

Competition Commission of India notifies amendments to the Combination Regulations, 2011

On August 13, 2019, pursuant to Gazette Notification F.No. CCI/CD/Amend/Comb. Regl./2019, the Competition Commission of India (“**CCI**”) notified certain amendments to the Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011 (the “**Combination Regulations**”). The amended Combination Regulations came into effect on 15 August 2019.

A summary of the amendments is set out below.

GREEN CHANNEL APPROVAL

A new Regulation 5A and Schedules III and IV have been inserted in the Combination Regulations, which provide that transactions which satisfy certain conditions will be deemed to be approved by the CCI upon filing of a valid Form-I application with the CCI (“**Green Channel Transactions**”).

Green Channel Transactions

Green Channel transactions are those where, considering all plausible alternative market definitions, the parties to the combination, their respective group entities and/or any entity in which they, directly or indirectly, hold shares and/or control:

1. do not produce/provide similar or identical or substitutable product(s) or service(s);
2. are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in product(s) or provision of service(s) which are at different stages or levels of the production chain; and
3. are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in product(s) or provision of service(s) which are complementary to each other.

Procedure

Parties to Green Channel Transactions are required to notify such transaction to the CCI in the short-form (Form-I) format, together with certain declarations, including that the relevant Green Channel Transaction “*is not likely to cause adverse effect on competition.*” Upon submission and acknowledgement of such filing, the relevant Green Channel Transaction shall be deemed to be approved by the CCI.

In the event it is found that the relevant Green Channel Transaction does not fall under Schedule III, the CCI may declare such deemed approval to be void *ab initio*, and examine the filing in accordance with the provisions of the Competition Act. The CCI will, prior to any cancellation of deemed approval, provide the

parties an opportunity to be heard.

These amendments are welcome, since they should facilitate speedy completion of transactions where the parties to combinations are not engaged in any connected businesses, and therefore are unlikely to have any impact on competition in India.

However, given the broad language used to define Green Channel Transactions, which requires that (i) “*all plausible alternative market definitions*”, and (ii) all entities in which the parties directly or indirectly hold shares or control, be taken into account when determining overlaps (i.e., horizontal, vertical or complementary), it is unclear whether a significant volume of transactions will qualify as Green Channel Transactions.

REVISED NOTIFICATION FORM-I

The template for the short-form filing (i.e., Form-I) has been updated (a Form-I is required in cases where the parties’ market shares do not exceed certain specified thresholds (i.e., less than 15% combined market share in case of a horizontal overlap; or less than 25% in any vertically related market)).

The new Form-I has been re-arranged to group similar disclosures together and reduce repetition, and also re-worded to provide more clarity on the information required. New disclosure requirements in the Form I include:

1. foreign investment as a result of the combination and the country of origin of such FDI; and
2. whether any party to the combination was a party to any proceeding before the CCI during the past five years (if yes, details of such proceeding are to be provided).

Further, the requirements in respect of the non-confidential summary which accompanies a combination filing have been modified: whereas earlier a combination filing required two versions of the non-confidential summary: (a) a short form (500 word) summary which was published on the CCI’s website, and (b) a long form (2000 word) summary which was used for reference by the CCI members and the case team, parties are now required to file only one 1000 word summary which will be publicly accessible on the CCI’s website.

This update is intended only as a general discussion of issues and is not intended for any solicitation of work. It should not be regarded as legal advice and no legal or business decision should be based on its content.

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