

July 2015

COMPETITION LAW UPDATE

The Competition Commission of India (“**CCI**”) has notified The Competition Commission of India (Procedure in regard to the transaction of business relating to the combinations) Amendment Regulations, 2015 (“**Amendment Regulations**”) thereby amending The Competition Commission of India (Procedure in regard to the transaction of business relating to the combinations) Regulations, 2011 (“**Combination Regulations**”). The Amendment Regulations are effective from July 1, 2015. A gist of the notification is given below:

- 1. Introduction of new Form I:** CCI has replaced the existing Form I with a new and detailed Form I. The new Form I requires the parties to furnish additional information to CCI regarding the meeting of thresholds, summary and description of combinations, details regarding the parties to the combination and other information. This will result in the parties providing more information upfront to CCI and will reduce the provision of additional information at the review stage of the form. Consequently, reducing the stopping of the clock for the CCI to deliver its order.
- 2. Introduction of notes to Form I and Form II:** New regulation 3A has been inserted which states that, the parties to the combination shall furnish Form I and Form II to CCI in accordance with the notes issued by it from time to time. CCI has also issued detailed notes to Form I and Form II. Parties will now have to file all the information as specified in the notes.
- 3. Deletion of words “Central or State Government”:** The words “Central or State Government” have been deleted from regulation 5(8) of the Combination Regulations. The effect being that communication of an intention of an acquisition to a “statutory authority” will be treated as date of execution of document for the acquisition and will be a notifiable event triggering the 30 (thirty) day statutory period, within which the acquirer must notify the CCI. The definition of statutory authority will need to be carefully looked at since the CCI has previously compared the FIPB (which is a part of the Department of Economic Affairs) with the IRDA which was set up pursuant to a specific statute.
- 4. Reduction in number of copies of forms to be filed:** The number of copies of the forms (Form I, Form II and Form III) to be submitted to CCI, have been reduced from two to one.
- 5. Filing of forms pursuant to delayed notification:** CCI has clarified in second proviso to regulation 8, that in case of a delayed notification of the combination to CCI by parties to the combination, CCI can direct parties to file either Form I or Form II, as decided by the CCI.

6. **Authority to file Form I or Form II given to any other person authorised by the board of directors:** CCI has modified regulation 9(1) and 9(3), thereby allowing any person authorised by the board of directors of the company to sign and verify the notice in Form I or Form II apart from the managing director or director of the company.
7. **Mandatory filing of single notice for smaller transactions giving effect to a transaction:** CCI has now, clarified in regulation 9(4) that parties to the combination shall mandatorily file a single notice, covering all the smaller inter-related transactions which give effect to a business transaction.
8. **Request for confidentiality:** A new proviso has been inserted to regulation 13(1) whereby it has been provided that in the event that notifying parties are seeking confidentiality of information or documents, then the parties must submit an application setting out the reasons and justifications for seeking confidentiality, along with a duly filled-in public version of the notice.
9. **Summary of combination to be submitted:** New regulation 13(1B) has been inserted, whereby the parties to the combination will now have file a short summary (not containing any confidential information) of not more than 500 words in addition to the summary of combination to be submitted under regulation 13(1A). The short summary shall contain the details regarding (i) name of the parties, (ii) type of combination (iii) area of activity of the parties to combination (iv) relevant market to which the combination relates etc. along with every notice of combination filed in Form I or Form II. CCI shall publish this summary on its website.
10. **Invalidation of notice:** New regulation 14(2A) has been inserted in the Combination Regulations whereby the CCI has been granted powers to invalidate a notice filed under regulation 5 or regulation 8 that is not complete and/or not in conformity with the Combination Regulations and also the guidance notes on the forms issued by CCI, by an order in writing.
11. **Termination of proceedings:** A new proviso has been added to regulation 17 whereby in cases where the CCI approval of a combination is conditional upon the modification of the combination by the parties, the proceedings under the Competition Act, 2002 will terminate upon the satisfaction of such modifications by the parties to the combination and acceptance of the same by CCI.
12. **Revised timelines:** The CCI will now form its prima facie opinion within 30 (thirty) working days instead of 30 (thirty) calendar days. Further, a new proviso has been added to regulation 19(3) whereby the time taken in obtaining information from any other enterprise is excluded from the above period of 30 (thirty) working days. However, this exclusion of time is only applicable for a period not exceeding 15 (fifteen) working days.

- 13. Confidentiality:** In regulation 30(1), a request for confidentiality submitted by the parties to the combination of information and documents, now has to compulsorily state the reasons, justification and implications for the business of the parties to the combination for consideration by CCI. A new sub-regulation 30(3) has been inserted whereby the parties seeking confidentiality of information shall now have to file an affidavit under regulation 42 of the Competition Commission of India (General) Regulations, 2009 stating that the conditions prescribed in regulation 35 of the Competition Commission of India (General) Regulations, 2009 have been satisfied.
- 14. Amendment of Schedule 1:** Schedule 1 of the Combination Regulations have been amended to exempt acquisition of shares, control, voting rights or assets by a purchaser which has been approved by CCI pursuant to an order under section 31 of the Competition Act 2002 from the notification requirements of the Competition Act, 2002.

IndusLaw Quick View:

The amendments have made the information in the notices to be filed with the CCI much more exhaustive. While this reduces the ambiguity in the filings and is expected to reduce the time required to process the same, the pre-filing workload of parties has increased significantly. CCI has also expanded the time available to it within which it is required to form a prima facie opinion about a proposed combination and has introduced the variable of public disclosure to the process. These amendments which aim to make filings simpler and more transparent, will result in greater wariness amongst participants as to the cost and predictability of outcome arising from a CCI notification.

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