

# Competition News Alert

March, 2011

## Merger control provisions notified by the Central Government

The Central Government vide four Gazette notifications issued on Friday, **March 4, 2011** has brought the provisions of the Competition Act, 2002 (the Act) relating to regulation of “combinations” i.e. acquisitions, acquiring of control, mergers or amalgamations into force, with some modifications.

According to the **first** notification issued under sub-section (3) of section 1 of the Act, sections 5, 6, 20, 29, 30 and 31 of the Act dealing with the definition of combinations, regulation of combination, power of the Competition Commission of India (CCI) to inquire into combinations, procedure for investigation of combination and procedure in case of notice under sub-section 2 of section 6 of the Act and orders of the CCI on certain combinations, respectively, have been brought into force with effect from **June 1, 2011**.

According to the **second** notification issued under section 20(3) of the Act, the thresholds for qualifying the transaction as a combination under section 5 of the Act have been increased by fifty percent (50%) on the basis of the increase in the wholesale price index.

According to the **third** notification issued under clause (a) of section 54 of the Act, the target enterprise, whose control, shares, voting rights or assets are being acquired having assets of the value of not more than ₹ 250 crores or turnover of not more than ₹ 750 crores have been exempted from the provisions of section 5 of the Act for a period of five years.

According to the **fourth** notification, issued under clause (a) of section 54 of the Act, from the definition of “group” appearing in the explanation (b) of section 5 of the Act, two or more enterprises exercising less than fifty one percent (51%) of voting rights in the other enterprise, have been exempted for a period of five years.

### Competition Commission of India (CCI) publishes the new draft Merger Regulations.

Besides the above mentioned notifications by the Central Government, CCI on **March 1, 2011** has published the new draft merger regulations titled “Competition Commission of India (Procedure in regard to the transaction of business relating to



combination) Regulations, 2011”. The draft regulations are available on the website of CCI [www.cci.gov.in](http://www.cci.gov.in).

Some of the key features of the new draft regulations are listed below:

1. **Pre-Merger Consultation** - The CCI has provided for voluntary pre-merger consultation on a specific request made by the parties. It should be noted that the views expressed by the CCI during such consultations will not be binding.
2. **Shorter Review Period** – CCI will form its *prima facie* opinion within 30 days of filing of the notice for the proposed merger clearance. The draft regulations also require CCI to pass a final order within 180 days<sup>1</sup> of filing of merger notification, as opposed to earlier waiting period of 210 days.
3. **Exemption for certain target enterprises under acquisition**- The new draft merger regulation specifies a list of transactions (in **Schedule I**), including the target enterprise, whose control, shares, voting rights or assets are being acquired having assets of the value of not more than ₹ 250 crores or turnover of not more than ₹ 750 crores for which parties can file a short notice in **Form I**. However, in view of the third notification issued by the central government, mentioned above, the acquisition of such target enterprises falling below these thresholds are now exempted from the mandatory requirement of filing a notice, for a period of 5 years.
4. **Three types of Notice Formats** - The draft regulations provide for three forms of notices to be filed for obtaining approval wherever required.  
**Form I**, which is short notice form includes,
  - a. Acquisitions of not more than 15 percent of the total shares solely for an investment purpose or in the ordinary course of business and which does not lead to a control of the enterprise;
  - b. Acquisitions where the acquirer is already in control of the enterprise;

<sup>1</sup> Calendar Days

- c. Acquisition of assets where the assets of the parties are not directly related to the business activities of the party acquiring or made solely as an investment or in the ordinary course of business.

d. Acquisitions taking place within the group.

**Form II** – The longer notice Form which is to be filed in case of combinations other than those listed above.

**Form III** – This Notice Form is to be used by public financial institutions, foreign institutional investors, banks or venture capital fund, in respect of share subscription or financial facility or any acquisition made by them pursuant to any covenant of a loan agreement or investment agreement, in pursuant to sub-section (5) of Section 6 of the Act.

5. **Filing Fee** - The amount of fee payable along with the notice in Form I or Form II, as may be applicable, shall be as under :-

- (a) in case of merger or amalgamation or acquiring of control over an enterprise, the fee shall be rupees forty lakhs (₹ 40,00,000);
- (b) in case of acquisition of shares, voting rights or assets of the enterprise, the fee shall be as given in the Table below:-

Value of Acquisition	Fee (₹)
Less than rupees five hundred crores	Ten lakhs (₹ 10,00,000)
From rupees five hundred crores to less than rupees one thousand crores	Twenty lakhs (₹ 20,00,000)
Rupees one thousand crores and above	Forty lakhs (₹ 40,00,000)

- 6. **Only acquirer to notify** - The draft merger regulation imposes the obligation to notify on the acquirer.
- 7. **Request for Confidentiality** – The draft regulations propose that any request for confidentiality of the documents submitted during the investigation shall be duly considered having due regard to the procedure laid down in the Competition Commission of India (General) Regulations, 2009.
- 8. **Appointment of independent agencies to oversee modification** - The draft regulations provide for appointment of independent agencies to oversee the carrying of modifications suggested by the CCI in cases where the parties have accepted such modifications and their implementation by the parties, in the opinion of CCI, needs supervision. The agencies to be appointed shall have no conflicts of interest. Such agencies may include an accounting firm, management consultancy firm or any other professional organization or independent practitioners of repute.

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

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