

Competition News Alert

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Competition Commission of India (CCI) notifies the Combination Regulations

CCI on **May 11, 2011** has published the final combination regulations titled “**Competition Commission of India (Procedure in regard to the transaction of business relating to combination) Regulations, 2011**”. The regulations, available on the website of CCI www.cci.gov.in, shall come in to force on **June 1, 2011**.

“Combination” as defined under section 5 of the Competition Act, 2002 (the Act), means “acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises”.

Salient features of the Combination Regulations are as under:

I. Shorter Review Period

Although the total period for review remains the same i.e. 210 days but -

- A. CCI will form its **prima facie opinion** under section 29(1) of the Competition Act, 2002 (the Act), **within 30 days** of the receipt of the notice of the proposed combination, in Form I or Form II, as the case may be, as to whether the combination is likely to cause an appreciable adverse effect on competition within the relevant market in India. CCI may call for additional information or accept modification, if offered by the parties before formation of such opinion, within the said period of 30 days; the time taken by the parties for furnishing additional information or for offering modification shall be excluded from the period of 180 days stated below; similarly, the additional time, not exceeding 15 days, needed by CCI for evaluation of the offered modification, shall be excluded from the period of 180 days. **[Regulation 19]**
- B. CCI shall endeavor to **pass the final order** either approving the combination or rejecting the



combination or approving the combination with modifications **within 180 days** of the filing of the notice under section 6(2) of the Act. **[Regulation 28 (6)]**

2. Exemption for certain transactions from filing of notice requirement

A. The new Combination Regulations specify a list of transactions (in **Schedule I**), which are ordinarily not likely to have appreciable adverse effect on competition in India, and declares that notice under section 6(2) of the Act need not normally be filed for such transactions. **[Regulation 4]**

B. **Schedule I**, includes, inter alia,

- (i) acquisitions of **shares or voting rights** –
- (a) solely as an investment or in ordinary course of business not exceeding 15% of the total shares or voting rights of a company;
 - (b) where the acquirer already has 50% or more shares or voting rights in the enterprise, except where the transaction results in transfer from joint control to sole control;
 - (c) pursuant to a bonus issue or stock splits or consolidation of face value of shares or subscription to rights issue, not leading to acquisition of control;
 - (d) by a person acting as a securities underwriter or a registered stock broker of a stock exchange on behalf of its clients, in ordinary course of business;
 - (e) by one person or enterprise of another person or enterprise within the same group.

- (ii) acquisition of **assets** –
 - (a) not directly related to a business activity of the acquiring party or made solely as an investment or in the ordinary course of business, not leading to control of the enterprise;
 - (b) by one person or enterprise of another person or enterprise within the same group.
 - (c) **‘Current Assets’** in the ordinary course of business.
- (iii) acquisition of stock-in-trade, raw materials, stores and spares in ordinary course of business;
- (iv) A combination taking place entirely outside India with insignificant local nexus and effects on markets in India.

3. Three types of Notice Forms

The Combination Regulations provide for three forms for the notice to be filed, wherever required, depending on the transaction.

- A. The parties have been given an option, to file the details of the proposed combination, in either **Form I** or **Form II**, depending upon the category to which the proposed transaction belongs to. **[Regulation 5(3)]**
 - (i) **Form I**, which is **short form** applicable for certain, specified categories of transactions mentioned in Regulation 5(2), Clause (a) to Clause (e).
 - (ii) **Form II**, which is a **long form** applicable to categories other than those mentioned for Form I above, including –
 - (a) **Horizontal** combinations (where parties are engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable service) and the combined market share of the parties shall not exceed 15% in the relevant market;

- (b) **Vertical** combinations (where parties are engaged at different stages or level of production chain in different markets, in respect of production, supply, distribution, storage, sale or trade in goods or provisions of services) and their individual or combined market share is less than 25% in the relevant market.

- B. **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. **[Regulation 6]**

4. Filing Fee

The amount of fee payable along with the notice in **Form I** or **Form II**, has been reduced substantially as under :- **[Regulation 1 I]**

- A. **Form I** – Rupees Fifty Thousand Only (₹ 50,000/-)
- B. **Form II** – Rupees Ten Lakhs Only (₹ 10,000,00/-)

However, there are no fees for **Form III**.

5. Belated notice

Where a notice filed in Form I or Form II is received beyond the time limits of 30 days prescribed under section 6(2) of the Act, the Commission may admit such notice without prejudice to its power to impose penalty for non-furnishing of such notice under section 43A of the Act. **[Regulation 7]**

6. Transactions taking effect before June 1, 2011 need not be notified

CCI has now removed the ambiguity by declaring that only such combinations that “take effect” on or after June 1, 2011 need to be notified to CCI. Accordingly, the Notice under section 6(2) of the Act would be applicable as follows: **[Regulation 3 I]**

- A. For acquisitions referred to in clause (a) of section 5 of the Act or acquiring of control referred to in clause (b) of section 5 of the Act, where the binding document(s) is executed, on or after June 1, 2011.

- B. For mergers or amalgamations referred to in clause (c) of section 5 of the Act, notice to be filed only in regard to proposals approved by the Board of Directors on or after June 1, 2011.

7. Obligation to file the notice

- A. The Combination Regulations impose obligation to notify on the acquirer, including in cases of hostile acquisitions where the acquirer is not in a position to notify, the party being acquired may be asked to notify. In cases of mergers or amalgamations, parties shall jointly file the notice in Form I or Form II, as the case may be.
- B. In cases where the ultimate intended effect of a business transaction is achieved by way of a series of steps or smaller individual transactions which are interconnected or inter-dependent on each other, which may amount to a combination, a single notice, covering all these transactions, may be filed by the parties to the combinations. **[Regulation 9]**

8. Request for Confidentiality

The Combination Regulations prescribe 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. The request may, inter alia, state the reasons, justification and implications for the business of the parties so that the same may be considered by the Commission while taking decision in the matter. **[Regulation 30]**

9. Appointment of independent agencies to oversee modification

The Combination 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, law firm or any other professional organization or independent practitioners of repute. The payment to the agencies appointed shall be made by the parties. **[Regulation 27]**

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