence operation, renewal of license, approval of branch license, approval of branch opening, approval of branch relocation , reopening of a closed current account, approval of external auditor, approval of minutes of Annual General Meeting (AGM) and/or amended Memorandum and Articles of Association (MoA & AoA), approval of influential shareholding and/or, appointment of replaced directors, CEO and/or SEOs and approval of new banking product, This can be contemplated from the fact that there are directives only as to the conditions, requirements and procedures required by newly establishing banks and CEOs.[187] However, to date there is no proactively formed structure within this Directorate with supporting directive on bank merger. Though there are several piece meal haphazardly issued directives by the Bank, which are hard to trace and creates difficulty to determine the specific mandate of the directorate. The Banking Supervision Directorate is considered to have sufficient information as to the financial and corporate governance status of each bank. Nonetheless this section lacks comprehensively defined regulatory factors to be considered in bank merger authorization and the Regulator does not explicitly assign the power of to bank merger authorization. The absence of proactive mandating and well defined conditions, requirement and procedures to be complied by banks (similar to it is made to licensing of new banks and other approval considerations to be recounted by the Directorate)[188] creates a problem in administering bank merger process. Even if the Directorate is said to conduct bank merger review and consider various factors such as soundness and health of the

[185] Interview with Ato Mesfin Getachew, Assistant Director of Legal Service Directorate of the National Bank of Ethiopia on May 01/2018 at 9:30 am.

[186] National Bank of Ethiopia, Bank Supervision Directorate, Circular BSD/03/11, Information Kit (Brochure)

[187] NBE Directive No.SBB/39/06, NBE, directives SBB/39/06, & circular BSD/03/11), directive SBB/40/06**,** directives SBB/40/06, & circular BSD/01/11, circular BSD/02/11**,** directives SBB/31/02, directives SBB/19/96

[188] NBE, Bank Supervision Directorate, Circular BSD/03/11, Information Kit (Brochure)

banks,[189] this is not statutorily defines thus is vulnerable to arbitrariness and escape accountability.

4.1.1.2. Absence of Legally Defined Procedural Framework to Ensure Accountable and Transparent Bank Merger Authorization Process by the NBE

Mergers of banks are often sensitive and potentially contentious because of concerns held by the public regarding the financial power wielded by large banks, fears about the possible loss of competition resulting from mergers, worries about the potential closure of nearby banking offices and alarm at possible losses of employment (this concern is particularly strong where the merging banks operate within the same geographical market). These concerns are best addressed through procedures that provide for transparency and accountability on the part of the agencies of government that deal with bank mergers. The International Monetary Fund has developed codes of *Good Transparency Practices for Financial Policies by Financial Agencies*. These codes of conducts are appropriate to financial regulators. These are:

> 1. The objectives and institutional framework within which bank supervisors operate should be clearly defined, preferably in relevant legislation or regulation,
> 2. Financial policies should be communicated to the public in an open manner, compatible with confidentiality considerations and the need to preserve effectiveness of actions,
> 3. Bank supervisors should issue periodic public reports on major developments in the financial system, report aggregate data on a timely and regular basis, make texts of regulations and directives readily available to the public, and publicly disclose special protections such as deposit insurance schemes and consumer protection arrangements, and
> 4. Bank supervisors should be accountable for their actions through reporting to public authorities and otherwise to explain the basis for actions taken and their effect on the financial system. [190]

In connection with bank mergers, principles of transparency require that members of the public and the financial institutions industry generally should be able to determine, in advance of the filing with the Regulator of any proposal for a bank merger, just what information future proponents will be required to submit; what opportunities will be available for participation by the public in the process; what

[189] Interview with Ato Mesfin Getachew

[190] International Monetary Fund, *Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles*, 1999, and related Fact sheet entitled *Transparency in Monetary and Financial Policies,* 2001.

criteria the prudential and antitrust authorities will bring to bear on the proposal; what time frames will govern regulatory action on the proposed merger; and how persons aggrieved may obtain review and appeal on the decisions of the Regulator on the proposal.[191] Furthermore, notice to the public of the filing of a bank merger proposal should be provided in timely fashion; members of the public and other competitors should be provided with the opportunity to inspect non-confidential portions of the filing, and to submit comments thereon for consideration by the Regulator in passing upon the proposal; and the proponents should be given the opportunity to respond to any comments filed in this fashion.

However, currently there is no directive or rulebook developed or issued by the NBE to ensure transparency and accountability of bank merger process.[192] Yet the Regulator does not have a guideline to bank merger proposal which is essential in undertaking bank merger authorization. Accordingly, the Bank lacks a clear procedural map that specify conditions, formality and procedural requirements to be complied by banks those voluntarily bring merger proposal or even to execute compulsory bank merger schemes which complicate and hamper the success of future mega merger program.

In undergoing merger review process, there is no clear procedure on how the Regulator holds authorization hearing as to whether it is public hearing or in camera. Moreover there is no defined procedure in how the Regulator will examine witnesses and complaints on a bank merger proposal. What evidence the party would present at the hearing and how much reasonable time and opportunity is given for the parties to inspect the application filed by proponents to the merger, and to submit written materials in opposition to it.

In addition, the Regulator should ordinarily provide a written opinion explaining his/her reasons for the action taken, at least in those cases where there were contested issues of law or fact and there should be a meaningful judicial review of the decision.[193] However, there is no such statutorily defined obligation on the

[191] In case of the TCCPA's decision on merger, there is a legal recourse and appeal procedure stated under the Proc. No. 813/2013 Art.33(2) (a) *cum.* Art. 39 (1) allows any aggrieved party by the decision of the Authority on merger proposal can appeal to the Federal Appellate Tribunal.

[192] Interview with Ato Mesfin Getachew

[193] Austin, *The Role of Supervisory Authorities in Connection with Bank Mergers*, p. 6

regulator to ensure accountability. Moreover, it is not clear whether an aggrieved party such as disappointed applicants, competitors and customers believing themselves to be adversely affected by the decision of the Regulator on a proposal can recourse to judicial review or have appeal right. Beside transparency requirement in the review process, it is desirable, in the interest of preserving public confidence in the banking system.[194]

In particular, there is no clearly known procedure undertaken in the merger of the two state-owned banks (CBE and CBB).[195] Ato Mesfin, responded that indeed, merger of state owned banks is separately executed in accordance to the Public Enterprises Proclamation No. 25/95, with due consideration of financial and other corporate factors by the Council of Ministers, yet there is no available information in the Regulator's Legal Service Directorate Office as to how it was undertaken.[196] This is an evidence to lack of transparency in undertaking the merger of CBE and CBB which the Legal Service Directorate does not take part at all.

