

CCI Amends Merger Control Regulations

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The Competition Commission of India (“CCI”) on February 23, 2012 has notified Amendments¹ to the Merger Control Regulations².

The Merger Control Regulations required the proposed combinations³ or the combined entity (if the combination has been effected) to notify the CCI of such combination within seven (7) days of the approval of the board of directors for the merger or execution of the acquisition agreement.

The Amendments have been issued to streamline the procedure of notifying the CCI of any proposed combination, and effect, inter alia, the following modifications to the Merger Control Regulations:

- a. The non-exclusive illustrative list of instances in which the parties were required to give notice of the proposed combination to the CCI has been deleted from Regulation 5(2) of the Merger Control Regulations. The amendment appears to eliminate any confusion that may have lingered earlier and clarifies that every proposed combination shall mandatorily be notified to the CCI.
- b. Substituting the earlier sub-regulation 3 to Regulation 5, CCI clarifies that apart from cases where CCI itself may require parties to a combination to submit additional information; the parties may themselves choose to notify CCI of such additional information. It appears that CCI prefers such additional information to be disclosed where parties are either engaged in the business of similar or identical or substitutable goods or services or at different stages or level of production chain in different markets.
- c. The Amendments further provide that where in a series of steps or individual transactions, assets are transferred to an enterprise for the purpose of such enterprise entering into an agreement relating to a combination; the value of assets and turnover of the transferor enterprise shall also be taken into consideration in assessing the total value of assets and turnover of the transferee enterprise under the Competition Act, 2002.
- d. The fees to be paid along with the prescribed Form I and Form II has been increased manifold.
- e. The amended Regulation 13 now requires that the enterprise shall also submit a summary of the combination in at least 2000 (two thousand only) words. The summary should include the details regarding the products, services and businesses of the parties to the combination; value of assets/turnover for the purpose of section 5 of the Competition Act, 2002; respective markets in which the parties to the combination operate; details of agreements/other documents and the board resolutions executed/passed in relation to the combination; and nature and purpose of the competition in the relevant markets in which the parties to the combination operate. Any confidential information can be excluded from the summary.

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1. CCI (Procedure in Regard to the Transaction of Business Relating to Combinations) Amendment Regulations, 2012
2. CCI (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011. Refer our newsletter of May 16, 2011
3. A combination includes a merger, an amalgamation, and acquisition of control, shares, voting rights or assets which fulfill specified asset value or turnover threshold.