

# Competition News Alert



October 11, 2018

## Competition Commission of India further amends Combination Regulations

The Competition Commission of India ('**CCI**') by way of a notification dated 9 October 2018 ("**Notification**") has further amended the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulations**").

The Combination Regulations provide the procedural framework for notifying the CCI of any acquisition, merger or amalgamation which constitutes a 'combination' under the Act. Parties to a combination are obliged to notify the CCI disclosing the details of the proposed combination prior to consummation of the combination. The proposed amendments aim to provide further clarity and expedite the disposal of combination cases.

The salient features of the main changes brought forth through the Notification are mentioned below:

### **Regulation 16A - Provision to withdraw and refile notice**

The newly inserted Regulation 16A(1) enables parties to the combination to withdraw and refile the notice (either filed voluntarily under Regulation 5 or under directions of CCI under Regulation 8) with the permission of the CCI, prior to the issuance to the show cause notice ("**SCN**") under Section 29(1) of the Competition Act, 2002 ('**Act**').

Noticeably, this is in addition to the existing provision, under which if any material change in the notice filed, which in the opinion of CCI, is likely to affect the factors for determination of the appreciable adverse effect on competition ('**AAEC**'), the CCI had to necessarily invalidate the notice already filed, after recording reasons, and after giving the parties an opportunity to be heard. With this amendment, the parties get an option to address the material deficiencies in the notice without facing an invalidation by the CCI.

The newly inserted Regulation 16A(2) also provides that in case the parties withdraw a notice and file afresh under sub regulation (1), the fee already paid in respect of such notice shall be adjusted against the fee payable in respect of the new notice, provided the refiling is done within a period of three months.

### **Regulation 19(2) and Regulation 25(1A)-Voluntary modifications to combinations**

The amended Regulation 19(2) affords an opportunity to parties to offer voluntary modifications to the combination before the formation of the *prima facie* opinion by the CCI under Section 29(1) of the Act i.e. prior to issuance of the SCN.

The newly inserted Regulation 25(1A) provides another opportunity to the parties to offer modifications after the issuance of the SCN to remove the competition law concerns raised by the CCI in the SCN.

## Clarification to the 210 day time frame

Under the scheme of the Act, there is a deemed approval of a combination, if the CCI does not approve/block a combination within 210 days from the date of notice given to the CCI. The amended Regulations provide that certain time periods (such as the 15 days' time taken by the CCI to evaluate the voluntary modifications offered by parties under Regulation 19(2) and Regulation 25(1A) as aforesaid) will be excluded from the 210-day timeline provided under Section 6 (2A), Section 29(2) and Section 31(11) of the Act.

**VA Comment:** *Notably the CCI has dropped the caveats proposed to the Item 1 exemption of Schedule I, dealing with minority acquisitions, which would have significantly narrowed down its scope. The proposed amendments to the Item 1 Exemption would have increased the compliance burden on entities, particularly private equity investors, even when the acquisitions are "passive" i.e. no acquisition of control. The CCI's decision to drop the proposed explanation to Item 1, Schedule I is pro-business which will encourage the investment climate and is a welcome step.*

For any further details and clarifications, please feel free to write to:

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