

Competition News Alert

January 11, 2016

CCI further amends Combination Regulations

The Competition Commission of India (“CCI”) vide a Notification (published in the Gazette of India) on January 08, 2016, (“the amendment”) published the “The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulation, 2016”¹, amending the existing Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“Combination Regulations”) prescribed under clause (b) and (c) of section 64 (2) of the Competition Act, 2002 (“the Act”). As part of its ongoing efforts to make M&A filing requirements simpler and readily acceptable to various stakeholders, CCI has further revised its Combination Regulations, making them more forward looking, in keeping with some of the best practices in other jurisdictions.

Key changes brought about by the present amendments are:

A. Changes in the regulations –

I. In Regulation 5: Form of Notice for the proposed combination

- (a) In sub regulation (2), the words “verified” stand omitted; which implies that notice to be filed under sub –section 6(2) in Form-I as specified in schedule II to these regulations, need not be verified as provided earlier.

- (b) A new proviso in sub regulation (8) has been substituted which provides where a public announcement has been made in terms of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, for acquisition of shares, voting rights or control, such public announcement shall be deemed to be the “other document”.

Comment: This is an important change as it includes announcements made under the SEBI Takeover Regulations as a category of “other Documents” under section 6(2) of the Act.

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

In sub regulation (2), the words “verified” stand omitted.

3. In Regulation 9 –Obligation to file the Notice

- (a) in sub regulation (1), in the proviso, for the words “board of directors of the company for the said purpose:”, the word “company” shall be substituted;
- (b) in sub regulation (3), in the proviso, for the words “board of directors of the company for the said purpose:”, the word “company” shall be substituted;
- (c) in sub-regulation (4), the words “or inter-dependent on each other” shall be omitted.

¹ 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; March 28, 2014 and July 01, 2015.

4. In Regulation 13 : Procedure for filing of Notice

In sub regulation (1), the words “verified” stand omitted.

5. In Regulation 14 – Scrutiny of Notice

(a) In sub regulation 2A, a new proviso has been inserted which provided that the Commission may give an opportunity of being heard to the parties to the combination in accordance with regulation 24 of these regulations before deciding to invalidate a notice ; further the proviso also provides that period between the commencement of proceedings under this regulation till the decision of the commission regarding validity of the notice , shall be excluded from the period specified in sub-regulation (11) of section 31 of the Act and sub-regulation (1) of regulation 19 of these regulations .

Comment: This is welcome since it provides an additional opportunity to the parties to rectify the defects in the notice.

6. In Regulation 31 – Filing of notice under sub-section (2) of Section 6 of the Act

The whole regulation stands omitted.

Comment: This regulation was unnecessary since it duplicated the statutory provision of section 6(2) of the Act and has therefore been deleted.

7. In Schedule I to these regulations;

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(a) in category (1), the following explanation has been inserted :

“Explanation:- The acquisition of less than ten per cent of the total shares or voting rights of an enterprise shall be treated as solely as an investment:

Provided that in relation to the said acquisition,-

(A) *the Acquirer has ability to exercise only such rights that are exercisable by the ordinary shareholders of the enterprise whose shares or voting rights are being acquired to the extent of their respective shareholding; and*

(B) *the Acquirer is not a member of the board of directors of the enterprise whose shares or voting rights are being acquired and does not have a right or intention to nominate a director on the board of directors of the enterprise whose shares or voting rights are being acquired and does not intend to participate in the affairs or management of the enterprise whose shares or voting rights are being acquired.”;*

(b) *in category (1A), the words “not resulting in gross acquisition of more than five percent (5%) of the shares or voting rights of such enterprise in a financial year,” shall be omitted;*

8. In Schedule II to these regulations,

(a) in Form I, for verification part, the following shall be substituted, namely:-

“DECLARATION

The notifying party declares and confirms that all information given in this Form and all pages annexed hereto is true, correct and complete to the best of its knowledge and belief, and that all estimates are identified as such and are its best estimates based on the underlying facts.

The notifying party is aware of the provisions of sections 44 and 45 of the Act.

Signed by or on behalf of the notifying party

Signature(s)

Name (in block capitals):

Designation:

Date: _____

[In case there are more than one notifying parties, each party may use the same format.]”

- (b) In Form II, for verification part, the following shall be substituted, namely:-

“DECLARATION

The notifying party declares and confirms that all information given in this Form and all pages annexed hereto is true, correct and complete to the best of its knowledge and belief, and that all estimates are identified as such and are its best estimates based on the underlying facts.

The notifying party is aware of the provisions of sections 44 and 45 of the Act.

Signed by or on behalf of the notifying party

Signature(s)

Name (in block capitals):

Designation:

Date: _____

[In case there are more than one notifying parties, each party may use the same format.]”;

- (c) In Form III, for verification part, the following shall be substituted, namely;-

“DECLARATION

The notifying party declares and confirms that all information given in this Form and all pages annexed hereto is true, correct and complete to the best of its knowledge and belief, and that all estimates are identified as such and are its best estimates based on the underlying facts.

The notifying party is aware of the provisions of sections 44 and 45 of the Act.

Signed by or on behalf of the notifying party

Signature(s)

Name (in block capitals):

Designation:

Date: _____

Comment: This is an important change in all Forms as it puts onus of correctness of the information provided on the parties to the combination and forewarns of the consequences of sharing incomplete, incorrect or false information and data with CCI.



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