4.1.1.3. Absence of Defined Jurisdictional Relationship

In fact there are distinct objectives and tasks vested to the general competition authority and sector specific regulatory agencies. For the sake of eliminating conflict of objectives between the competition law enforcement and the application of sectoral regulation, developed country have adopted detailed rules on competence, procedures and priorities of the institutions.[197] Hence defining the jurisdictional boundaries based on mutually supported and harmonized manner between the general competition authority and the sector specific regulators is crucial to avert the risk of conflict and parallel decisions (or may be deadlocks).

Under the current bank merger review regime, there is no law which serve as a platform between the prudential Regulator (NBE) and the general competition authority (TCCPA), defining how the two governmental agencies interact. This jurisdictional loophole can be a source of regulatory uncertainties. According to Ato Mesfin Getachew, there is a serious dialogue being held on the issue of

---

[194] *Id*. p. 7
[195] Interview with Ato Mesfin Getachew
[196] *Ibid.*
[197] Muhammed K., *A Critical Appraisal of the Institution Controlling Competition in Ethiopia*, p. 62

jurisdiction that the TCCPA alleged to take part in bank issues including on consumer protection law enforcement, the he believes not relevant to banks in particular that need special expertise knowledge and skill on protection of its customer.[198] The issue of jurisdiction is a critical problem yet not clearly defined by the existing legal frameworks and internal working custom.[199] And firmly claimed the bank merger reviews should be conducted exclusively by the Regulator and the provision of the TCCPP Art. 4(3) need to be interpreted restrictively and it exception need to be upheld strongly especially for financial sectors which need special knowledge and skill of the sector.[200]

Surprisingly, the previous Trade Practice and Consumer Protection Proclamation No. 865/2010 attempted to incorporate a jurisdiction clause by envisaging a provision which call for a compromise approach to be utilized to resolve the conflict of jurisdiction that may arise between the Authority and other regulatory body. However, as a comedown the newly introduced proclamation that vowed to fill the intricacies of its predecessor depleted the provision.[201]

Likewise, the National Bank of Ethiopia Establishment (as Amended) Proclamation No. 591/2008, tried to define the relationship of the NBE to the government (conventionally to the executive organ to whom the NBE is accountable for) and its relationship with the entire financial institutions (Banks, Insurances and Micro-finance Institutions).[202] However, this Proclamation failed to define or contain a leading principle in its jurisdictional or functional relationship with the general competition authority and or other sectoral regulators.

Further, the law should require that any challenge instituted by the competition law authority to block the merger be filed within a short time following the Regulator’s approval of the transaction.[203]

The same problem is prevalent in relation with merger of government-owned banks which attract the application of the Public Enterprises Establishment

[198] Interview with Ato Mesfin Getachew,
[199] *Ibid*
[200] *Ibid*
[201] Art 24 of Proc. No. 685/2010
[202] The National Bank of Ethiopia Establishment Proclamation, 2008, *Federal Negarit Gazzette*, 22th year, No. 101, Proc. No. 591, Arts. 12 and 14 [here in after, Proc. No. 591/2008]
[203] Austin, *The Role of Supervisory Authorities in Connection with Bank Mergers*, p. 8

Proclamation No. 25/92 in to effect. In case of merger of public-owned banks, as it has been discussed under the previous chapter, the Council of Ministers it the organ which is vested with the power to pass decision. However, neither of the existing substantive laws related to bank merger regulation address the jurisdictional interaction between and among the three concerned organs of the government which are simultaneously entrusted with the power to authorize bank merger schemes and proposals within their respective legal frameworks. In the absence of separate bank merger law in the country, the NBE as a prudential and central financial regulator which is shared by the constituents involved in bank merger would have been required to provide a proactive policy and legal framework in coordination with other counter parts to alleviate the problem of jurisdictional parallelism.

The Case of Merger between Commercial Bank of Ethiopia and Construction and Business Bank

The merger of CBE and CBB sparks various legal and jurisdictional issues. Both banks are state-owned and this attracts the Public Enterprise Proclamation No. 25/1992 within the concern. To reiterate, under the TCCPP, whenever a merger takes place, the Trade Competition & Consumer Protection Authority (TCCPA) has to be notified either by the business people who propose to enter into an agreement or arrangement of merger, or the concerned government organ responsible for the registration of the merger. The notification has to follow some procedures. After determining the type of merger and a thorough assessment on its effect on competition of the relevant product and geographic market, the Authority will approve or reject the application.

Under normal course of action, if two independent entities propose to enter into an agreement or arrangement of merger, the Ministry of Trade (MoT), the TCCPA, Ethiopian Customs & Revenue Authority (ECRA) and the Document Authentication & Registration Office (DARO) will be involved. Nonetheless, the merger between and among state-owned firms, centrally calls the involvement of the Council of Ministers in to the authorization process and this in turn sparks the question whether the conventional regulatory bodies review and approval is necessary or not in case of merger of public enterprises in general and in merger of state-owned banks in particular, alike merger of private entities or banks.

Primarily, both the Commercial Bank of Ethiopia (CBE) and the previous Construction and Business Bank (CBB) has been established by Council of Ministers Regulation No. 202/2002 and 203/2002, respectively. Legally speaking, such recent merger between CBE and CBB constitutes a statutory merger which is not comprehensively addressed under the existing bank merger legal framework. A renowned scholar on the area defines; “a statutory merger is one in which the acquiring company assumes assets and liabilities of the target in accordance with the statues of the State in which the combined companies will be incorporated.”[204] Pursuant to the Public Enterprise Proclamation No. 25/1992, two or more enterprises may be amalgamated by the decision of the Council of Ministers.[205] This will be effectuated through the issuance of regulation by the Council of Ministers.[206] The acquired entity, in this regard, will be treated as being dissolved. The amalgamation proposal has been made by Ethiopian Financial Public Enterprise Supervisory Agency. Ultimately upon the decision of the Council of Ministers and issuance of Regulation No. 384/2016 the two banks have been merged.

