LAW & POLICY UPDATE

COMPETITION & ANTITRUST

CCI proposes to amend Combination Regulations

By: Bharat Sharma, Partner

The Competition Commission of India (**CCI**) issued a press release[1] proposing to omit Para 5.7 from Form I, which provides for giving information regarding non-compete restrictions (**Restrictions**) under the Combination Regulations[2]. If the proposal is effectuated, it may assist CCI in adhering to the timelines for deciding applications seeking its approval for combinations.

Parties entering into a combination may not henceforth be required to furnish information on non-compete restrictions for the purpose of its examination by the CCI. They won't also be required to justify such non-compete restrictions, if the CCI's current thinking is anything to go by.

CCI is of the view that prescribing a general set of standards for assessment of non-compete restrictions may not be appropriate in modern business environments. While it may be possible to conduct a detailed examination on case by case basis, the same may, however, not be feasible considering the timelines followed in combination cases as per the release.

It maybe recalled that the CCI had already issued a Guidance Note explaining the circumstances under which a non-compete restriction would be regarded as 'ancillary' or 'not ancillary'. The Guidance Note provides that three years of non-compete obligation is usually justified in case of transfer of goodwill and know-how and two years in case of transfer of goodwill alone. It further provides that the scope of non-compete shall be restricted to the business sold and the territory where it was conducted. However, a finding that the restriction is not ancillary does not raise any presumption of infringement under the provisions of the Act.

---

[1]Press Release No. 10/2020-21, dated May 15, 2020, CCI, https://www.cci.gov.in/sites/default/files/whats_newdocument/PublicComments-Non-Compete.pdf
[2]Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011