

C&A E-Alert: Competition Commission of India amends merger control regulations

The Competition Commission of India (CCI) on 1 July 2015 (published today, 6 July 2015) [amended](#) the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 (**Combination Regulations**). The latest set of amendments is the result of an annual exercise undertaken by the CCI to update the regulations that provide the procedural framework for seeking an approval for notifiable transactions. Notably, this year's exercise was preceded by a 'first-of-its-kind' consultation with stakeholders and has led to one of the most comprehensive reviews of the Combination Regulations in recent years.

In a first, the CCI has also issued [Introductory Notes to Forms](#) and the [Notes to Form I](#). Both of these documents serve as a useful guide for notifying the regulator of a proposed combination. The documents articulate the level of details that – perhaps – the regulator always expected from combining parties; and are a marked departure from the 'light touch' approach that the short – form filing (i.e., Form I) was previously associated with.

The key changes introduced by the CCI are summarized below:

Filing procedures

- a. **Guidance on filing Form I and Form II:** the CCI has issued detailed guidelines on the information it expects from notifying parties and the manner in which the information is to be presented. The relevant forms must be prepared in accordance with such guidelinesⁱ and non-compliance may lead to such forms being declared invalidⁱⁱ. The guidance notes will certainly go a long way in ensuring consistency in filings made before the regulator and avoid delays on account of incomplete or deficient notices.
- b. **New Form I (short-form filing):** one of the most significant changes in the latest round of amendments has been the replacement of the old Form I (short form filing) by the CCI.ⁱⁱⁱ The new Form I requires parties to present additional information to the regulator and is more specific in its approach. It is clear that the CCI wishes for parties to 'front-load' information and wants to do away with issuing defect-notices to the parties. Interestingly, the changes to the Form I were not part of the proposed amendments and stakeholders did not get an opportunity to provide comments on the new Form I.

The new Form I is divided into eight parts. Each part is briefly discussed below:

Part I – Basic information on the combining parties.

Part II and Part III – details of payment of fees and authorised signatory (along with a certified copy of the board resolution, in the case of a company).

Part IV - Parties to provide threshold information in the manner previously set out under Form II (long form filing).

Part V – the summary provisions in the old Form I have been replaced and now parties are to file a short and long summary in the manner set out in regulations 13(1A) and the new 13(1B) (see ‘summary’ below) of the Combination Regulations.

Part VI – this part deals with the description of the combination and requires information, to be furnished, relating to the structure of the combination; change of control and ownership of the combining enterprises and downstream enterprises; purpose and rationale of the combination; details of filings made in other jurisdictions (if any) etc. Importantly, the CCI has now sought information regarding the value and form of the consideration of the combination; and specific details and justifications regarding any non-compete provisions in the transaction documents. In the *Notes to Form I*, the CCI has further aligned the short form (Form I) with the long form (Form II) filing, by directing the combining parties to submit their annual accounts; and in cases where there are horizontal overlaps or vertical relationships between parties, the notifying parties are required to submit copies of all the presentations analysing the combination.

Part VII - under this part, the parties are required to provide comprehensive details of each combining party; their products or services; the products and services provided by enterprises within their respective groups; details of horizontal overlaps and vertical relationships; and an overview of the sector(s) involved in the combination. The *Notes to Form I* further articulate the manner in which such information is to be provided and specifies the level of detail expected by the regulator. For example, in the overview of the sector, the CCI expects parties to provide details of the supply chain, intermediate customers, importance of innovation and intellectual property rights, legal and regulatory provisions specific to the sector, etc.

Part VIII – in this part, the combining parties will now need to provide extensive details of the relevant market(s); the size of the relevant market(s); the market shares of the combining parties in such relevant market(s); the market shares of group enterprises (where horizontal overlaps or vertical relationships exist); the market share of competitors; and the details of the suppliers and the customers. Where vertical relationships exist, the new Form I requires parties to provide details of upstream and downstream markets; details of competitors in both markets; and details of existing supply arrangements between the parties along with the value of such transaction. The *Notes to Form I* states, amongst other things, that the parties are expected to provide all plausible alternative definition(s) of the relevant market, including the narrowest possible definition.

- c. **Copies of the notice:** the CCI has reduced the number of copies of the notice (in Form I, II, or III) that have to be submitted from two to one^{iv}.

