

Where Does Indian Merger Control Stand After 'Green Channel' Fast Track Approvals For Combinations?

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Having the Competition Act passed in 2002 and Competition Commission of India (hereinafter 'CCI') only started to function from 2009, Indian Competition law has taken many turns over the course of time and the 'Competition Law Review Committee', constituted in 2018, aims to ensure that the Indian legislation is in sync with the changing business environment.

As a result of this effort, the Government Notification of 13th August 2019 introduced a 'Green Channel' fast track procedure under Regulation 5A of the Combination Regulations (the notification can be found [here](#)) where the parties now only have to file a single form (Form I) for a combination that may have no major concerns regarding appreciable adverse effects on competition. Upon filing this Form I, the combination would be deemed to have been approved by CCI. However, once CCI find that the combination does not fall under Schedule III (Schedule III combination are listed below), the combination can be declared *void ab initio*. But CCI can only do this after giving the parties a fair opportunity to show otherwise.

The combinations falling under Schedule III, as below mentioned, where the parties to combination and their respective group entities and/or any entity in which they, directly or indirectly, hold shares and/or control:

1. do not produce/provide similar or identical or substitutable product(s) or service(s); and
2. are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in product(s) or provision of service(s) which are at different stage or level of production chain; and
3. are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in product(s) or provision of service(s) which are complementary to each other.

Notification also includes a much simpler Form I and what kind of information is to be supplied along with Form I to CCI.

What happens to the already existing procedure under Indian Competition law

The word 'combination' under the Indian Competition Act has a specific meaning under Section 5 and they are mandatorily notified to CCI for seeking approval by filing notice Form I or Form II, where a transaction between parties includes -

1. acquisition of assets, shares, voting rights or control, the value of assets and turnover of the acquirer or acquirer group, and the target enterprise, whose assets, shares, voting rights or control are being acquired.
2. acquisition of control by a person over an enterprise when such person already has direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, the value of assets and turnover of the enterprise or group to which the enterprise would belong, over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control.
3. mergers / amalgamations, the value of assets and turnover of the enterprise or group remaining after the merger or created as a result of the amalgamation.

The transaction above mentioned must satisfy the turnover thresholds which are as follows -

Parties test:

- Combined assets of value in India more than INR 20 billion or combined turnover in India is more than INR 60 billion; or
- Combined assets of the enterprises value more than USD 500 million, including at least INR 5 billion in India, or turnover is more than USD 1.5 billion, including at least INR 15 billion in India, in case either or both parties have assets/turnover outside India.

Group test:

- Combined assets of the group in India more than INR 80 billion or such group have turnover in India more than INR 240 billion; or
- Combined assets of the group value more than USD 4 billion, including at least INR 10 billion in India or turnover is more than USD 12 billion including at least INR 30 billion in India, in case group has assets/turnover outside.

After the notification of 13th August 2019, only when the parties to combination are not fulfilling Schedule III, *i.e.*, engaged into business of providing goods/ services which are substitutable in nature or complementary to each other, and are not belonging to different stage or level of production chain, the parties on their own or preferably file Form II when -

- the parties are engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable services and the combined market share of the parties to the combination after such combination is more than 15 % in the relevant market; or
- the parties are engaged at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or trade in goods or provision of services, and their individual or combined market share is more than 25 % in the relevant market.