

## LEGAL PROVISION OF MERGER AND ITS APPLICATION IN MERGING OF COMPANIES: A CASE OF BANGLADESH

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**Abstract:** *Now a day's merger practice is increasing in the corporate sector as a strategic choice for upholding organizational growth. It has been recognized as a corporate strategy that does not limit only organizational growth but includes profit, empire building, market dominance and long term survival without creating a subsidiary, child entity or using the joint venture. The ultimate goal of this strategic choice is to generate more profit and maximization of shareholder value for newly established companies. The strategy can be chosen by the firms with evil intention to create a monopoly in the market which impacts the economy adversely and eliminates overall competition. There has a number of hurdles or barrier with regards to legislation and regulatory bodies which are responsible to govern the activities of the merger in Bangladesh. Therefore, the aim of this article is to study the existing relevant laws which are being used to give it a legal cover. Besides that article also tries to find out the gaps and loopholes of relevant laws of the merger. This article mainly discusses the definition and forms of the merger, an overview of merger practices in Bangladesh, consequences of the merger in the economy, legal provisions of merger procedure in Bangladesh and lastly the paper concludes with some considerations for effective merger practices in Bangladesh. The sources used in this research paper have been mainly collected from secondary sources like book, journal and numerous relevant website. This paper will be helpful for researchers, policymakers and above all for the law students.*

**Keywords:** Merger, Acquisition, Policy, Regulation, Competition, Company Law

**Research Area:** Company Law

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### 1. INTRODUCTION

The growth of the company primarily depends upon the utilization of its products and services. It may also grow up in an inorganic way by spreading new area of workforce, expansion of business infrastructure resources, enhancing collaboration and widening the category of customer that may have a good impact on companies overall income. Merger is one of the affective dimension in the inorganic process of growth of the company whereby two or more companies jointly merge into a single entity for gaining more market share, reducing or set-off accumulated losses of one entity against the profits of the other merging entity and eliminating market competition. In some cases, acquisition happens whereby one entity buys another entity of the business. Whatever the form of either merger or acquisition, the concept and practice of both are relatively new in the Bangladesh context but the practices of that have been rampant all over the other parts of the world. However, recently it has been noticed some of the deals in the growing industry like power and telecom and the

merger of Robi and Airtel can be taken into consideration. Over a couple of years, Bangladesh witnessed huge economic development and it will continue in future. This paper tries to make an elaborate discussion of the existing laws regarding merger and provide recommendations if necessary, for creating value to the relevant users and concerned parties.

### *1.1 Definition and Forms of Merger*

From a legal point of view, a merger can be defined as a legal unification of two companies into one company. On the other hand from the economic point of view merger generally occurs as a result of the fortification of assets and liabilities of two entities into one entity. So, a merger can be formed between or among two or more companies when one of them merges its identity into another or other existing company or they form a new company through merging their identities by transferring companies all assets and liabilities. (Sherman and Hart, 2006) define Merger as "a combination of two or more companies in which the assets and liabilities of the selling firm(s) are absorbed by the buying firm. Although the buying firm may be a considerably different organization after the merger, it retains its original identity". (Lambrecht, 2004) mentioned that the merger is linked to economies of scale (EOS) during economic expansions. Investopedia ([www.investopedia.com](http://www.investopedia.com)) defines a merger as 'A merger is an agreement that unites two existing companies into one new company. There are several types of mergers and also several reasons why companies complete mergers. Merger is commonly done to expand a company's reach, expand into new segments, or gain market share. All of these done are done to please shareholders and create value'.