There are a bunch of legal and regulatory issues which are left unanswered by the relevant merger laws (both the general or specific laws). The first issue is should the decision of the Council of Ministers be approved by the general Competition Authority (the TCCPA) and other sector specific regulators such as the NBE in case of bank mergers or the decision of the Council of Ministers is legally self contained. Bearing in mind that the merger of CBE and CBB create some pressure on other private banks in Ethiopia, the competition Authority would have required testing the competitive effect of such merger. An interview with Ato Nebyou, Director of Mergers and Acquisitions Directorate, in the TCCPA, reveals that the Authority does not take part in the merger authorization process of the CBE and

[204] De Pamphilis, *Mergers and Acquisitions Basics: All You Need to Know*, p. 12
[205] Art. 37 (1) of Proc. No. 25/92
[206] *Id*. Art.37(2) and effected by the Commercial Bank of Ethiopia’s Takeover of the Construction & Business Bank Share Company Council of Ministers Regulation No. 384/2016.

CBB.[207] At the first place, the CBE is incomparable with other private banks even prior to the merger and this is clear that this is detrimental to other private banks and there is a potential to the CBE to abuse its market dominance or other predatory behaviors. Even it could a negative bearing on the entry of new banks. In fact this the Authority appreciates that this would create an adverse effect on the competition of the banking industry.[208] However, CBE is one of the major governmentally favoured state-owned banks that is mandated to play key developmental roles of the country. As we know the political economy of the current Ethiopia is built-in the 'developmental state' orientation. Accordingly, the existing economic and political policy of the country is a major justification that persuaded the Authority to abstain from taking part or from claiming to take part in the authorization process of public enterprises and the same approach is headed in amalgamation of the CBE and the CBB.[209]

4.1.1.4. Absence of Legally Defined Authority to Ultimate Approval/Disapproval on Bank Merger

Regardless of the division of responsibilities between the Regulator and other authorities and the consideration of competition law issues, the NBE, as the prudential regulator, must have ultimate discretionary authority over any bank merger proposal.[210] The Basle Core Principle 4 provides that: "*Banking supervisors must have the authority to review and reject any proposals to transfer significant ownership or controlling interests in existing banks to other parties.*" The competition law authority may seek to block, on competition law grounds, a merger approved by the Regulator, but that authority should not be able to cause a transaction opposed by the prudential Regulator to be approved.[211] Under the OECD, "…if a prudential regulator ever found it necessary to block a precompetitive merger, competition law would not thereby be abrogated…because competition law regarding mergers is proscriptive rather than prescriptive in

[207] Interview with Ato Nebyou Bellete
[208] Interview with Ato Nebyou Bellete
[209] *Ibid*
[210] Andrews, Michael A., Addressing the Prudential and Antitrust Aspects of Financial Sector Mergers and Acquisitions, *IMF/Monetary and Exchange Affairs Department*, 2000, cited in Austin, *The Role of Supervisory Authorities in Connection with Bank Mergers*, p. 8
[211] Austin, *The Role of Supervisory Authorities in Connection with Bank Mergers*, p. 8

nature,[thus]can be used to block but not to require mergers."[212] Accordingly, to the level that the regulation becomes prohibitive than normative, mergers rejected by the general competition agency should not generate an outright contradiction with the sectoral regulators.[213]

Under the existing Ethiopian bank merger institutional framework there is no legal instrument that confers the NBE as a prudential Regulator to have ultimate and discretionary approval or disapproval power over any bank merger proposal. As it is evidenced under the above studies, such failures in the current Ethiopian situation could lead to parallel decisions and jurisdictional conflict between these agencies.

4.1.1.5. Lack of Cooperation between the general Competition Authority and the NBE in Bank Merger Review

i. The interface between prudential and competition policy concerns in bank mergers

Practically in most international jurisdictions, bank mergers are reviewed by both prudential regulators and competition agencies.[214] That necessitates a need for collaboration between these organs in order to eliminate unproductive redundancy. In this regard the OECD has also recommended countries to incorporate unequivocal and comprehensive procedures to guarantee the mutual evaluation is transparent and likely predictable so that it does not excessively encroach in private sector affairs.[215] Moreover, there should be a clearly defined legal provision that compel the action by the competition law authority be coordinated with that of the Regulator so as to permit a timely action by the latter.[216]

Currently, under the Ethiopian bank merger regime there is no such clearly asserted legal provision calling for cooperation and coordinated action between the General Competition Authority i.e. the TCCPA and the prudential Regulator i.e. the NBE. beyond this, due to the absence of bank merger experience in the

---

[212] OECD, *Mergers in Financial Services*, p.33
[213] *Ibid*
[214] *Ibid*
[215] *Ibid*, For instance several OECD countries, including Australia, Canada, Norway and the United States, have taken formal steps to promote such co-ordination.
[216] Austin, *The Role of Supervisory Authorities in Connection with Bank Mergers*, p. 8

country, except the recent CBE and CBB merger which is undertaken without due transparency, there is not customarily developed cooperation platform between these bodies and the area is still remained blurred to both expertise of these organs.[217] In this regard, both the currently operative legal frameworks i.e. the BBP and The TCCPP are silent. To reiterate the previous Trade Practice and Consumer Protection Proclamation No. 856/2010 made a splendid attempt to resolve such jurisdiction hurdles through compromise.[218] Nonetheless, the existing TCCPPA depleted such provision of its predecessor with a nonsense reason to do so.

4.2. Issues and Challenges Associated with Policy-Induced Bank Merger Scheme

The issues and challenges accompanying policy induced merger process can be evaluated under two captions, as pre-merger issues and post-merger issues and challenges

4.2.1. Pre-Merger Issues

A bunch issues can be drawn up to be essentially in the pre-merger stage. Remarkable among these are:

4.2.1.1. Time Allocation for Merger Program

Typical mergers and acquisitions process requires a prolonged time and progressively successive event. There are several conditions and procedures to be undertaken to complete the scheme successfully.

The following are the major steps to be undertake in accomplishing bank merger program

- Preparation and clearing of the Scheme document;
- Separate shareholders meetings of the banks be convened;
- The notices of shareholders' meetings must be published in the newspapers;
- Approval of the schemes of merger by shareholders

[217] Interview with Ato Mesfin Getachew, reveals there is no clear cognizance as to how the two organs interact in relation to bank merger review process.
[218] Art 24 of Proc. No. 685/2010

- In addition to the above, the banks had to pass through NBE's authorization process and secure its written approval
- The TCCPA also should review the bank merger proposal

Bearing the above time intensive processes in mind, the NBE does not objectively and proactively draw a time line and necessary documents including a directive requiring a capital increment and statutorily well defined conditions and procedures to be complied by banks which can be through a comprehensive guideline.[219] If the Regulator employ government-led bank merger scheme after giving a short period of time so that banks to capitalize or merge, it would result inconvenience and delayed process that jeopardize both the interest of bankers and their respective depositors. Hence, so long as the principle is the need to voluntary merger, if not the NBE need to craft necessary implementation rules and guidelines proactively before the risk get imminent.

