

## CCI publishes draft combination regulations for public consultation

On September 5, 2023, the Competition Commission of India (“CCI”) published the [Competition Commission of India \(Combinations\) Regulations, 2023](#) (“**Draft Combination Regulations**”) for public comments. The Draft Combination Regulations will replace the existing CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (as amended) (“**Existing Combination Regulations**”) and incorporate the changes brought by the Competition (Amendment) Act, 2023 (“**Amendment Act**”).

The key changes introduced in the Draft Combination Regulations are as follows:

### 1. Deal value threshold and its computation

The Amendment Act introduced a provision on deal value threshold (“**DVT**”) pursuant to which, a transaction which is not notifiable to the CCI basis existing jurisdictional thresholds (asset and turnover criteria) would now be notifiable if: (a) the value of the transaction exceeds INR 2,000 crores (~USD 241 million); and (b) the target enterprise has ‘substantial business operations’ in India (“**SBOI**”). The Draft Combination Regulations set out the methodology for calculating the ‘*value of transaction*’ and scope of the ‘*SBOI*’.

#### **Value of the Transaction**

The value of the transaction must include *every valuable consideration, whether direct or indirect, immediate or deferred, cash or otherwise*. This catch-all definition provides indicative examples of consideration that will need to be included while calculating the *deal value* such as:

- a) non-compete fees;
- b) all incidental arrangements entered into between the parties within 2 (two) years of the transaction, including technology assistance agreements, licensing of intellectual property rights, and supply of materials;
- c) the value of all inter-connected transactions. The Draft Combination Regulations clarify that all transactions by the acquirer or its group enterprises in the target enterprise within 2 (two) years prior to the date of the execution of the binding definitive documents will be considered inter-connected with the (new) transaction and must be included in the deal value;
- d) for the transactions involving call or put options, the transaction value should be the consideration payable on full exercise of the options.

The Draft Combination Regulations further clarify that:

- a) If the transaction value is not specified in the transaction documents, the value approved by the board of directors (or other approving authority) of the notifying party must be considered.
- b) In case of an open offer, the value of transactions will be based on the assumption that all shares are tendered.
- c) If the precise transaction value cannot be determined with certainty, the DVT is presumed to be met.

### **Substantial Business Operations In India**

The target enterprise will be deemed to have SBOI if atleast 10% of its global:

- a) users, subscribers, customers, or visitors were from India at any point in time during the 12 (twelve) months prior to the date of the transaction documents; or
- b) gross merchandise value for the 12 (twelve) months prior to the date of the transaction documents was from India; or
- c) turnover from all products and services for the preceding financial year was from India.

## **2. No standstill obligations for open market purchase**

The Amendment Act permits the implementation of open offers or on market purchases (acquisitions on stock exchanges) without notifying the CCI. The Draft Combination Regulations clarify that in case of such transactions:

- a) the acquirer must notify the transaction within 30 (thirty) calendar days from the date of completion of such on-market purchases<sup>1</sup>.
- b) the acquirer can exercise certain rights prior to receipt of the CCI approval, including:
  - i) availing economic benefits such as dividends or any other distribution, bonus shares, buy-backs;
  - ii) disposing of shares or securities acquired; or
  - iii) exercising voting rights in matters relating to liquidation or insolvency proceedings.

However, the acquirer is prohibited from exercising any influence on the target enterprise in any manner.

## **3. Increased Filing Fee**

The Draft Combination Regulations have significantly increased the filing fees for Form I (short form) and Form II (long form).

Type of Notification Form	Existing Fee	Proposed Fee
<b>Form I</b>	INR 20 lakh (~USD 24,052)	INR 30 lakh (~USD 36,077)
<b>Form II</b>	INR 65 lakh (~USD 78,168)	INR 90 lakh (~USD 108,232)

## **4. Exclusion of Schedule I Exemptions**

The Existing Combination Regulations provide exemptions to certain categories of notifiable transactions including intra-group transactions, minority share acquisitions, bonus issues, creeping acquisitions, buy-backs etc. ("**Schedule I Exemptions**"). The Schedule I Exemptions did not find place in the Draft Combination Regulations. There is a possibility that the Schedule I Exemptions will be re-introduced by the Government of India or the CCI by way of a separate notification/ rules.

<sup>1</sup> In case of a series of on-market purchases, 30 calendar days will be counted from the first on-market purchase transaction.

## 5. Review of notification form and clock stop

The Draft Combination Regulations provide that in case the CCI issues a defect letter to the parties within 10 (ten) working days from the date of receipt of the notification form, the CCI's review timeline (of 30 (thirty) calendar days) will begin only after such 'defects' are cured.

## 6. Exclusion of 'Green Channel Route'

The Existing Combination Regulations provide for notifying certain transactions to the CCI under the green channel route ("GCR") where no overlap exists between the parties in India. Such transactions are deemed to be approved by the CCI upon filing of the GCR notification form.

While the Draft Combination Regulations have removed specific regulation pertaining to GCR, the template of draft Form I prescribed under the Draft Combination Regulations still refers to GCR.

## 7. Format for Offering Modifications

The Draft Combination Regulations introduce a new format for offering voluntary modifications to the CCI in relation to the notified transactions. Under which the parties are, *inter alia*, required to explain how the modifications offered are sufficient to address the competition concerns.

## Competition Practice

Since the inception of the Indian competition regime, JSA has been a one-stop shop for all types of competition and anti-trust-related matters. As such, the team's in-depth understanding of the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to cartelisation (including leniency), abuse of dominance, vertical agreements, and dawn raid before the Competition Commission of India and appellate courts. The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance training for clients. Given the team's continued involvement with the regulator, coupled with its balanced and practical approach to competition law, it has been instrumental in shaping the competition law jurisprudence in India.

Over the years, the team has developed a reputation of not only being well regarded by its peers but also for having developed a good working relationship with the regulatory authorities. As such our lawyers have been involved in drafting statutory regulations and have represented the Indian competition law fraternity at various competition law seminars, workshops, and advocacy & public awareness programs across the world. The team's expertise (including team members) has been widely recognised by various leading international rankings and publications including Chambers and Partners, Who's Who Legal, Global Competition Review, Benchmark Litigation, Asialaw, and the Legal 500.

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**Global Competition Review (GCR)** has recognized JSA's Competition Law Practice in its latest 2023 edition of 'GCR 100'



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