Sometimes merger and acquisition are being used in the same meaning but has a little difference between the two. The acquisition takes place when one entity takes ownership of another entity's stock, equity interest or assets. (Krishnamurti and Vishwanath, 2008)" 'acquisition' is the purchase of by one company (the acquirer) of a substantial part of the assets or the securities of another (target company). The purchase may be a division of the target company or a large part (or all) of the target company's voting shares." Again Competition Act 2012 section 2(a) define acquisition as 'acquisition means to acquire or to agree to acquire, directly or indirectly, any share, voting rights or assets of any enterprise or to take control over assets or management thereof'. Now it is seen that both merger and acquisition generally occur as a result of the consolidation of assets and liabilities under one entity and the difference between the two (merger& acquisition) is less clear. (Pautler, 2001) noted M&As process may take place in different forms depending upon: i) purpose to be achieved, ii) legal status of the firms, either they are listed or non-listed limited companies or partnerships, etc, iii) location of the firms, whether both are operating in the same or different countries, iv) taxation and other related laws and iv) nature of the business and their operations.

There appear five forms of combination of companies known as merger on the basis of economic function, the purpose of the business transaction and the relationship of the merging companies.

### *1.2 Conglomerate*

Conglomerate merger occurs between two firms that are involved in completely different business activities or sell their products in totally different markets. On the other hand, it can more precisely be defined as conglomerate merger as coming together of two companies having business activities in an unrelated geographical area. The newly formed entity through conglomerate merger gets the benefit of diversifying in its business portfolio. For example, when a leading manufacturer of Drug Company merges with a distinct company like leather that leads a conglomerate. PRAN-RFL Group is one of the largest food, beverage and plastic industrial conglomerate in Bangladesh.

There are two sub-types of the conglomerate merger: pure and mixed. In a pure conglomerate merger where two firms involved have nothing in common to them. On the other hand in a mixed conglomerate merger occurs between firms whereby though they have unrelated business activities are actually trying to extend their business or market extension through the merger.

### *1.3 Horizontal Merger*

The horizontal merger takes place between the companies when they sell the homogenous product in the same market and often as competitors offering the same good or service. Horizontal mergers are often used as a way for a company to increase its market share by merging with a competing company (Evans et al, 2000). One of the clearest examples of horizontal integration is Facebook's acquisition of Instagram in 2012. In the social media industry, Facebook and Instagram (both are photo-sharing platform) provide photo-sharing services to the users. In order to achieve a competitive advantage and strengthen its market position, Facebook decided on being together with Instagram. Through this acquisition, Facebook achieved a greater opportunity to grow its market share by sharing photo space, reduce competition and gain access to new audiences.

The prime objective of this business consolidation is to form a new large company with a large volume of market share. As the merging companies business is the same in nature, there may have some opportunities to act on some operation jointly, such as manufacturing and reducing cost. It is observed that horizontal integration usually happens in some common business firm whereby competition tends to be higher. Through merging firms potential gains are much greater in such industry. But it is not always true that firms usually merge horizontally to accomplish such economies of scale. Moreover, horizontal mergers raise three basic competitive problems that have been observed by (Weston, 1990). The first problem is to be created a monopolized business environment through the elimination of competition in the industry. Secondly, the newly formed merging firms not only demonstrate the monopolized business but also the merged entity got market power that enables it to raise market prices by reducing output unilaterally. The third problem is that the newly merged company got enormous power to control or coordinate the activities of the market's remaining participants especially their pricing and output decisions.

### *1.4 Vertical Merger*

A vertical merger consists of two or more companies involved in producing different or separate products or services but engaged in the same supply chain process of a common

good or product. In essence, the related companies of vertical mergers are associated with not similar types of business activities rather diversified activities which are complementary to each other. (Salop and Culley, 2014) mentioned that a vertical merger joins together a firm that produces an input (and competes in an input market) with a firm that uses that input to produce output (and competes in an output market). One of the most successful vertical mergers may be announced of being togetherness of Walt Disney and Pixar. In 2006, the Walt Disney Company bought Pixar for being benefitted since it (Pixar) was the world's most innovative animation studio. Simultaneously, Pixar decided to be merged and to operate a business with Walt Disney for getting Disney's strong financials and extensive distribution network. Vertical merger can be classified mainly two categories: one is forward integration (upstream integration) meaning a business strategy whereby a company merges with another company engaged in doing direct distribution of products and services in the supply chain and another is backward integration (downstream integration) in which a company purchase of another company in the supply chain associated with supplying raw materials with a view to improving efficiency and cutting cost. (Roberts et al, 2016) differentiated the two as; forward integration runs towards the customer base, whereas backward integration runs towards the supplier base.

