

# Competition News Alert

July 10, 2015

## CCI further amends Combination Regulations

The Competition Commission of India (“CCI”) vide a Notification (published in the Gazette of India) on July 01, 2015, (“the amendment”) published the “The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulation, 2015”<sup>1</sup>, amending the existing Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“Combination Regulations”). As part of its ongoing efforts to make M&A filing requirements simpler and readily acceptable to various stakeholders, CCI has revised its Combination Regulations, making them more forward looking, in keeping with some of the best practices in other jurisdictions.

Continuing with its trend of consultative process for merger related issues, CCI, at the time of publishing the draft amendments on its website in March, 2015, invited comments from all stakeholders. While giving inputs and suggestions on the amendments, the stakeholders welcomed the same, as the amendments now provide greater clarity and transparency and help in avoiding undue delays. Significantly, for the first time, the amendment envisages the publication of “Notes” to Form-I and Form –II for guidance of the parties, which is a welcome step and major changes in Form-I of the notice enlarging the scope of information including the date of pre-filing consultations, if any,

held with CCI; filing of an additional short summary in not more than 500 words (in addition to the existing long summary in not less than 2000 words) about the details of the Combination, detailed information on the relevant markets and sector overview etc.

Key changes brought about by the present amendments are:

### A. Changes in Form-I –

- I. Form-I has been enlarged and divided into 8 parts (as against 12 parts in Form-II) covering basic information etc. and relevant markets descriptions and detail about the parties to the combination and sector overview and summaries to the combination etc.
2. The new changes / additions in Form-I are as under:
  - i. Part I – Basic information on the combining parties.
  - ii. Part II and Part III – details of payment of fees and authorised signatory (along with a certified copy of the board resolution, in the case of a company).
  - iii. Part IV – Deals with threshold information in the manner previously set out under Form II.
  - iv. Part V –summary provisions in the earlier Form I have been replaced and now parties are to file a short and long summary in the manner set out in regulations 13(1A) and the new 13(1B) of the Combination Regulations.

<sup>1</sup> CCI has earlier amended Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 in February 23, 2012; April 04, 2013 and March 28, 2014.

- v. Part VI –Deals with description of the combination and requires information, to be furnished, relating to the structure of the combination; change of control and ownership of the combining enterprises and downstream enterprises; purpose and rationale of the combination; details of filings made in other jurisdictions (if any); value and form of the consideration of the combination; specific details and justifications regarding any non-compete provisions amongst other details ,along with the supporting documents as (may be) listed in the Notes to Form I, if applicable.
- vi. Part VII – Parties are required to provide comprehensive details of each combining party; their products or services; the products and services provided by enterprises within their respective groups; details of horizontal overlaps and vertical relationships; and an overview of the sector(s) involved in the combination.
- vii. Part VIII – Combining parties need to provide extensive details of the relevant market(s); the size of the relevant market(s); the market shares of the combining parties in such relevant market(s); the market shares of group enterprises (where horizontal overlaps or vertical relationships exist); the market share of competitors; and the details of the suppliers and the customers. Where vertical relationships exist, the Form I requires parties to provide details of upstream and downstream markets; details of competitors in both markets; and details of existing supply arrangements between the parties along with the value of such transaction.

## **B. Changes in the regulations –**

### **1. In Regulation 5: Form of Notice for the proposed combination**

- (a) A new sub regulation ( 3 A) has been inserted which provides that the parties to the combination shall file Form I and Form II in accordance with the Notes to the respective forms (to be) issued by CCI and published on its official website , from time to time

*Comment- it may be noted that the “Notes” to Form I and Form II have yet to be published by CCI.*

- (b) In sub regulation 8, second proviso, the words “Central Government or State Government or” stand omitted.

### **2. In Regulation 6 - Filing of details of acquisition under sub – section (5) of Section 6 of the Competition Act, 2002.**

- (a) In sub regulation (2) , CCI has reduced the number of copies of the notice (in Form I, II, or III) that have to be submitted from two to one.

### **3. In Regulation 8 - Failure to file Notice**

- (a) in sub –regulation(2) for the parties who fail to file notice ,the requirement of filing notice only in Form II has been done away with and the parties shall now file the notice either in Form I or Form II, as decided by the Commission.

### **4. In Regulation 9 - Obligation to file the Notice**

- (a) in sub regulation (1) and (3) CCI has now allowed the notice to be signed by any person duly authorized by the Board of Directors of the company as against the company secretary who was earlier only

authorized to do so. Further in sub regulation (4) in cases of inter-connected or interdependent transactions which may ultimately amount to a combination, the requirement of filing a single notice has been made mandatory.

## 5. In Regulation 13 : Procedure for filing of Notice

- (a) In sub regulation(1), CCI has reduced the no. of copies from “two copies” to “one copy”.
- (b) After sub –regulation (1), new proviso has been inserted which provides that if the parties to the combination request confidentiality of information or document(s) under sub- regulation (1) of regulation 30 of the Combination Regulations, such request may be filed as per the procedure laid down in the Competition Commission of India (General) Regulations, 2009, along with a duly filled public version of the notice and an electronic version thereof.
- (c) After sub-regulation (1A), sub regulation (1B) has been inserted which provides that the parties to the transaction to file a summary of combination, not containing any confidential information, in not more than 500 words (comprising of name of the parties; type of the combination; area of activity of parties; relevant market(s)) along with an electronic version shall have to be filed. The summary submitted under this sub –regulation shall be published on the website of CCI.