4.2.1.2. Awareness and Exposure of the Existing Banks to Bank Merger

In the current banking industry, bankers have a very limited awareness on transaction such as mergers and acquisitions.[220] This is due to absence of merger experience with in the sector. Even at institutional level there is shortage of human power acquainted with advanced knowledge and skill of mergers and acquisitions.[221] The existing banks have limited exposure to bank mergers and acquisitions processes such as due diligence and "know your customer" investigations. Practically, they are reluctant and not cooperative to offer documents and information. This is aggravated by the absence of Security Exchange Market (SEC) and existence of a few numbers Asset Management

[219] Interview with Ato Mesfin Geatchew witnessed the absence of such proactive measures at all, except some informal directions and orientations given to bankers. On the other hand, as seen from the experience of the Nigerian bank consolidation process timeline, the existing Ethiopian, banks may not continue get the usual five year period to attain required capital which has not been issued yet and this timeframe to recapitalization may be two or three year which can urge the bankers and affect the program.

[220] Interview with Ato Mesfin Getachew

[221] Interview with Ato Nebyou Bellete

Companies (AMC). Overall, these factors could inhibit an effective merger scheme which the banking industry is deemed to be due.[222]

4.2.1.3. High Cost of Mergers and Acquisitions

Different countries experience those executed policy induced bank merger schemes such as Nigeria shows that the process is highly expensive to complete successfully. Especially the majority of the small and medium banks with weak financial capability had to sustain costs to raise fund in Capital Market and need to assume cost of merger transaction.[223] Among these identified costs includes; costs to comply with due diligence reports, consultant fees, costs of scheme document preparation and related miscellaneous costs.[224]

4.2.1.4. Potential Resistance and Lack of Cooperation from some of the Merging Banks

Policy-induced bank merges as usually non-voluntary. They could end up being hostile due to resistance from target banks management. Some banks may find it hard to find strong bank or from the very start they may have resistance to cooperate due to its involuntary nature. In some instances there could be fundamental shareholders identity difference, or discrepancy in corporate governance model adopted prior to the merger scheme. For these or other reasons some banks may proceed to obstruct the process.[225] Hence, such pre-determined lack of interest by some banks could create difficulty to the smooth running of the merger program.

4.2.1.5. Employment Issues

Bank mergers schemes could make the employees of the bank taking part in merger transaction to feel nervous and job insecurity. As a principle one of the perceived gains of merger transaction is deemed to reduce various operational costs and economy of scale. To maintain this work force reduction is one of the

[222] Interview with Ato Nebyou Bellete
[223] Dr. Adeyemi, Banking Sector Consolidation in Nigeria, p. 12
[224] Dr. Adeyemi, Banking Sector Consolidation in Nigeria, p. 12
[225] Dr. Adeyemi, Banking Sector Consolidation in Nigeria, pp. 12-13, For instance they could create difficult conditions on such as the worth and the value of their shares, quality of their risk assets, number of representation on the board of the new bank and general lack of transparency in providing timely information.

mechanisms of cost reduction. However, "Many studies fail to find significant evidence that M&As allow banks to exploit economies of scale and scope, and generate cost savings especially for domestic transactions."[226] Hence bank mergers can pose an issue of job losses and lay-off.[227] In addition the discrepancy of the two constituent banks in terms of wages, compensation and other remunerations is another potential issue that needs proactive consideration and reconciliation. Especially the more the merging banks have substantial size and financial stance, the greater the issue come in to picture and get worse. Further issues identified by scholars such as "seniority, salary, transfers, promotion, parity in perks…and litigation will not be able to provide personalized services provided by small banks."[228]

4.2.1.6. Issue of Incompatibility of Information and Communication Technology

Nowadays, information and communication technologies are one of the inherent parts and parcel of the banking industry. Saving the recent attempt by the Regulator to integrate the Automated Transfer Machine (ATM) among the existing banks, currently each bank utilize different information and communication technologies and software in provision of banking services.[229] Moreover these technologies are very expensive to install. After the imminent merger these banks are required to harmonize their information and communication technology platform. Otherwise incompatibility could obstruct the success of any bank merger scheme.

In nutshell, bank merger create problems including technology migration issues, customer attrition issue, high cost of implementation of the merger scheme.

---

[226] Anke Weber, 'Bank Consolidation, Efficiency, and Profitability in Italy', *European Department, IMF*, 2017, p. 10

[227] John C. Soper, 'Consolidation in Banking and Financial Services: The Demise of Glass-Steagall', *John Carroll University*, 2007, p. 6

[228] Duvvuri Subbarao, 'Banking Structure in India – Looking Ahead by Looking Back', *Speaking notes at the FICCI-IBA (Federation of Indian Chambers of Commerce & Industry - Indian Banks' Association) Annual Banking Conference*, Mumbai, 13 August 2013, p. 8 [here in after, Duvvuri, Banking Structure in India-Looking Ahead by Looking Back]

[229] Interview with Ato Mesfin Getachew

4.2.2. Post-Merger Challenges

4.2.2.1. Divergence in Corporate Governance

One of the major challenges in post merger phase is the issue of corporate governance. Once, banks are merger the material existence of the new bank is different and its ownership structure will be changed. As a principle its ownership base is deemed to get wider thus, necessitates improved and inclusive corporate governance. However, when banks with different backgrounds on corporate governance and management appeared to merge, there is a serious potential for divergent opinions and quarrels. Hence, the leader of the board of both banks should be able to come and sit around table and hold the situation, which otherwise could be an impediment on the success of bank merger scheme.

4.2.2.2. Post-Merger Integration

In post merger phase one of a potentially serious challenge is integrating the structural and institutional units each constituent banks. This poses a serious risk due to a divergent background experience of each banks and lack of flexibility in a certain bank taking part in the merger scheme. For instance currently, the divergence among the identity of each bank shareholders (intentionally or unintentionally) is not denied.[230] Similarly, each constituent bank developed its own peculiar corporate culture. This will be an entanglement to the newly merged bank with cultural divergence and clashes.[231] Hence, the newly merged bank should be committed in integrating the overall managerial, operational procedural, processes, products and services and stand still.[232]

4.2.2.3. "Too Big to Fail" (TBTF) and Moral Hazard Problem

The Notion of Too big to fail (TBTF) come in to picture when an institution constituted large and its functions constitute a considerable segment a nation's payment system, credit-granting process, or other major financial functions.[233] Consequently, any disorder in that institution results a serious impact on the entire

---

[230] Interview with Ato Mesfin Getachew

[231] Such cultural clashes and management squabbles are natural in any merging firms with different background.

