

## ERGO

*Analysing developments impacting business*

### COMPETITION COMMISSION OF INDIA ISSUES AMENDMENTS TO THE COMBINATION REGULATIONS

11 October 2018

The Competition Commission of India (CCI) notified the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2018 on 9 October 2018 (Amendment Regulations). The Amendment Regulations bring welcome and anticipated changes to the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Combination Regulations). The Amendment Regulations came into effect on 9 October 2018. These are the sixth set of amendments to the Combination Regulations.

Following are the key highlights from the Amendment Regulations:

➤ **Mechanism for computation of 210-day period**

Under the Competition Act, 2002 (Competition Act), a notified transaction cannot be completed until the CCI gives its approval or until the expiry of 210 calendar days from the date of notification, whichever is earlier. Prior to this amendment, there was ambiguity in the manner of computation of the 210-day period, particularly whether the clock-stops during the review process are required to be excluded while counting the period of 210 days, given that there is no categorical mention of such exclusion in the Competition Act and/or the Combination Regulations. The Amendment Regulations now clarify that the period of 210 days is extendable based on the number of times a request for information is issued by the CCI. This means a longer waiting period for a “deemed approval” and could result in significant uncertainty in approval timelines.

➤ **Withdrawal and refiling of notice**

Previously, in cases where changes made to a notice (post filing) were likely to substantially affect the factors for determining appreciable adverse effect on competition, the CCI had the liberty to invalidate the notice. Now, in case a proposed transaction undergoes a significant change, the parties can withdraw the previous notice, and refile a fresh notice. The introduction of this provision provides flexibility to the parties to decide whether to “withdraw and refile” or to simply notify the CCI of any change to the notice. However, the final decision on whether to allow the refiling vests with the CCI.

While an invalidation of the notice by the CCI does not carry any penal consequences, it is an outcome most parties wish to avoid. The CCI has been following this practice of allowing the parties to “withdraw and refile” and the Amendment Regulations seek to formalize the same.

➤ **Introduction of provision for Phase I voluntary modifications**

Previously, Regulation 19(2) of the Combination Regulations provided that if the CCI considers it necessary, it may ask for additional information and accept voluntary modifications, if made by the parties. However, after the substitution of Regulation 19(2) by the Amendment Regulations, the CCI may accept voluntary modifications, even when it does not deem such modifications to be necessary. Further, the previous Regulation 19(2) only provided that the CCI may accept modifications if offered by the parties but did not provide for the approval of the combination based on such modifications. However, in practice, the CCI approved the transaction after the parties proposed a modification. The substitution, therefore, is a welcome step as it has embodied the decisional practice of the CCI.

➤ **Introduction of provision for voluntary modifications before Phase II review**

The introduction of the new provision allows the parties to offer modifications (prior to a formal Phase II process) immediately after the CCI has formed its *prima facie* opinion under Section 29(1) of the Competition Act, in response to the show-cause notice issued by the CCI just before initiating a Phase II investigation.

This amendment is a welcome change as the parties will not have to wait for the CCI to order modification after a long-drawn Phase II review process. As such, this would result in speedier resolution of the CCI's concerns and consequently will also result in quicker approvals. This insertion is a win-win situation for both the parties and the CCI and is consistent with the approach taken by other leading international merger authorities.

**Comment**

Largely, the Amendment Regulations are a welcome step as they simplify the filing procedures and formalize the existing practice of the CCI. Further, they seek to align the applicable procedures closer to the international best practices.

Certain additional proposed amendments in relation to non-controlling minority investments, which would have significantly diluted the availability of the exemption, seem to have been dropped in an endeavour to encourage investments and sustain an investor friendly climate in India.

The only aspect where the CCI appears to be seeing the wood for the trees is the compromise in the sanctity of the 210-day statutory timeframe for deemed clearance. The introduced changes would now extend the time-period and leave very little predictability for the parties in estimating the approval timelines. To mitigate this newer challenge, the notifying parties may need to plan and strategize well in advance, anticipating the consequences of a longer waiting period.

- *Manas Kumar Chaudhuri (Partner), Anisha Chand (Principal Associate) and Sakshi Agarwal (Senior Associate)*

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

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**Mumbai**

One Indiabulls Centre, 13<sup>th</sup> Floor  
Tower 1 841, Senapati Bapat Marg  
Mumbai 400 013, India

T: +91 22 6636 5000  
E: [mumbai@khaitanco.com](mailto:mumbai@khaitanco.com)

**New Delhi**

Ashoka Estate, 12th Floor  
24 Barakhamba Road  
New Delhi 110 001, India

T: +91 11 4151 5454  
E: [delhi@khaitanco.com](mailto:delhi@khaitanco.com)

**Bengaluru**

Simal, 2nd Floor  
7/1, Ulsoor Road  
Bengaluru 560 042, India

T: +91 80 4339 7000  
E: [bengaluru@khaitanco.com](mailto:bengaluru@khaitanco.com)

**Kolkata**

Emerald House  
1 B Old Post Office Street  
Kolkata 700 001, India

T: +91 33 2248 7000  
E: [kolkata@khaitanco.com](mailto:kolkata@khaitanco.com)