



CCI amends the Combination Regulations to provide for approval under Automatic Route

August 14, 2019

Background:

In an effort to match the central government directives to simplify business regulation in the country, the Competition Commission of India (CCI) on August 13, 2019, made encouraging changes to the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (**Combination Regulations**). These amendments to the Combination Regulations will be effective from August 15, 2019.

Key Takeaways:

- a. **Introduction of Green Channel:** The CCI has now identified certain category of transactions as 'Green Channel' transactions. The newly introduced Green Channel transaction is one where, considering all plausible alternative market definitions, the parties to the transactions (including their group companies and subsidiaries):
 - are not competitors i.e., do not produce/provide **similar or identical or substitutable** products/services;
 - are not and cannot potentially be vertically related i.e., are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in products or provision of services which are at **different stage or level of production chain**; and
 - are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in products or provision of services which are **complementary to each other**.
- b. **Green Channel transactions are deemed to be approved:** As per the new regulation 5A of the Combination Regulations, parties to a Green Channel transaction can file notice with the CCI in Form I with a declaration that proposed transaction falls under the Green Channel and is not likely to cause an adverse effect on competition. Once such a notice is filed and an acknowledgement granted by the CCI, the transaction would be deemed to be approved under section 31 (1) of the Competition Act, 2002 (Act). However, should the CCI, after hearing the parties, find that proposed transaction is not applicable for the Green Channel or is likely to cause AAEC, approval granted would be *void ab initio* and the CCI would assess the transaction as per the appropriate provisions of the Act.
- c. **Changes to Form I:** To accommodate the Green Channel stipulations and to bring greater clarity to the present Form I, the CCI has revised the transaction details as required under Form I. For instance, under description of combination, the CCI now requires the parties to disclose details of foreign investment as a result of the proposed transaction (FDI, FPI etc.)
- d. **Detailed summary of the proposed transaction no longer required:** The CCI has amended Regulation 13(1A) removing the requirement for providing a detailed (*more than 2000 words*) summary of the transaction and now only a 1000-word summary shall be filed for publication on the website.

ELP Comment:

The CCI is the first competition authority to have brought in the concept of anti-trust approvals under the automatic route. Given the mandatory and suspensory nature of the CCI's jurisdiction i.e., transactions cannot be implemented before approval from the CCI, the introduction of a green channel will hasten the approval process for simple transactions having no appreciable adverse effect on competition (AAEC). It will also help in creating enforcement priorities and ensure optimum utilization of the limited resources available with the CCI. The Competition Law Review Committee (CLRC) has also recognized the various benefits of a green channel in its report released on August 14, 2019 (available

[here](#)). The recommendations of the CLRC were implemented by the CCI in some part even before the committee report was made public.

Despite these laudable achievements, these amendments may give rise to uncertainties.

First, while any transaction under the Green Channel is deemed to be approved, it is unclear as to when the CCI will assess if the Green Channel route has been correctly taken. Given that after the deemed approval the parties would ideally consummate the transaction, should the CCI later hold the approval to be void ab initio, the parties (subject to a clarification in the Combination Regulations or amendment in the Act) may be liable for non-compliance proceedings under the Act.

Second, while the Green Channel does make the approval process faster, it does not make it less cumbersome, since the parties would have to file the detailed Form I.

Third, there is still no fast track procedure for transactions arising out of the insolvency resolution process under the Insolvency and Bankruptcy Code, 2016. Notably, the CLRC recommended that such transactions be included within their proposed automatic route.

Fourth, given that a transaction under the Green Channel would be deemed to be approved, it would have been encouraging if the filing fee of INR 15 lacs would have been waived off.

The notification as published in the national gazette, regarding these amendments, is available [here](#).

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com.

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