

# Kluwer Competition Law Blog

## Green Channel Route: Resolving the Impediment and Procedural Infirmities

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The unnecessary delay and piling up of cases are amongst the predicament of the Indian Judicial System. And the existence of this intricacy is not limited to the judiciary, it also stretches to other regulatory aspects and administrative systems across our country. Even specific tribunals and regulatory bodies are lagging behind in keeping pace with the required settlement speed. As a matter of fact, where the antitrust lawsuits are concerned, the ground reality is no different. This underlying issue screamingly tells us to find a remedy and act upon it. Observing the exigency for providing a smooth and hassle-free procedure in antitrust lawsuits pertaining to combination filings, the Competition Law Review Committee under the chairmanship of Mr Injeti Srinivas [submitted a recommendation](#) dated 26<sup>th</sup> July 2019 to the Ministry of Corporate Affairs, Government of India seeking necessary amendments in the Competition Act 2002 (the Act), which is the prime act governing all competition and antitrust matters across India (even abroad cases if the matter is related to Indian jurisdiction). The modifications [introduced a new concept](#) of Green Channel Route to facilitate the speedy disposal of specific merger and acquisition cases in which there is no underlying risk of any harm to competition regimes and no appreciable adverse effect on competition. The commencement of this provision enabled a party to pass through the intricacies of the merger control regime in a relatively easy way. The specific conditions and requirements were all laid down by the Competition Commission of India (CCI) by way of the amendment. The step was hugely applauded by industry experts, given the existence of red-tapism and sluggish bureaucracy which makes access to justice a long-lost journey. By way of this article, the author has provided a synopsis of the Green Channel Route and the relevant aspects surrounding it.

### Green Channel Route: The Underlying Concept

The Green Channel Route is an automated approval scheme which acts as a filter for certain kind of merger transaction or combination filings which don't possess any risk of harm to competition regimes. It is an automated approval system for combinations which will prove to be beneficial for parties falling into a certain category to avail the benefit of this scheme instead of waiting for a 30-day working period. This route provides a bypass from the regular legal proceedings to enable them for speedy settlements and quicker administrative decisions. This also eliminates a mandatory 210 days period prescribed under the Act which CCI takes for an ex-ante investigation to see whether the transaction is causing any appreciable adverse effect on competition. For the sake of

quicker disposal, parties are not required to mention market size, market share, competitor details etc. Thus, they are allowed for fewer disclosure requirements.

### Procedure and Eligibility Criteria

The freshly inserted Schedule III of the amended combination regulations prescribes the methodology for parties to self-assess the proposed transaction by considering relevant market definitions in all cogent and reasonable ways and to determine whether the proposed transaction would be considered fit for Green Channel Approval or not. The self-assessing measure is stipulated so as to make entities understand the standpoint of each other and the possible economic & financial effects as a result of this transaction. For parties to be considered fit for Green Channel approval, the below-mentioned points are to be fulfilled for proceeding further –

- That they do not manufacture similar or identical or substitutable goods (*horizontal overlaps*).
- That they are not involved in any activity relating to production, supply, sale and distribution of goods that belong to different levels of the production chain (*vertical overlaps*).
- That they are not involved in any activity relating to production, supply, sale and distribution of goods which act as complementary to each other (*complementary overlaps*).

If all the above conditions are satisfied, then the parties are required to fill and submit the amended Form I (Form I which contains the Green Channel section) along with a declaration (as prescribed in Schedule IV of amended regulations) that the resultant combination will not cause any appreciable adverse effect on competition. The declaration must substantiate that (a) the proposed combination will not cause any horizontal, vertical or complementary overlaps. (b) there will not be any appreciable adverse effect on competition as a result of the successful execution of this transaction. (c) the details provided in the application are not false or misleading and are true to the best of the parties' knowledge. The filing fee of INR 20,00,000 has to be deposited while submitting an application as prescribed in Regulation 11 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. Afterwards, the CCI issues an acknowledgement paper certifying the deemed approval if it considers the transaction to be fit for processing through Green Channel. This approval is construed as an order by CCI under section 31(1) of the Competition Act 2002.

In case the CCI considers a transaction to be unqualified for Green Channel purpose or if the details provided in the application are proved to be false and misleading, then it may declare the approval *void ab initio* and afterwards, the proposed combination will be dealt with by the regular proceedings mentioned therein. Another scenario is when parties execute the transaction before CCI's approval, such transactions would be held for Gun Jumping & come under the ambit of section 44 of the Competition Act 2002.

