

Legal Update- Competition Commission of India

The Competition Commission of India (CCI), in an effort to reform merger control regulations and promote ease of doing business in India, has introduced certain amendments to the *Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2011 (Combination Regulations)*. The amendments are effective from 15 August 2019 and the key changes include:

Introduction of Green Channel

Before the Amendment, parties to a combination (which is the acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises) had to wait for the approval from CCI upon submission of required forms and documents being a time consuming and cumbersome process. Now, under the Amendment, an optional automatic approval route called Green Channel is available which fall under the newly introduced Schedule III. Additionally, a declaration must be provided under the new Schedule IV of the Combination Regulations post which, such a transaction will be deemed as approved. The declaration under Schedule IV has been added in order to safeguard the market from any Appreciable Adverse Effect on Competition (AAEC). The whole process will be carried out on a self-assessment basis by the parties i.e. they need to self-certify the conditions as laid under Schedule III, which are explained below.

Previously, there was no deemed approval route for a combination under the Combination Regulations. Schedule III provides a Green Channel to the parties which do not have any overlap transactions which are identified in the form of- (i) horizontal arrangements i.e. production of similar/identical/substitutable products or services, and/or (ii) vertical or complementary arrangements i.e. directly or indirectly engaging in any activity related to production/supply/storage/distribution/sale/services in different stages where another party to the combination is involved.

Such an overlap must be identified between (i) the parties, (ii) their group entities, (iii) where the parties directly or indirectly hold shares; and (iv) where parties directly or indirectly exercise control. If CCI concludes that such a transaction is not falling under the conditions given under Schedule III and declaration under Schedule IV is found to be false, then such deemed approval will be *void ab initio* and it shall be dealt in accordance with provisions contained in the Competition Act, 2002.

Substitution of Regulation 13(1A) and omission of Regulation 13(1B)

The Amendment has simplified the requirement of providing summary details of combination which is mandated to be published on the website of CCI and has done away with additional requirement needed on such combination to ease the process.

Revision of Form 1/Simple Form

The Amendment has also revised and restructured Form I. Parties to a combination shall have to provide additional details related to any inter-connected transactions between such parties, information on rights acquired by such parties, any investment from outside India as a result to such combination etc. along with submission of documents like annual report of such parties, chart depicting shareholding and voting rights along with host of other related documentation along with declaration under Schedule IV.

Conclusion

The intent behind such an Amendment aims to promote ease of doing business in India. CCI has taken an appreciable step in the right direction by providing an automatic route under the existing Combination Regulations. Self-assessment of the documents by the parties without any involvement of the CCI will save precious time and efforts of the parties to the proposed combination. Additionally, simplification of Form – I will help the parties to capture the requisite information swiftly. The Amendment to merger control regulations is a welcome step and it will surely help to promote a better business sense.