- d. **Summary of the combination:** every notice filed in Form I (short form filing) or Form II (long form filing) is required to be accompanied with a short summary of not more than 500 words containing the details of the type of combination; the area of activity of the parties; and details of the relevant market.^v This summary is *in addition* to the detailed summary of the combination, which is submitted under regulation 13(1A). The CCI shall publish the short summary on its website to enable comments from third parties.
- e. **Execution of the notice:** in a welcome change, the CCI has done away with the requirement of permitting only the managing director, director or company secretary of a company to sign and verify the notice. Now, “any person” that has been authorised by the board of directors may sign and verify the notice in either Form I or Form II.^{vi}
- f. **Seeking confidentiality on submissions:** it has further clarified that in the event that notifying parties are seeking confidentiality on information or documents, 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. Although not stipulated in the Competition Commission of India (General) Regulations, 2009 (**General Regulations**), the application for confidentiality must be accompanied with an affidavit stating that the requirements of Regulation 35 of the General Regulations have been complied with by the notifying party.^{vii}

Changes to substantive provisions

The Combination Regulations are primarily ‘implementing regulations’. The regulations deal with the procedural aspects of merger control. However, the regulations also contain certain substantive provisions. The latest iteration of the Combination Regulations include the following changes:

- a. **Triggering event - limiting the definition of “other document”:** under the earlier regulations, if an intention of an acquisition is conveyed to the Central or State Government or a statutory authority, it would trigger a filing requirement. In the past, parties have tripped over this requirement and invited penalties from the CCI.^{viii} The amendments have deleted references to the Central and State Government. The amended regulations state that in addition to an agreement between the combining parties, if an intention of an acquisition is conveyed to a “statutory authority”^{ix}, it will be a notifiable event triggering the 30-day statutory period, within which the acquirer must notify the CCI.^x
- b. **Triggering event – series of transactions:** the CCI has clarified that if, through a series of transactions the ultimate intended effect of business transaction is achieved, one or more of which may amount to a combination, then parties to the combination *must* file a single notice covering all such transactions with CCI.^{xi}

- c. **Combinations pursuant to structural remedies:** Schedule I of the Combination Regulation contains a list of transactions that are exempted from the notifying requirements of the Competition Act, 2002. The CCI has now exempted transactions relating to the acquisition of shares, control, voting rights or assets by a purchaser approved by the CCI, pursuant to its order directing (structural) modifications to the combination.^{xii}

Other Changes

- a. **Failure to file notification:** the previous regulations stated that where parties to a combination have failed to notify the CCI, the CCI would direct such parties to file a notification in Form II (long form filing). It is now clarified that a belated filing may be made in either Form I or Form II, as decided by the CCI.^{xiii}
- b. **Incomplete notices:** the latest amendments insert a new regulation 14(2A) which empowers the CCI to invalidate a notice that is not complete and/or not in conformity with the Combination Regulations and the relevant guidance notes on the forms. The regulator will need to record reasons for its decision and communicate its decision within seven days, to the combining parties.
- c. **Time period for *prima facie* scrutiny of combinations:** given the increased scope of details required under the new Form I, the CCI has increased the self-imposed time period of thirty calendar days to thirty working days.^{xiv} The amendments also include a new proviso to regulation 19(3) that allows the regulator to 'stop-the-clock' when it seeks information from third parties regarding a combination. Laudably, under the amended regulations, the CCI will only be able to 'stop-the-clock' for a period not exceeding fifteen working days.
- d. **Termination of proceedings in cases of modifications:** where the CCI has imposed conditions for the clearance of a combination, the proceedings under the Competition Act, 2002 will culminate upon the combining parties satisfying those conditions and the CCI accepting the compliance report in respect of the satisfaction of such conditions^{xv}.

While the changes will certainly lead to filings being more tedious and may delay transaction timelines, the CCI must be appreciated for bringing in more transparency and certainty to its procedures. This may actually prevent the regulator from 'stopping-the-clock' during its review process, which had become the norm rather than the exception.

Should you have any questions, please contact members of our competition team.



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- ⁱ Regulation 5(3A) to the Combination Regulations.
 - ⁱⁱ Regulation 14(2A) to the Combination Regulations.
 - ⁱⁱⁱ A new Form I has replaced the earlier Form I in Schedule II to the Combination Regulations.
 - ^{iv} Refer regulation 6(2) and 13(1) to the Combination Regulations.
 - ^v Refer regulation 13(1B) to the Combination Regulations.
 - ^{vi} Refer regulation 9(1) and 9(3) to the Combination Regulations.
 - ^{vii} Refer proviso to regulation 13(1) to the Combination Regulations.
 - ^{viii} Combination case no. 2014/03/162, [notice given by Tesco Overseas Investments Limited](#).
 - ^{ix} Defined in section 2(w) of the Competition Act, 2002.
 - ^x Refer regulation 5(8) to the Combination Regulations.
 - ^{xi} Refer regulation 9(4) to the Combination Regulations.
 - ^{xii} Refer entry 10 of Schedule I to the Combination Regulations.
 - ^{xiii} Refer regulation 8(2) to the Combination Regulations.
 - ^{xiv} Refer regulation 19(1) to the Combination Regulations.
 - ^{xv} Refer regulation 17 to the Combination Regulations.