### *1.5 Product Extension Merger*

Product extension merger is a form of conglomerate merger in which two or more companies of different but related products' get merged. The companies are functionally related in production and/or distribution but sell products that do not compete directly with one another (Backman, 1970). The companies are not competitors to each other rather they use common or related production processes and the same marketing and distribution channels. The prime objective of this type of merger is to attract customers of the same market by offering a bundle of complementary products. The acquisition of Mobilink Telecom Inc. by Broadcom can be mentioned as the proper example of a product extension merger.

### *1.6 Market Extension Merger*

Market extension merger is the combination of two companies that manufacture the same products or services but sell them in different market regions. The main purpose of the market extension merger is to capture a larger number of consumers through access to a larger geographical market. It basically extends the market base of the products and services. An example of a market extension merger is Alibaba-Amazon partnership.

## **2. OVERVIEW OF MERGER PRACTICES IN BANGLADESH**

In today's globalized economy, over the last few decades, it has seen the growth of mergers for improving the competitiveness of companies through gaining greater market share, broadening the portfolio to reduce business risk, entering new markets and geographies, and capitalizing on economies of scale etc (Mahesh, R., & Prasad, D. 2012). But in the cases of Bangladesh, the concept of the merger of companies witnessed a new one though such practices have been rampant in other parts of the world for a long time. So it may be considered the dealing of such merger to be a nascent stage in Bangladesh. However, in the last couple of years, Bangladesh witnessed some merger dealing.

In Bangladesh, the trend of merging subsidiaries started in 2005 after the amalgamation of two sister concern of Beximco Group– Beximco Pharma and Beximco Infusions into one for enhancing companies' capacity and capability through the combination of people from the two companies, who have diverse skills, talent and vast experience in an increasingly competitive environment. Companies were merged on the basis of some rational expectations that total assets of the merged company would increase around 7 percent, revenues will rise around 15 percent, net profits will jump around 12 percent, net assets will rise to Tk 514 crore from Tk 480 crore, total Debt/Equity Ratio to fall marginally from 77.65 percent to 77.48 percent, the earning-based value per share will increase to Tk 79.80 from Tk 77.39 and moreover following the merger, a shareholder of Beximco Infusions Limited holding one share will get 4.5 (four and a half) shares of Beximco Pharmaceuticals Limited (<https://www.beximcopharma.com>).

In 2006, Beximco Textiles, Beximco Denims and Beximco Knitting merged with Padma Textile Mills, which later renamed Bextex and again merged with Beximco for boosting Bextex's production to nearly 50 million pieces of garments annually. Through the dealing Bextex's paid-up capital increased by Tk 443 million (Tk 44.3 crore) to reach Tk 1.112 billion (Tk 111.20 crore), while the shareholders' equity stands at Tk 2.710 billion (Tk 271 crore). The company after expansion expected to earn an annual profit of Tk 2.763 billion (Tk 276 crore) on an annual turnover of Tk 17.903 billion (Tk 1,790 crore) (<https://www.beximco.com>).

Bangladesh Online merged with its parent company Beximco in 2009 as a part of the new business strategy that had been taken by the Beximco group. Besides, Dhaka- Shanghi Ceramics, Shinepukur Ceramics, Shinepukur Holdings and Beximco Fisheries were amalgamated with Beximco at different times. Tripti Industries merged with Olympic Industries in 2008, Keya Detergent with Keya Soap Chemicals in 2010 and Ocean Containers with Summit Alliance Port in 2012. In 2014, Keya Cosmetics merged with its associated companies: Keya Knit Composite, Keya Cotton Mills and Keya Spinning Mills (<https://www.thedailystar.net>).