[232] Dr. Adeyemi, Banking Sector Consolidation in Nigeria, p. 14

[233] Marcus, '*Issues for Consideration in Mergers and Takeovers from a Regulatory Perspective* , p. 3

financial system. That's why countries give a special protection to such entities than any other undertakings. "Although the new banking and financial conglomerates may pass our traditional statutory and regulatory guidelines, such combinations require that we refocus our attention on a long-standing and vexing concern."[234] In this case, bank mergers and consolidation of the banking industry is deemed to be the process of evolving big banks that attract over extended special privilege and protection. In return the creation of large banks would result these large banks to behave recklessly, which is technically called moral hazard problem. Generally, bank merger are deemed to result sophistication and Too-Big-To-Fail (TBTF) or Too-Connected-To-Fail (TCTF) moral hazards with undesirable effect on financial stability.

4.2.2.4. Regulatory issues

Significant big banks could resort to monopolistic or oligopolistic practices that could lessen unequal competition and fair trade practice. Moreover big banks could tend to conduct through predatory behavior and this could hamper the financial conduction and market mechanism for efficient distribution of resources. [235]

[234] *Id*. p. 4
[235] Duvvuri, Banking Structure in India-Looking Ahead by Looking Back, p. 8

CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1. Summary and Conclusion

The study is classified under four chapters. The first chapter discussed on introduction and research proposal.

The second chapter is dedicated to discuss the theoretical and regulatory concepts of Mergers and Acquisitions with specific emphasis to bank mergers. Under this chapter, definition, types and distinctions among the various technical terminologies in merger and acquisitions world have been discussed. There are various peculiar terminologies in merger and acquisitions world which includes takeovers, consolidations and even mergers can further be categorized on different factors such as the market chain and considerations utilized in the merger arrangement. This chapter also discussed the various motivations and need to mergers and acquisitions such as, the aspiration to enjoy economies of scale, economies of scope, enhance revenue, tax incentive, becoming bigger and dominance in the market, to acquire technological and highly qualified personnel, to stay competitive, to access and diversify new markets. This chapter also discussed regulatory principles, concerns and considerations to be recounted by the prudential regulator. The regulatory principles which are drawn up by Basle Committee such as the need to confer the regulator with ultimate approval power of bank mergers and further considerations to be considered by the regulator such as efficiency and licensing criterions and the need to employ consolidated supervision and cooperation between and among regulators. There are concerns and considerations that need to be observed in bank mergers by the prudential regulator such as, contagion risk, systemic risk, lenders last resort too big to fail factor and moral hazard problem. Moreover, community convenience (public interest) considerations, corporate governance and employees consideration is discussed as further regulatory concerns.

Under chapter three, the existing bank merger substantive legal frameworks which are incorporated in relevant legislations i.e. the Commercial Code, the TCCPP, the BBP and the PEP has been scrutinized.

The study found and recognized the following problems

Regarding to the Commercial Code, in fact it pioneered in laying the foundational provisions that aimed to regulate mergers within the scope of company law regime, though currently this law is suffering from different problems that is resulted due to its out dated existence. The provisions of the Commercial Code on mergers are very limited and too general, hence, do not address the detail issues of merger. The provisions of the code suffer from several gaps on corporate governance, protection of minority shareholders and exit rights which play vital role in bank merger regulation. The merger provisions of the code do not make a clear distinction between and among the conceptually and technically different terminologies. It does not distinguish the concepts of mergers, acquisitions, takeover and consolidations. Instead it squeezed all the notions under a single terminology i.e. "Amalgamation". This crates potential confusion to the regime in particular in regulation of bank mergers which undertake series of sophisticated transactions. It failed to incorporate provision as to how the target firm is approached and due diligence is undertaken in a potential merger. It is also unclear how the fate of a failed merger scheme is regulated.

Relatively the existing TCCPP incorporated detail rules on conditions, requirements and procedures to be undertaken in merger schemes and this proclamation is supplemented by Regulation No.1/2016. The regime is virtually efficient to regulation of merger in general, however, it is not fully and exclusively appropriate to bank merger schemes, due to its limitations as to the factors of merger review are not sufficient to bank mergers, failure to clearly define the jurisdictional relationship between and among sectoral regulators and the general competition authority, absence of legally defined cooperation platform and its failure to clearly determine the spatial applicability of the TCCPP provisions which are equivocal and subjected to interpretation.

Similarly the Banking Business Proclamation which has a bearing on bank mergers suffers from limitations. These limitations starts from the absence of separate section allocated to bank merger regulation. The provisions under this proclamation are scattered under different sections and are hard to comprehend. Moreover, it lacks a comprehensive conditions, requirements, procedures and factors to be considered by the regulator in authorizing bank merger proposals. The proclamation also fails to distinguish voluntary and non voluntary bank merger schemes and their executions. Furthermore, the final fate of receivership due to merger of banks without giving prior notice is not clear under the proclamation.

The Public Enterprises Proclamation also suffers from different deficiencies in regulating merger of state-owned enterprises in general and state-owned bank mergers in particular. It failed to clearly envisage provisions as to the hierarchy and applicability of other relevant substantive merger laws such as the TCCPP and in particular the Banking Business proclamation merger provisions. There is no substantively defined rules n authorization of merger of state-owned banks and there is no transparency in this regard. This is witnessed from the case study made on the merger of the CBE and CBB. The absence of such clear procedure has an adverse effect on the competition of the banking sector.

- Generally, after an assessment of the relevant substantive rules on bank mergers, the study found the absence of comprehensive guiding substantive legal framework within which bank mergers, acquisitions or takeover are to be conducted, and that sets forth special requirements relating to timing and mode of offer, announcements, documentation and disclosure of adequate information to allow shareholders to make an informed decision as to the merits of an offer, including the option tosurrender their holdings.

