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# CLIENT ALERT

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## CCI'S GREEN CHANNEL APPROVAL – MORE GREY THAN GREEN

The Competition Commission of India (**CCI**) has amended certain key aspects of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (**Combination Regulations**), by its notification dated 13 August 2019 (**Amendment**). In one of the most significant amendments to the merger control regime in India, the CCI has finally introduced the concept of a 'Green Channel' approval route (**Green Channel**), which will allow parties to receive an on-spot approval from the CCI, instead of waiting for the 30 working-day period. It is pertinent to note that the Green Channel is one of the recommendations of the Competition Law Review Committee, which was set up to review the competition law framework in India.

The Green Channel is of course, subject to certain stringent conditions.

The Form I (i.e., the simple form) has also been revised to present a more comprehensive picture of possible effects of the proposed combination and to simplify the filing for Green Channel notifications.

### Green Channel Route

The Green Channel will apply to only those transactions where the acquirer (and the acquirer group) has no existing interests in companies (i) that may be seen as competitors of the target group's business; or (ii) that operate in markets with vertical linkages to the target group's business; or (iii) with complementary linkages to the target group's business. Eligible parties may also choose the ordinary route to approach the CCI and wait for the CCI's approval. If they opt for the Green Channel,

they would receive a deemed approval immediately upon notifying the CCI and upon receipt of the acknowledgement.

However, if the CCI finds that the transaction did not qualify for the Green Channel and/or the declaration filed was incorrect, the notification and the approval would become void *ab initio* and it is likely that the CCI will pursue proceedings for 'gun jumping' under Section 43A and possibly Section 44 (for material non-disclosure) of the Competition Act, 2002 (as amended). The CCI will allow the parties an opportunity to be heard before it arrives at a finding in this regard.

Parties opting for the Green Channel will also benefit from simpler disclosure and data requirements under the Form I. For instance, there is no requirement of providing responses to the 'Top 5 Questions' (customers, competitors and suppliers) or market related information such as market size and market shares.

### **Form I revised**

The Form I (for ordinary notices to the CCI) now involves certain increased disclosure obligations:

- a. In relation to furnishing of information pertaining to the relevant market, the parties are required to assess complementary activities in addition to horizontal and vertical linkages;
- b. Market related information has to be provided for a 3 year time period instead of 1 year;
- c. Top 5 Questions have to be answered for a 3 year time period instead of 1 year; and
- d. Overlap analysis has to be conducted on the basis of both acquirer and target groups.

It is significant that many of these questions were in fact put to the parties during the assessment of their notifications through requests for information, in any case.

### **Key Implications**

The Green Channel appears to be in line with the Government's policy of Ease of Doing Business in India, it most definitely does not compromise the CCI's existing mandate for merger regulation.

While it is clear that first time investors in India could be most obviously eligible for the Green Channel, PE firms / financial investors would have to be careful before choosing this route as even indirect non-controlled existing investments in similar / vertically linked / complementary sectors may make them ineligible for the Green Channel. This will require an in-depth merger control analysis and parties may just prefer proceeding with the ordinary route for seeking the approval.

The amendment would have been more effective if existing non-controlling investments of the acquirer group were not required to be considered for determining the applicability of the Green Channel. Alternatively, a percentage shareholding threshold could have been provided, where existing interests in similar / vertically linked / complementary sectors below a certain percentage could have been disregarded for the applicability of the Green Channel.

Finally, parties opting for the Green Channel will have to be extremely careful in terms of the accuracy and completeness of the information being provided in the filing, as any inaccurate / incomplete information could lead to potential penalty proceedings.

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*Should you have any queries in relation to any of the issues set out herein or on other areas of law, please feel free to contact us at the following coordinates*

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