In 2015 and 2016, despite having some impediments regarding the regulation of merger activity Bangladesh witnessed a series of merger practices particularly in the telecom and power sectors. Among the numerous transactions most important was the merging of Khulna Power Company where it amalgamated two of its unit Khanjahan Ali Power Company and Khulna Power Company Unit II. Again another mentionable merging happened in the Summit group in 2016 where the first private sector power producer Summit Power amalgamated three of its subsidiary units, Summit Uttaranchal Power Company, Summit Purbanchol Power Company and Summit Narayanganj Power. This merger took place to come to all companies under one management as a new strategy of business thus efficiency would be increased and hence profit (<https://www.thedailystar.net>). In the same year, another merger happened in the power sector whereby United Power Generation Company Limited acquired its two power-generating units (United Ashuganj Power Ltd and Shajahanullah Power Generation Company Ltd) at Tk 652 crore for the purpose of taking a new move and making a profit. The scheme of the company's amalgamation was to enhance the capacity of about 50 percent to 240 MW. The scheme also declared that the amalgamation



would bring in further integration in values and strategies to increase total shareholder returns (<https://www.thedailystar.net>).

It is noticeable that all of the mergers which have been mentioned above are intra-group merger basically held among the group of companies and with its sister concern. But the Robi Axiata and Airtel Bangladesh merger on July 14 2016 was the exception and noteworthy whereby though, both of which are mobile phone operators in Bangladesh, merged as two distinct entities that have created a new possibility in the merger regime. Talking of merger started between two entities in September 2015 and after having approval from their respective board of director filed an application on 14<sup>th</sup> October 2015 under section 228 and 229 of the Company Act 1994 before the High Court Division of the Supreme Court of Bangladesh. Subsequently, it was confirmed by the Hon'ble Court on 14<sup>th</sup> July 2016 with some observations. Though the companies did not mention the value of the merger, it was thought that it was being proposed on the largest scale for the first time in Bangladesh that would affect large consumer-based revenue earnings of the government. The judgment depicted that some public interest factors such as government revenue, consumers interest and employment shall be carefully taken into consideration by the court during the approval of the merger application. The Hon'ble Court also made clear that the court would apply its inherent jurisdiction to make a way out to know the concern of interest group and stakeholder over the proposed merger. The Hon'ble Court in this judgment also directed the respective transferor company to formulate retirement plans for the employee (<http://www.iflr.com>).

After merging, Robi as the merged company began its commercial operation on November 16, 2016. Following the merger of Robi and Airtel, Robi was granted a license to use the Airtel brand in Bangladesh for the customers having 016 number series and became the second-largest operator company both in regarding subscriber and revenue but before the merger Robi was the second and Airtel was the fourth operating company in terms of the subscriber. Now it is a joint venture company between Axiata Group of Malaysia, Bharti Airtel, of India and NTT Docomo Inc., of Japan whereby Axiata holds 68.7% controlling stake in the entity, Bharti holds 25% while the remaining 6.3% is held by NTT Docomo of Japan, an old partner of Axiata Group (<https://www.robicom.bd>).

### **3. THE ECONOMIC CONSEQUENCE OF THE MERGER**

A merger can have a negative and positive impact on the economy. An incident of a merger has an impact on the overall market competition and labour force.

#### **3.1. The positive impact of merger on the economy:**

Merger benefits the Economy by increasing the efficiency and synergy in the industry. When companies merge with each other they share equipment, retail locations, technology, and a competent workforce, which enables the company to produce things more efficiently. Eventually, that increase in productivity can bring well-being for the business, consumers, and the overall economy. Another advantage of the merger is it encourages competition. When small competitors merge with each other to create a more formidable one, it concerns other competitors naturally. This inspires competition and competition boosts productivity up and costs for consumers down. Merger and acquisition motivate growth by creating an environment where more entrepreneurs get an incentive to start businesses and

succeed. When new startups with innovative ideas realize that there is an opportunity to get acquired for millions of dollars it motivates them to innovate (<https://campuspress.yale.edu/>).