Chapter four of the study scrutinized the existing relevant bank merger enforcement-institutional frameworks. The study explored the persistent institutional challenges in enforcement of bank merger schemes. These challenges begin from the absence of a clearly defined set of rules, guidelines and procedure in enforcement of bank mergers. There is also lack of a defined jurisdictional interaction between the NBE and the TCCPA. And both authorities claim their legitimate involvement in bank merger authorizations. Though, the later have shown abstinence in merger of the CBE and CBB which is executed exclusively with the decision of the Council of Ministers. Moreover, there is no statutorily or customarily installed cooperation platform between the NBE and the TCCPA and the Council of Ministers (in case of merger of state-owned banks). Under this chapter potential pre and post bank merger issues and challenges have been discussed on the advent of the imminent compulsory bank merger scheme in the country. The pre merger issues are related with timeline for merger scheme which consume a protracted processes and the NBE does not introduced any guideline to draw timeframe yet. The other issue is poor bank merger awareness and exposure by both the bakers and the staffs of the enforcement institutions. There are also issue of high cost of bank mergers**,** potential resistance and lack of cooperation from some of the merging banks, employment issues, issue of incompatibility of information and communication technology. In post merger stage there are some identified challenges including, divergence in corporate governance, post-merger integration, "Too big to fail" (TBTF) and moral hazard problem, regulatory issues that are related with the adverse effects of bank merger schemes and capacity of the regulator to manage the resulting large size banks.

5.2. Recommendations

- The provisions of the Commercial code, merger provisions need to be re crafted with a clear distinction on the notion of mergers, acquisitions and takeover. The provisions of the code need to distinguish, what constitute friendly and hostile acquisitions (takeover) by clearly providing how the initiation is communicated, bidding process, and how the target company is approached. It also need to devise a way out for shareholders and come across with provisions on protection of minority shareholders. It need to clearly affix provisions to regulate unsuccessful merger arrangements. It is also vital to craft a strong corporate governance provisions within the company law framework.
- The general competition law i.e. the TCCPP (and its accompanying Regulation No. 1/2016,) should be applied to bank mergers by the general

competition authority. The TCCPP sphere of application stated under Art. 4 (2) should be construed broadly to undifferentiated, to all private and state-owned entities and to all sectors. The subsequent sub Article i.e. Art. 4(3) of the TCCP, as long as it is an exception making sub article should be interpreted restrictively, only so as to facilitate sector specific regulators function and measures on their mandated sphere of influence, and should not broadly contemplated to supersede the application of the general competition law. This exception should not be taken as an attempt to immunize banks from merger analysis to be made by the general competition authority. Hence, there is a need to avoid sectoral gaps in coverage of competition law, unless evidence suggests that compelling public interests cannot be served in better ways. Hence there is a need to review and strengthen the scope, effectiveness and enforcement of competition policy and law of the country in relation to sector specific concerns.

- The existing Banking Business Proclamation's provisions relevant on bank mergers should be amended, either by issuance of a new implementation Regulation by the Council of Ministers, or directive by the NBE itself so that to address the issue of bank mergers and acquisitions in comprehensive manner. It should set forth detail rules on conditions, requirements and procedures to be observed in bank mergers. Hence, there must be a separate bank merger legislation which incorporates special provisions to the sector such as, factors to be considered in bank merger analysis, the procedures to be followed by the regulator and the proponents of merger proposals.
- The general competition authority should take part in any bank merger review processes. The competition authority should consider proposals to make appropriate changes in the transaction, but should not intervene on the measures taken by or being taken by the regulator.
- Likewise, the NBE as a prudential Regulator need to scrutinize any bank merger proposals, principally from traditional banking factors perspective, such as, from the efficiency gain of the merger proposal, the future prospect of the bank, the interest of its customers (mainly the depositors), from licensing

criterion (capital requirement), from the community convenience (implication on access to financial service), its effect on credit flow and competition.

- The NBE as a prudential regulator should be conferred with a veto power to approve/disapprove on bank merger proposal. At the same time, the TCCPA should be give the power to require blockade of a bank merger on the ground of anticompetitive effect. There must be a period of limitation with in which the TCCPA may resort for blockade. However, the ultimate approval/disapproval power should be vested to the prudential Regulator i.e. the NBE.
- In case of state-owned bank mergers authorization there should be transparent procedure on how the Council of Ministers decides on mergers. Such transparency begins from crafting a defined statutory procedure (it may be through issuance of Regulation that clearly enumerates the procedure of merger authorization). Thus the existing, Public Enterprises Proclamation provisions on amalgamation of public enterprises need to be amended. The conditions specified under Art. 37 of the proclamation, which seeks the consent of the creditors and guarantor of the enterprise, need to be implemented in transparent way. Moreover, these conditions are not sufficient enough to positively decide on amalgamation of public enterprises by the Council of Ministers, hence it should be redrafted in the way to include other factors to be recounted such as the competitive effects that are to be tested and approved or disapproved by the TCCPA and regulatory authorization by the NBE in case of Public-owned bank mergers schemes.
- There should be a defined platform as to the jurisdictional relationship of the general competition authority which is virtually preferred to conduct its own separate competition review regardless of the identity of the merging partner and the NBE that its jurisdictional power need to be oriented in line with its sector specific prudential role than the general competition factor. Decoupling the separate task and role of each organ is important to demark the jurisdictional boundary of these organs and alleviate the risk of illegitimate encroachment in the task of the other. Likewise, there should be a

need to clearly answer the jurisdictional interaction between the Council of Ministers and the TCCPA and the NBE. In resolving the existing legal loophole, the Council of Ministers, though it is a superior organ in comparison to the TCCPA or the NBE, its decision should be subjected to the review by the TCCPA and the NBE. This is because, the decision of the Council of Ministers may be justified on developmental reason, and however, sometime the justification of developmental reason could be detrimental especially in the financial sector. The Council of Ministers do not and cannot be expected to have sector specific knowledge and skill, hence the prudential regulator i.e. the NBE also need to take part to check whether the prudential criterions are met.

- The general competition authority needs to build its capacity to advocate competition reforms. The TCCPA should prepare awareness creation programs to the business community as to the concept of mergers and acquisitions. Especially, it needs to disseminate awareness to the business community in general and the financial sector in particular. It needs to prepare experience sharing and knowledge transfer programs in collaboration with the international bodies with best experience on merger and acquisitions.
- Similarly, the NBE need to come up with guidelines, rulebooks and directive that pro actively give awareness and caveat to the bankers, in order to make them ready by internalizing the exit strategy of merger. The guideline should be comprehensive enough to address and to set forth special requirements relating to timeline and mode of offer, announcements, documentation and disclosure of adequate information to allow shareholders to make an informed decision as to the merits of an offer, including the option of surrender their holdings. It should also distinguish voluntary mergers from non-voluntary/policy-induced merger programs that may be initiated by the NBE and how it will be executed in advance.
- The Regulator should contemplate and adopt the internationally accredited regulatory principles on bank mergers and acquisitions (financial

conglomerations in general), such as the Basel Committee Core Principles, the IMF Codes on Good Transparency Practices for Financial Policies by Financial Agencies.

