

## COMPETITION NEWS ALERT

April 03, 2020

Dear Readers,

The current lockdown due to COVID 19 pandemic , has not deterred the Fair Trade Regulator , the **Competition Commission of India (CCI)** , to continue with its efforts to bring transparency and clarity as well as convenience of procedure of filings etc by parties towards ease of doing business.

We bring you a gist of the latest developments on the combination front.

### 1. CCI allows Pre-Filing Consultations (PFC) through video conferencing

CCI, vide its Press Release dated 19<sup>th</sup> March 2020, has allowed the facility of video conferencing to Parties desirous of utilizing , pre-filing consultation (PFC), for seeking informal guidance *inter alia* on (i) determining filing related requirement (s) (ii) information to be given in the notice to be filed for a proposed combination (iii) automatic approval of certain categories of combination through Green Channel.

This facility has been allowed to help Parties to avoid travelling to New Delhi from Mumbai and other metropolitan cities for PFC.

For enterprises based in Mumbai, CCI has made arrangements for conducting PFCs through the video conferencing mode at the Office of Regional Director, Registrar of Companies, Ministry of Corporate Affairs, Mumbai.

Parties desirous of using this facility have to follow the procedure given in the [CCI guidance note on Pre-filing Consultation](#) available on Commission's website and have to specifically mention in their request for PFCs about the availing of video conferencing facility.

### 2. CCI revises guidance to Note to FORM I for Merger Filings -

CCI, vide its Press Release dated 28<sup>th</sup> March 2020 has published the *Revised notes to Form I*. The revised notes incorporate the amendments made to Form I of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulations**") in August 2019, while introducing "Green Channel" for automatic approvals of certain combinations . You may see the summary of these amendments [here](#).

The revised notes, in addition to providing the scope of the information and documents to be submitted along with the Form, also provide the much-needed clarity regarding the eligibility criteria for [green channel approval](#).

The key revisions to the notes are as follows:

#### A. Clarity on complementary overlaps:

The newly inserted Regulation 5 A of the Combination Regulations provided automatic approval for combinations that did not have any horizontal, vertical or complementary overlaps. However, there was an ambiguity in so far as to what constituted complementary products/services.

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The revised notes now specify that complementary products/services constitute those products/services that are combined and used together (e.g. printers and ink cartridges), and which enhance the value of the combined product/service.

### **B. Specifying eligibility for green channel approval:**

To avail the green channel approval route overlaps had to be checked not only between the parties to the combination and their respective group entities but also *any entity in which they, directly or indirectly, hold shares and/or control*. To allay fears that the broad scope will diminish the efficacy of the green channel route, this phrase has been read down to only include entities where a party has:

- (i) Direct or indirect shareholding of 10% or more; or
- (ii) A right or ability to exercise any right (including any advantage of commercial nature with any of the party or its affiliates) that is not available to an ordinary shareholder; or
- (iii) A right or ability to nominate a director or observer in another enterprise.

### **C. Relaxation of scope of market-facing information:**

The revised Form I had placed an additional burden on the notifying parties to submit information on the total market size and market shares of the parties, as well as the market shares of five largest competitors for three (3) years instead of the existing one (1) year requirement, for all markets where there exists a horizontal, vertical or complementary overlap.

Providing relief to the parties, the revised notes now clarifies that data for three (3) years is required only when the combined market share of the parties exceeds 10%.

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