### 3.2 The Negative Impact of Merger on the Economy

One of the major problems of the merger is market domination which takes the market competition towards monopoly and finally ends up with customer exploitation. When two companies with large market share merge with each other they may reduce the price to bankrupt the competitors then they increase the price and earn significant gain from products and services, it doesn't bring any increase in value or productivity. They increase profitability by sabotaging health for the broader economy. That's why the government of any country pass rules and regulation to keep the market in perfect competition and to restrain firms from creating a monopolistic state so that consumer and the country's economy can be saved from corporate exploitation. With the help of Herfindahl-Hirschman Index (HHI), these things can be explained very clearly (<https://campuspress.yale.edu/>).

The Herfindahl-Hirschman Index (HHI) is the most common way to measure pre-merger and post-merger and acquisition market concentration and competitiveness. To calculate the HHI first we need to know each company's percentage of the market share in the industry, then we have to square the number and add all the squared numbers. The formula for the HHI is given below.

$$HHI = x^2_1 + x^2_2 + x^2_3 \dots\dots\dots x^2_n$$

Firm	A	B	C	D	E	F	G	H	Total
Market share	32%	25%	15%	10%	8%	5%	3%	2%	100%
Squared Market share	1024	625	225	100	64	25	9	4	2076

**Table 1: HHI Calculation**

Here the HHI is 2076(Table 1). According to the US Department of justice if the HHI is less than 1,500 is considered to be a competitive marketplace, an HHI of 1,500 to 2,500 to be a moderately concentrated marketplace, and an HHI of 2,500 or greater to be a highly concentrated marketplace (Figure 1). This means the exemplary market shown in table one is moderately concentrated.

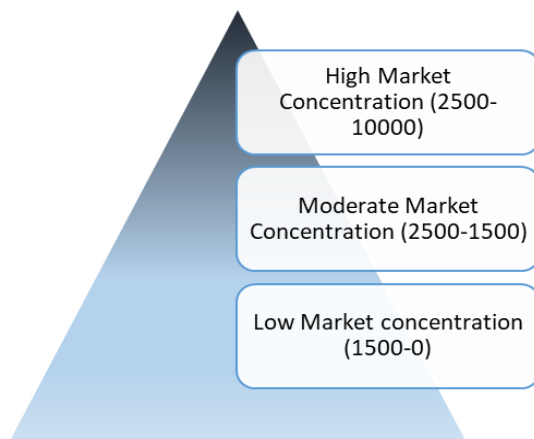


Figure 1: HHI of market concentration (Source: <https://www.justice.gov/atr/herfindahl-hirschman-index>)

### 3.3 Pre-merger and post-Merger analyses of Robi and Airtel under HHI:

As we know that in Bangladesh Merger events are not very common, till today the biggest merger event is Robi and Airtel merger in January 2016. Here we will analyze the telecom industry of Bangladesh using the HHI concept.

**Pre-Merger Scenario:** In December 2015 according to BTRC information Grameen phone had 42.39 %, Banglalink had 24.58%, Robi had 21.17%, Airtel had 8%, Citycell had 0.75% and Teletalk had 3.11% market share (Figure 2).

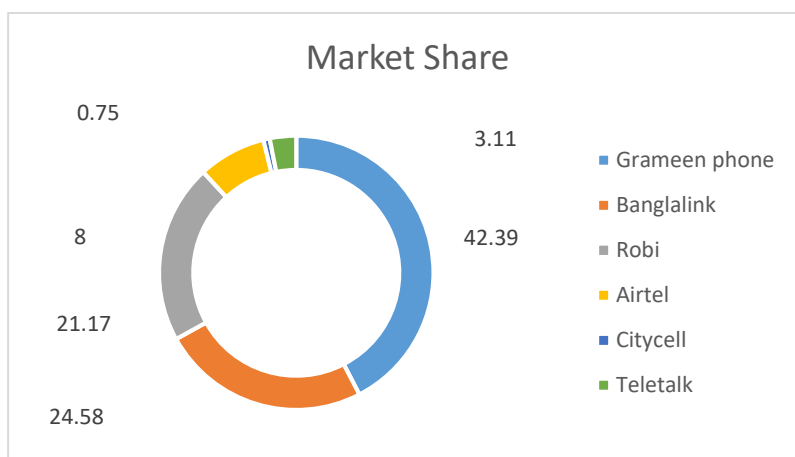


Figure 2: Source BTRC

In table 2 the HHI was 2904 which means that the market concentration was high in 2015 and a merger of 3<sup>rd</sup> and 4<sup>th</sup> largest may decrease competitiveness. We will see the impact of merger in the next part.