- It is essential to foster coordination and cooperation between prudential regulator and the competition authority. This collaboration also needs to be extended to the concerned Council of Ministers section on public enterprises merger. The latter need to closely approach the TCCPA and the NBE before deciding on merger initiations. To install cooperation platform among these organs there should be a defined bank merger authorization procedure which need to emerge with due deliberation among these organs.
- It is also important to finalize the recently initiation on establishment of a Stock Exchange Market (SEC) positively, because the market plays a vital role in regulation and can impetus company mergers in general and bank mergers in particular.

Bibliography

I. Books, Journals, Working Papers, and Theses

- Fox B & Fox E, *Corporate Acquisitions & Mergers*, Vol. 1, Matthew Bender & Co., 2004.

- Donald DePamphilis, *Mergers and Acquisitions Basics: All You Need to Know*, Elsevier Inc. , Burlington, USA, 2011.
- Muhammed K. *A Critical Appraisal of the Institution Controlling Competition in Ethiopia: Analysis of the Law and the Practice*, LLM thesis, Addis Ababa University, Law Faculty, 2014.
- Dr. K. S. Adeyemi, 'Banking Sector Consolidation in Nigeria: Issues and Challenges', *Research Gate*, Nigeria, 2014. Available at: <https://www.researchgate.net/publication/242780351 pp.11-14>
- Peter Lim Felton, Too Big to Manage: A Case for Stricter Bank Merger Regulation, *Santa Clara Law Review*, 2012, Vol. 52, No.3, PP. 1081-1109 , at p. 1089 <http://digitalcommons.law.scu.edu/lawreview/vol52/iss3/11
- Carletti, Elena, *et al.* 'The Impact of Merger Legislation on Bank Mergers,' Working paper, *Federal Reserve Bank of Cleveland*, 2016, pp. 16-14.
- Brian W. Smith and Laura R. Biddle, 'Is the Bank Merger Regulatory Review Process Ripe for Change?', *CCH Incorporated*, 2005,
- Solomon Abay Y. *Financial Market Development, Policy And Regulation: The International Experience and Ethiopia's Need For Further Reform*, PhD. thesis, FdR, University of Amsterdam, 2011, [unpublished file with the author]
- IMF, *Financial Sector Regulation: Issues and Gaps-Background Paper*, Monetary and Financial Systems Department, 2004,
- Yadav, A.K., and Kumar, B. R, 'Role of Organization Culture in Mergers and Acquisitions', *SCMS Journal of Management*, 2005, Vol. 2, No. 3, PP. 51-63
- Steven J. Pilloff & Anthony M. Santomero, , *The Value Effects of Bank Mergers and Acquisitions*, Wharton School Center for Financial Institutions, University of Pennsylvania, 1999
- Dario Focarelli , Fabio Panetta and Carmelo Salleo, 'Why Do Banks Merge?', *Journal of Money, Credit, and Banking* Vol. 34, No 4, 2002, PP. 1047-1066

- Weinberg M. A and Blank M. V., *Take-Overs and Mergers*, Sweet & Maxwell, ed. 5th, 1989.
- Priya Bhalla, 'Mergers & Acquisitions in India: A Sectoral Analysis', *A International Journal of Business and Economic Development*, 2014, Vol. 2 No. 2, PP. 119-134.
- Lobana, Shalluy Singh, 'Consolidation in Banking Industry through Mergers and Acquisition: Corporate Restructuring Widens', *IBA Bulletin*, 2005, Vol.27, No.1
- Maleka Femida Cassim, 'The Introduction of the Statutory Merger in South African Corporate Law: Majority Rule Offset by the Appraisal Right, University of the Witwatersrand, 2008, No. 20, *South Africa Merc. Law Journal*, PP. 1–32, *Available at:* *https://www.researchgate.net/publication/319064029_The_Introduction_of_the_Statutory_Merger_in_South_African_Corporate_Law_Majority_Rule_Offset_by_the_Appraisal_Right_Part_I?enrichId=rgreq66a8ad2211be1bb0fc47987d55d6f60aXXX&enrichSource=Y292ZXJQYWdlOzMxOTA2DAyOTtBUzo1MjYxNDk5MTA1MjwMDBAMTUwMjQ1NTMyMjAwMA%3D%3D&el1_x_3&_esc=publicationCoverPdf*
- Tadesse, S. 'Consolidation, Scale Economics and Technological Change in Japanese Banking', 2005, U*niversity of South Carolina*, Columbia, available at http://ideas.repec.org/p/wdi/papers/2005-747.html,[Un published thesis]
- Weston, J. F. and Mansinghka, K. 'Test of Efficiency Performance of Conglomerate Firms', *Journal of Finance*, 1971.
- Gurminder Kaur, *Corporate Mergers and Acquisitions*, Deep & Deep Publications, 2005
- Sudarsanam, P.S, *The essence of mergers and acquisitions*, Prentice Hall, London, New York, 1995
- Deshpande,N.V., 'Mergers Consolidating the Banking Industry: A Legal Perspective', *IBA bulletin*, 2005
- Earl W. Kintner & Hugh C. Hansen, 'A Review of the Law of Bank Mergers', *Boston College Industrial And Commercial Law Review*, 1972,

Vol. 14, No. 1, p. 217 Available at: http://lawdigitalcommons.bc.edu/bclr/vol14/iss2/1 >

- Casson & Burrus, Federal Regulation of Bank Mergers, *Am. U. L. Rev.*, 1969, Vol. 18,
- Robinson, Constance K. 'Bank Mergers and Antitrust', *allocution prononcée lors de la 31e rencontre annuelle du Banking Law Institute*, Washington, D.C., 1996
- Arthur R Pinto & Douglas M Branson, *Understanding Corporate Law*, 1999,
- Stephen Kenyon-Slade *Mergers and Takeovers in the US and UK Law and Practice* , 2003,
- Andrews, Michael A., Addressing the Prudential and Antitrust Aspects of Financial Sector Mergers and Acquisitions, *IMF/Monetary and Exchange Affairs Department*, 2000
- Anke Weber, 'Bank Consolidation, Efficiency, and Profitability in Italy', *European Department, IMF*, 2017.
- John C. Soper, 'Consolidation in Banking and Financial Services: The Demise of Glass-Steagall', *John Carroll University*, 2007
- Hussain Tura, Merger Regulation in Ethiopia, University of Oxford Centre for Competition Law and Policy Working Paper CCLP (L) 36.
- Zerayehu Sime Eshete, Kagnew Wolde Tesome, Teshome Ketama Abebe, Competition in Ethiopian Banking Industry, *African Journal of Economics* Vol. 1, No. 5, pp. 176-190, December, 2013. Available online at www.internationalscholarsjournals.org

