



CCI EASES NORMS FOR M&A

April 2013

On April 4, 2013, the Competition Commission of India (“CCI”) amended the CCI (Procedure in regard to transaction of business relating to combination) Regulations, 2011 (“Merger Control Regulations”) easing norms for certain M&A activity. Regulation 4 exempts certain transactions from the radar of CCI. These transactions are listed in Schedule I of the Merger Control Regulations and are “ordinarily not likely to cause an appreciable adverse effect on competition in India.” The April 2013 amendment have brought more clarity to Schedule I and will facilitate internal reorganization and restructuring of companies and additional stake acquisition without notifying the CCI. The major changes are:

Additional acquisition of stake: If a company already holds 25% equity stake in an enterprise, it can acquire additional shares/voting rights up to 5% in a financial year without notifying CCI, provided this does not lead to acquisition of control over the enterprise. This amendment is in line with the creeping acquisition allowed under the SEBI Takeover Code.

Intra-group acquisition: Any acquisition of shares/voting rights within a group is exempted and does not require the approval of CCI. However, in such a case the acquired enterprise shall not be jointly controlled by enterprises which are not part of the same group. This change will ease compliance requirements for intra-group restructuring and consolidation of holdings.

Intra-group reorganization: A merger or amalgamation between two enterprises, where one of them holds more than 50% shares/voting rights in the other is now outside the ambit of CCI- no approval required. The exemption also extends to mergers between two enterprises of a group where more than 50% shares in each of them are held by enterprises in the same group. However, this exemption is subject to the condition that transaction does not result in transfer from joint to sole control. Let us take an illustration: There is a company X, where company Y holds 58% equity and the rest 42% is held by company Z. X is under the sole “control” of Y. Now, X and Y merge. If the control of the merged entity is with the same shareholder(s), no clearance is required from CCI. However, in the same facts, if X is under the joint control of Y and Z, and the amalgamation of X and Y will result in sole control of a shareholder, then the transaction will have to be notified to the CCI. This change will facilitate merger of a subsidiary into its parent. Before the amendment, the exemption was only provided to merger of a wholly-owned subsidiaries with its parent.

The amendments will reduce the number of filings before the CCI, but highlights the commitment of the government to give impetus to the M&A activity at large.

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