Competitors	GP	Banglalink	Robi	Airtel	Citycell	Teletalk	Total
Market share	42%	25%	21%	8%	1%	3%	100%
Squared Market share	1764	625	441	64	1	9	2904

Table 2: Pre-merger HHI of Bangladesh telecom industry. (Source:BTRC )

**Post-merger scenario:** According to the BTRC website in January 2018 the market share is distributed as Grameen Phone 44.81%, Robi 30.08%, Banglalink 22.01% and Teletalk 3.1% (Table 3). It is clearly visible after the merger of Robi and airtel they become the second-largest operator in the country.



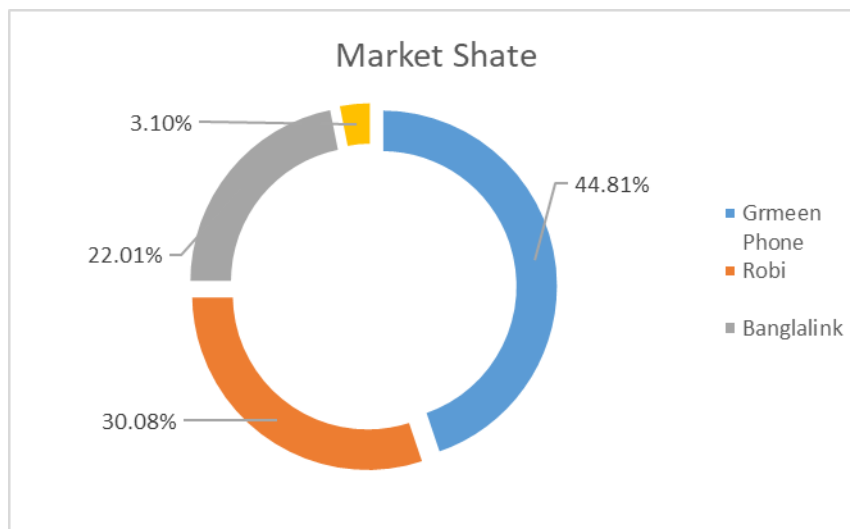


Figure 3: Source BTRC

Let’s see what happens to the market competition and concentration according to the HHI index.

Competitors	GP	Banglalink	Robi	Teletalk	Total
Market share	44.81%	22.01%	30.08%	3.10%	100%
Squared Market share	2007.9	484.4	904.81	3.61	3400.72

Figure 2 : Post-merger HHI of Bangladesh telecom industry (Source: BTRC)

We can see that after the merger the market become more concentrated and competition decreased and one of the small competitors Citycell went out of business. In another shift in the market, we can observe that the market leader Grameen phone and Robi after merger gained significant market share, on the other hand, Banglalink lost a remarkable pie of market share and the government-owned Teletalk remained stable. From the daily star business report we can see that the revenue of Grameen phones and Robi grow significantly after the merger and Banglalink’s revenue growth was stable from 2014 to 2017(Figure 3).

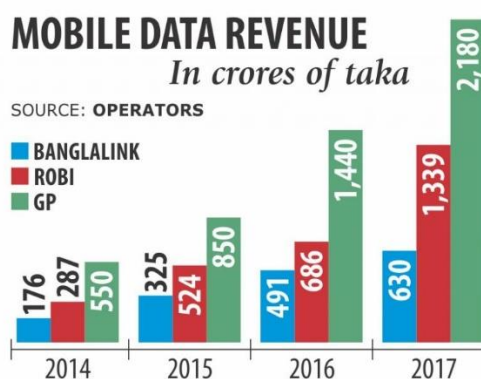


Figure 3: Market revenue growth, (Source: the Daily Star)

#### **4. LEGAL PROVISION OF MERGER APPLICATION IN BANGLADESH**

There are numerous laws that primarily regulate the merger activities of the companies of Bangladesh. In addition to that, there have some sector-wise specific laws, principles, regulations, guidelines, rules and policy decisions that also may be applicable. For example, if any merging seeking by companies from the telecommunication sector that matter must come under the provision of Bangladesh Telecommunication Act, 2001, Telegraph Act, 1885 etc.. On the other hand, there have some regulatory bodies under the various laws which are responsible to regulate the transaction of mergers.