II. Dictionaries and Encyclopedias

- *Halsbury's Law of England*, 1907, Vol. 3, Butterworth, United Kingdom
- Sloan, H. and A. Zurcher, *Dictionary of Economics*, Barnes and Noble Books, New York, 1970

III. Conference papers and Speech notes

- John V. Austin, Esq., 'The Role of Supervisory Authorities in Connection with Bank Mergers', *in IMF Conference*, Washington, D.C., May 7-17, 2002
- Imala, O. I. 'Consolidation in the Nigerian Banking Industry: A Strategy for Survival and Development' *A Paper Presented during the Visit of the Nigerian Economics Students' Association (NESA)*, University of Abuja, 2005
- Nnanna, O. J. 'Beyond Bank Consolidation: The Impact of Society', *A Paper Presented at the 4th Annual Monetary Policy Conference of the Central Bank of Nigeria*. Abuja, 18th – 19th November, 2004
- Gill Marcus, '*Issues for consideration in mergers and takeovers from a regulatory perspective*', Speech at the Institute for International Research 9th Annual Conference held in Johannesburg on 18 July 2000
- Duvvuri Subbarao, 'Banking Structure in India – Looking Ahead by Looking Back', *Speaking notes at the FICCI-IBA (Federation of Indian Chambers of Commerce & Industry - Indian Banks' Association) Annual Banking Conference*, Mumbai, 13 August 2013
- Cruikshank, Don, 'Competition and Regulation: An Interim Report', *and accompanying letter sent by Mr. Cruikshank, on July 22, 1999, to Gordon B. Brown, Chancellor of the Exchequer,*

IV. Internet Sources

- HCL, Theoretical concepts of Mergers and Acquisitions, p. 23 <https://www.google.com/url?q=http://shodhganga.inflibnet.ac.in/bitstream/10603/100632/10/10_capter%25202.pdf&sa=U&ved=2ahUKEwiB2TViK3bAhXC2qQKHb0LA9sQFjAAegQICBAB&usg=AOvVaw2PgPbMyTDm8UqUXOnRTdFC > [Last accessed on 22/03/2018]
- Jan-Peter Siedlarek, 'Merger Control in the Banking Sector', *Federal Reserve Bank of Cleveland*,<https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2017-economic-commentaries/ec-201710-merger-control-in-the-banking-sector.aspx > [Last accessed on 20/12/2017]

- Asrat Seyoum, 'Mega Banking: Future of Ethiopian Banks', *The Reporter Ethiopia*, <http://archiveenglish.thereporterethiopia.com/content/mega-banking-future-ethiopian-banks> [Last accessed on 22/02/2018]
- "Mergers and Acquisitions – M&A" https://www.investopedia.com/terms/m/mergersand_acquisitions.asp> Last accessed on 20/02/2018
- "Ethiopia: What Does Not Kill the Banking System" at <http://www.addisfortune.com>September 2/2017, [last accessed on 20/12/2017]
- "What is the difference between mergers and acquisitions?" At https://www.investopedia.com/ask/answers/021815/what-difference-between-merger-and-acquisition.asp [last accessed 20/02/2018]

V. International Documents and Code of Conducts

- International Monetary Fund, *Code of Good Practices on Transparency in Monetary and Financial Policies: Declaration of Principles*, 1999, and related Fact sheet entitled *Transparency in Monetary and Financial Policies*, 2001.
- OECD, , *Mergers in Financial Services*, Directorate for Financial, Fiscal and Enterprise Affairs Committee on Competition Law and Policy, 2000, Available at: <http://www.oecd.org/daf/clp>
- Basle Committee on Banking Supervision, *Core Principles for Effective Banking Supervision* (September1997)

VI. National Legislations

Ethiopia

- The Banking Business Proclamation, 2008, *Federal Negarit Gazzeta*, Proc. No 592, 14th year, No 57,
- Trade Competition and Consumers Protection Proclamation, 2013, *Federal Negarit Gazzeta*, Proc. No. 813, 20th year, No. 28
- The Commercial Code of the Empire of Ethiopia, 1966, *Negarit Gazzeta*, Extraordinary issue, Proc. No. 166, 19th year, No. 3,

- The National Bank of Ethiopia Establishment Proclamation, 2008, *Negarit Gazzette*, 22th year, No. 101, Proc. No. 591,
- Trade Practice and Consumers Protection Proclamation, 2010, Proc. No.685, *Federal Negarit.Gazzeta*.Year 16, No.49
- Public Enterprises Proclamation, 1992, Proc. No. 25, *Negarit Gazeta*, 51st year, No. 21
- The Commercial Registration Proclamation, 2016, Proc. No. 980, *Negarit Gazzet*, 22th year, No. 101,
- Commercial Bank of Ethiopia's Takeover of the Construction & Business Bank Share Company Regulation No. 384/2016, Council of Ministers Regulation.
- Requirements for Persons with Significant Influence in a Bank, Directives No. SBB/54/2012, National Bank of Ethiopia, 2012
- Minimum Capital Requirement for Banks Directive, National Bank of Ethiopia, 2011
- NBE Directive No.SBB/39/06, NBE, directives SBB/39/06, directives SBB/19/96 & circular BSD/03/11, directive SBB/40/06**,** directives SBB/40/06, & circular BSD/01/11, circular BSD/02/11**,** directives SBB/31/02
- Merger Directive No. 1/2016, Ministry of Trade.
- NBE, Bank Supervision Directorate, Circular BSD/03/11, Information Kit (Brochure)

VII. Others

- Interview with Ato Mesfin Getachew, Assistant Director of Legal Service Directorate of National Bank of Ethiopia on May 01/2018 at 9:30 am.
- Interview with Ato Neyou Bellete, Director of Merger and Acquisition Directorate in the TCCPA, on may 04/2018 at 8:30am