

## COMPETITION NEWS ALERT

May 19, 2020

### CCI invites public comments on proposed amendment to the Combination Regulations omitting requirement of furnishing non-compete information

The Competition Commission of India (“**Commission/CCI**”) has [invited public comments](#) on the proposed amendment to the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2020 (“**Combination Regulations**”). The proposed amendment omits Paragraph 5.7 from FORM I filings which seeks information regarding non-compete restrictions agreed between the parties to combination and justification for the same.

The proposed amendment aims to dispense with the ex-ante assessment of non-compete clauses under the merger review process i.e. under Section 6 of the Competition Act, 2002 (“**the Act**”). All non-compete clauses will now be subjected to scrutiny under the antitrust provisions of the Act i.e., Section 3 and/or Section 4.

Commission had earlier issued a [Guidance Note on Non-Compete Restrictions](#) (“**Guidance Note**”) explaining the circumstances under which a non-compete restriction would be regarded as ‘ancillary’ or ‘not ancillary’. Interestingly, a finding that the non-compete restrictions was ‘not ancillary’ does not automatically raise presumption of infringement of the provisions of the Act and the CCI could not have termed the clause as anti-competitive without undertaking an analysis of competition harm.

The CCI’s rationale was that prescribing a general set of standards for assessment of non-compete restrictions may not be appropriate in modern business environments. Further, conducting a detailed examination on a case by case basis as part of the combination review process may not be feasible considering the strict timeframe prescribed under the Act for combination approvals (a combination is deemed approved after the expiry of 210 days from the date of notification of the combination).

It is anticipated that the proposed amendment will provide flexibility to the parties to the combination in determining the non-compete restrictions while reducing the information burden.

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**However, the Commission has included a caveat that the parties nevertheless will have to undertake a self-assessment to ensure that the non-compete arrangements do not fall afoul of Section 3 and/or Section 4 of the Act.**

**VA Comment:** *The proposed change in FORM 1 of the existing Combination Regulations is in line with the CCI's decisional practice since late 2018 where the CCI has been reserving its right to examine non-compete clauses under Section 3 and/or Section 4 of the Act which are not ancillary as per the Guidance Note, instead of directing the parties to modify them as part of combination approval process. However, the proposed change seeks to shift the burden on the parties to the transaction , to ensure that the non-compete clauses wherever included in transaction documents are competition compliant, based on , inter alia , the assessment framework provided under the Guidance Note , which will still be useful.*

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*For any further information/clarification, please feel free to write to:*

MM Sharma -[msharma@vaishlaw.com](mailto:msharma@vaishlaw.com)

Anand Sree -[anand@vaishlaw.com](mailto:anand@vaishlaw.com)