##### ***4.1 Key Legal Legislation and Regulatory Bodies***

The Companies Act, 1994 is one of the major laws which contain the wide provision of transfer of share relevant with merger, acquisition and takeover of the companies. Section 228 and 229 are the key provisions of the said Act which deal and provide specific guidance regarding the proposed merger application that has been brought before the court by the companies. Moreover, both of the sections also provide the power of the High Court to approve the scheme of arrangement or amalgamation.

Substantial Acquisition of Shares and Takeovers Regulation, 2002 has been promulgated by the Bangladesh Securities and Exchange Commission (BSEC which is being used to regulate takeover and acquisition activities of the listed companies in the capital market but does not include merger.

Competition Act, 2012 has been enacted to control anti-competitive practices in business and enhance the business competition whereby section 15 prohibits any express and implied agreement of acquisition which causes or likely to cause an adverse effect on competition or creates monopoly or oligopoly in the market. Again this Act also provides the provision of a competition commission which has been empowered to deal with the complaint under the said Act. It is found in section 21 of the said Act that no merger can be enforced if it affects the competition in the market and thereby needs to take approval from the competition commission.

Foreign Exchange Regulation Act, 1947 is another law whereby section 18 provides that no person residing in Bangladesh without taking prior general and special permission from Bangladesh Bank shall do an act where a company that is controlled by Bangladeshi ceases to be so controlled.

In addition, The Contract Act, 1872 which governs the contracts and determine the rights of the parties and The Specific Relief Act, 1877 which provides remedies to the respective parties in case of breach or violation of any contract, are also relevant laws in terms of merger of companies. Furthermore, Income Tax Ordinance, 1984 also may be relevant.

##### ***4.2 Legal Procedures for Merger***

There are some considerations or legal formalities that must be followed by the business entities when one company wants to get merge with another. As of a first instance, before filling an application to the High Court, the companies who desire to get merge must examine their memorandum of association to search and check whether the power of a merger is vested within it. Through examining the object clauses if nothing is found

regarding merger, the respective companies call on a special meeting with its shareholders, board of directors and company law board to approve and pass a resolution for bringing necessary changes in the MOA. When it is found that the respective companies are listed in the stock exchange, then the copies of notices and approved resolution should be communicated to the stock exchange as well as concerned regulatory bodies of the stock exchange. After taking all the necessary changes in the MOA if required, the respective companies through mutual negotiation make a draft of merger proposal. Then after getting the approval of the relevant sector regulator the proposed merger draft must be brought before High Court through an application to get final approval.

After receiving the summary application from the company or from any creditor or member of the company and upon satisfying that the scheme is prima facie workable and fair, then under section 228(1) of the Company Act (1994), the High Court Division of the Supreme Court of Bangladesh make an order for call and arrangement of a meeting between a company and its creditors or between a company and its member for arbitration or mediation on any matter upon summary application. The respective companies are liable to conduct the meeting as per the specific direction or requirements of the court. Under section 228(4) of the said Act, the court is also empowered to give direction to stay the commencement or continuation of any suit until the disposal of the proceedings of the meetings if it finds it necessary.

Now the court may approve the scheme when following the direction under section 228(1) an agreement has been reached by the 3/4<sup>th</sup> majority of the members/creditor (as the case may be) in a meeting and such agreement shall be bound upon all interested parties if sanctioned by the court (section 228(2)). In order to make the order effective, a certified copy of the order needs to be filed with the Registrar and a copy of every such order must be annexed to every copy of the memorandum or constitution of the company issued after the order has been made (Section 228 (3) of the said Act). If this rule is not complied with, the company along with every officer of the company knowingly and willfully in default shall be liable to pay a fine up to 50 taka for each copy in respect of which the default is made (Section 228 (4) of the said Act).