*Comment: This is an additional requirement. The earlier prescribed long summary of not less than 2000 words under sub regulation (1A) remains. Moreover, for the first time the summary of Combination will be published on the CCI website.*

## 6. In Regulation 14 – Scrutiny of Notice

- (a) In sub regulation (1), minor change in language has been made without any change in meaning.
- (b) After sub regulation (2), sub regulation (2A) has been inserted which provides that CCI may invalidate a notice if the same is not complete and not in conformity with the Combination Regulations including the relevant guidance Notes to be provided under Regulation 5. CCI, will have to record reasons for the decision within seven days, and will have to communicate the same to the parties to the transaction.
- (c) In sub – regulation (3) now provides that where the information or document(s) contained in the notice under Combination Regulation 5 or 8 or any response filed pursuant to Combination Regulation is incomplete in any respect, the parties to the Combination may<sup>2</sup> be asked to remove such defect(s) or furnish the required information including document(s).

## 7. In Regulation 17- Termination of Proceedings

- (a) New proviso has been inserted which provides that wherein, approval is conditional upon parties to the Combination carrying out modification to the combination, the proceedings shall terminate upon acceptance of the compliance report by CCI in accordance with Regulation 26 of the Combination Regulations.

---

<sup>2</sup> In place of the word “shall”.

## 8. In Regulation 19: Prima facie opinion on the Combination

- (a) In sub regulation (1), time period for formation prima facie opinion has been changed from thirty calendar days to thirty working days.
- (b) In sub –regulation(3) a new proviso has been inserted which provides that the time taken in obtaining the information from other enterprise(s) shall be excluded from the time prescribed for formation of the prima facie opinion but the same shall not exceed fifteen working days .

## 9. Regulation 30: Request for Confidentiality

- (a) In sub regulation (2), notifying parties seeking confidentiality on information or documents, are now mandatorily required to clearly state reasons, justifications and implication for the business of the parties seeking such confidentiality in the application for seeking confidentiality to be filed under sub regulation (1).

- (b) After sub- regulation (2), new sub regulation (3) has been inserted which provides for filing of an affidavit in accordance with Regulation 42 and 35 of the Competition Commission of India (General) Regulations 2009, in support of the application for seeking confidentiality to be filed.

## 10. In Schedule I after category 9

- (a) A new Category (10) has been inserted which provides that the exemption to the transactions included in the Schedule-I shall now also include the acquisitions of shares, control, voting rights or assets by a purchaser approved by CCI, pursuant to modifications to be ordered by CCI in accordance with its order under section 31 of the Competition Act, 2002.

For any further queries or assistance, please contact or write to:

**M M Sharma** ([mmsharma@vaishlaw.com](mailto:mmsharma@vaishlaw.com))

**Vinay Vaish** ([vinay@vaishlaw.com](mailto:vinay@vaishlaw.com))



All rights reserved.

© Vaish Associates, Advocates, 2015

1st & 11th Floor, Mohan Dev Building, 13, Tolstoy Marg, New Delhi-110001, India

### Disclaimer:

While every care has been taken in the preparation of this Competition News Alert to ensure its accuracy at the time of publication, Vaish Associates, Advocates assumes no responsibility for any errors which despite all precautions, may be found therein. Neither this Alert nor the information contained herein constitutes a contract or will form the basis of a contract. The material contained in this document does not constitute/substitute professional advice that may be required before acting on any matter.

[www.vaishlaw.com](http://www.vaishlaw.com)

#### DELHI

1st & 11th Floor  
Mohan Dev Building  
13, Tolstoy Marg  
New Delhi - 110001, India  
Phone: +91-11-4249 2525  
Fax: +91-11-2332 0484  
[delhi@vaishlaw.com](mailto:delhi@vaishlaw.com)

#### MUMBAI

106, Peninsula Centre  
Dr. S. S. Rao Road  
Parel  
Mumbai - 400012, India  
Phone: +91-22-4213 4101  
Fax: +91-22-4213 4102  
[mumbai@vaishlaw.com](mailto:mumbai@vaishlaw.com)

#### GURGAON

803, Tower A  
Signature Towers  
South City-I, NH-8  
Gurgaon - 122001, India  
Phone: +91-124-454 1000  
Fax: +91-124-454 1010  
[gurgaon@vaishlaw.com](mailto:gurgaon@vaishlaw.com)

#### BENGALURU

Unit # 305  
Prestige Meridian-II  
Building No. 30, M. G. Road  
Bengaluru - 560001, India  
Phone: +91-80-40903581/ 88 /89  
Fax: +91-80-40903584  
[bangalore@vaishlaw.com](mailto:bangalore@vaishlaw.com)