### Need For Green Channel Mechanism

To foster speedy economic transactions and provide swift regulatory proceedings Green Channel route was introduced by the Ministry of Corporate Affairs. Basically, it will serve the three primary purposes – (a) providing a quick and reliable review of combination cases; (b) establish an equilibrium between cooperation and enforcement functions. (c) create a business-friendly and

healthy economic environment. The need for providing a Green Channel Route lies in the fact that sometimes, the entities are breaching the threshold limits but in reality, the proposed transaction does not carry any significant risks of adverse effect on competition due to the fact that they do not form any kind of overlap in their activities. The lengthy merger filing process might seem like an inevitable stride. This reluctance made the antitrust enforcers think and make a way out for smaller counterparts in dealing with combination filings and merger control regulation. The authorities were of the view that there's no point in a company having a minuscule impact face such complex legal procedures. As a result, the concept of *Green Channel Route* was introduced so as to enable smaller transactions and minute combinations to pass through the rigorous process in an easy manner. The Parties to such transactions had to go through unnecessary procedures and formalities just because their figures are breaching the limit prescribed. So, for providing a different way so that such companies can quickly execute a transaction without any avoidable delay, the requisite regulations were introduced.

### **Drawbacks Of This Mechanism**

Although the Green Channel Route is designed keeping in mind the refinement of time taking procedures, it is not flawless. Primarily, the mandatory conditions stipulated in Schedule III for self-assessment seem very constraining and restrictive. The parties are required to analyze each possible relevant market definition under which the transacting entities come. As a result, the fulfilment of each of these conditions becomes a hectic task. Also, even if there is a negligible or minuscule overlapping between the two entities' business operations, the transaction will be excluded from the domain of the Green Channel Regime. Small enterprises may find it easier to fit themselves into the criteria whereas large corporations may find it hard to fit themselves into the criteria due to their diversified investments. Thus, this regulatory requirement might drift away from some companies from utilizing the Green Channel approach.

Another lacking in this provision is that of the term "complementary". In the antitrust regimes, the overlap is two-fold only i.e Horizontal and Vertical. But in the Green Channel regime, the new addition of 'complementary overlap' seems to be blurry and obscure because neither the Competition Act nor the Combination regulations provide a concrete definition and understanding of 'complementary'. There isn't any threshold or standard by which complementary overlap between the parties can be construed. This intricacy might prove to be cumbersome for lawyers dealing with their clients.

Thirdly, there isn't any time specified within which the CCI has to declare whether a combination is fit for the Green Channel route or not. If a combination is finally declared unfit for the Green Channel route the deemed approval will be held *void ab initio*. As a result, parties will have to file a fresh new notification and if by that time the parties have already consummated the transaction, they might be considered liable under section 44 of Competition Act 2002 (Gun Jumping). This uncertainty of the time taken by CCI might make parties reluctant to pursue the Green Channel approach.

### **Conclusion**

The Green Channel mechanism is a welcome step in merger regulations in India. But as debated

above, there are certain provisions that hamper the main motive behind the introduction of this regulation. This limits the ability of this provision to fully realize its objectives. The main purpose was to promote ease of doing business in India. To date, only a handful of transactions are passed through Green Channel. However, pre-filing consultations between CCI officials and parties may help clear up the ambiguities. Also, the CCI must implement modifications so as to ensure that future proceedings do not get caught up in these intricacies.

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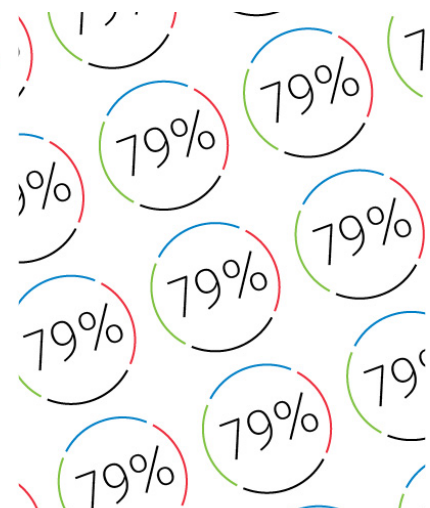
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