The provision of section 229(1) comes into focuses when such a respective meeting has been arranged for the reason of reconstruction and amalgamation (merger) of the companies whereby one company refers as ‘transferor’ company and others as ‘transferee’ company. This sub-section also empowers the court to issue an order for the transfer of assets and liabilities among the companies without winding up of any transferor company.

Again under Section 229 (2) the court has the power to vest the properties and liabilities of Transferor Company to Transferee Company. If the property is charge-free by virtue of the agreement, it shall be transferred as free of any charge. In order to make the order effective, a certified copy of the order needs to be filed with the Registrar for registration within 14 days by every company related to this reconstruction or amalgamation process. If this rule is not complied with, the company along with every officer of the company knowingly and willfully in default shall be liable to pay a fine up to 200 taka (Section 229 (3)).

So, it is seen after coming to the final order of approval of merger from the High Court, all the assets and liabilities of the merged company will have to be transferred to the merging company as per the direction of the court.

## **5. CONSIDERATIONS FOR EFFECTIVE MERGER PRACTICES IN BANGLADESH**

Apparently, merger practices are not rampant in the competitive business market in Bangladesh but nowadays this tendency is increasing especially in the telecom and energy sector. It is evident that a lot of transactions have been taken place over a couple of years whereby the merger of Robi Axiata and Airtel Bangladesh is particularly noteworthy. Again in future, the public merger will be increased since more firms are being enlisted in the stock exchange. But the existing relevant laws and regulations are not enough to address the respective smooth practices that must be reformed to allow different merger strategies and fill the gap within the existing legal framework.

There has been some hurdle in the procedure of merger in Bangladesh as merger practices are absolutely court driven here and depend on the satisfaction of the court. Generally, interested companies start merger process through mutual agreement but this is not enough to provide legal cover to it. It is required and mandatory to take permission from the High Court for bringing it into effect which is long drawn. For getting the smooth and hassle-free practice of merger, the contractual form of merger which is approved by the shareholders of ordinary majority may be given statutory recognition in the Company Law, 1994 as it is the practice in many other countries.

Sometimes merger activities may be taken by the companies to enter into the market through a leading brand or to eliminate competition which may have adverse effects on the overall competitiveness of the business market. This matter has been addressed in the Competition Act, 2012 whereby section 21 provides a merger that adversely affects the competition in the market is restricted unless approved by the Competition Commission. Till now no rule and regulation has been framed under this Act to address the respective competition issue in merger activity. Though Competition Commission has been established, yet not be fully functional. So, all these issues must be taken into consideration for the fair practice of merger.

At present there have no specific rules or regulation to deal specifically with the public merger. If a public company listed in the stock exchange wants to merge with another company only the provision of the Company Act will be applicable and the court has the final say. Substantial Acquisition of Shares and Takeovers Regulation, 2002, is the only law in the case of acquisition that has now become obsolescent. Considering the lack of an existing legal framework, the key regulatory body of the capital market formed a committee in 2016 to revise the existing rules but unfortunately, the committee is only working with acquisition and takes over and not for merger (<http://www.newagebd.net>). So, the provision of merger also should be included in the coming regulation which will help the process of merger more transparent and systematic.

## 6. CONCLUSION

In the above discussion, it can be concluded that merger practice can be an effective tool that helps the companies to boost up their business especially for the companies of developing economic countries like Bangladesh. The merging of companies would simply open up a new window in cases of development and improvement in business on any levels. Bangladesh is so much potential in the merging of companies and obviously, this tendency will be increased in future. But there have some direct obstacles whereby legal or regulatory barrier is one of them which impact the fair and smooth practices of merger. In addition, there has no sufficient sector-wise policy for addressing that issue. Therefore, the country needs to take or adopt sufficient measures to address the gap and revise the existing laws in line with the international standard.

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