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## Amendment in the Combination Regulations

Abir Roy (Lakshmikumaran & Sridharan, India) · Sunday, August 30th, 2015

In a press release dated 3 July 2015, Competition Commission of India (CCI) has clarified the scope of amendments made to the Regulations relating to Combinations. The amendments touch upon several procedural changes to be followed in case of filings by imparting more flexibility to the parties. A noteworthy aspect of the amendment is the insertion of a transparency element in case of merger filing procedure. The amendment clarifies the following:

Further, to bring in greater transparency regarding the review process, the amendments provide that a summary of every combination under review will be published on the website of CCI. Such publication will provide stakeholders an opportunity to submit their comments to CCI regarding the proposed combination.[ CCI Amends Regulations Relating To Combinations, Press Release dated 03.07.2015, available at: <http://www.cci.gov.in/May2011/PressRelease/prjuly15.pdf>]

The amendment has also been mentioned in Regulation 13 (1B) of the Combination Regulations. This amendment is path-breaking as the new regime would now allow any stakeholder to intervene in merger proceedings. The amendment is a step forward to the existing regime for inviting third party intervention in case of mergers. E.g. prior to this amendment, Regulation 19(3) of the CCI (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulation, 2011 governed the discretionary powers of CCI (as it deemed necessary) to call for information from other enterprises in it's inquiry whether the combination has caused or is likely to cause an appreciable effect on competition in India. Similarly, CCI could seek opinion of any other agency or statutory authority in relation to combination pursuant to Regulation 34 of the 2011 Regulation. Under it's own statutory power to regulate it's procedure (Section 36, Competition Act, 2002), CCI holds the power to invite experts or direct persons in respect to the trade in question and gather information. In-fact these provisions had been applied in merger cases. E.g. In the recent merger between Denki Kagaku Kogyo Kabushiki Kaisha and Mitsui & Co. Ltd. (2015), CCI sought the opinion of Rubber Board, Ministry of Commerce and Industry as well as certain users of chloroprene rubber in India. Similarly, Air India furnished it's views and comments on the Jet-Etihad merger deal (2013).

In the light of the existing position of law and the decisional practice of CCI, the amendment is likely to have twin implications:

- i. The amendment goes a step beyond the existing regime as it now provides an opportunity to any stakeholder or interested party to intervene in merger application under CCI's investigation. The focus of intervention shifts from CCI using it's discretion to parties now intervening on their own

accord. Therefore, as a business strategy, the competitors can give their comments on a combination to the Commission for their analysis.

ii. Earlier the competitors on their own could only make submissions during Phase II of the investigation (detailed investigation) or when they were to intervene under Regulation 19(3) of the 2011 Regulations. Now, any stakeholder can provide comments in-order to assist the CCI in making its determination of merger and the same can be exercised at any stage, i.e. a prima facie stage or a later stage of merger investigation.

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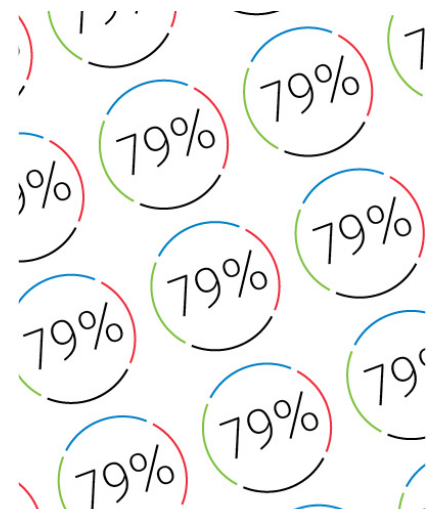
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“>Mergers

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