COMBINATIONS

(Under Competition Act, 2002)

Combination includes acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises where these exceed the thresholds specified in the Competition Act in terms of assets or turnover.

According to Section 6 of Competition Act, 2002:
No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

The provisions of combinations are governed by the Competition Act, 2002 and the Combination regulations issued by commission and modifications thereof. The Combination Regulations have been in force w.e.f. 1st June, 2011 and **major amendments were made in combination regulations on February 23, 2012.**

Section 5 of the Competition Act, 2002 provides thresholds in terms of assets/turnover, for mandatory notification to the Commission which are as follows:

Applicable	Criteria	In India	In India and abroad
Individual	Assets	Rs. 1500 Crores	$ 750 Million (including Rs. 750 Crores in India)
	Turnover	Rs. 4500 Crores	$ 2250 Million (including Rs. 2250 Crores in India)
Group	Assets	Rs. 6000 Crores	$ 3 Billion (including Rs. 750 Crores in India)
	Turnover	Rs. 18000 Crores	$ 9 Billion (including Rs. 2250 Crores in India)

According to the Competition Act, 2002:
1. “Group” means two or more enterprises which, directly or indirectly, are in a position to —
   - Exercise 26 % or more voting rights in other enterprise
   - Appoint more than 50% directors in other enterprises
   - Controls the affairs or management of other enterprise

2. “Turnover” includes value of sale of goods or services

3. The value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent,

permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout- design or similar other commercial rights.

INTIMATION TO CCI:

Any person or enterprise proposing to enter into a combination shall notify the Commission in the specified form disclosing the details of the proposed combination within 30 days of the approval of such proposal by the board of directors or of the execution of any agreement or other document.

The proposed combination cannot take effect for a period of 210 days from the date it notifies the Commission or till the Commission passes an order, whichever is earlier. If the Commission does not pass an order during the said period of 210 days the combination shall be deemed to have been approved.

BELATED NOTICE:

Without prejudicing the provisions of the Act, the CCI may admit belated notice but subject to penalty under Section 43A of the Act. These provisions are provided in the Regulation 7 of Combinations Regulations.

EXEMPTIONS:

Pursuant to Section 6(4) and 6 (5) of the Competition Act, 2002, for acquisition, share subscription facility or financial facility, the following categories of persons would be exempted from the provisions of the Competition Act, 2002.

- Public Financial institution,
- Foreign Institutional Investor,
- Bank, and
- Venture Capital Fund

The category of these persons have to intimate the CCI within 7 days of such transaction in Form III.

ENQUIRY*:*

As per the Combination Regulations, the Commission shall form its prima facie opinion as to whether the combination is likely to cause or has caused appreciable adverse effect on competition within the relevant market in India within 30 days from the receipt of the notice. If the Commission is prima facie of the opinion that a combination has caused or is likely to cause adverse effect on competition in Indian markets, it shall issue a notice to show cause to the parties as to why investigation in respect of such combination should not be conducted. On receipt of the response, if Commission is of the prima facie opinion that the combination has or is likely to have appreciable adverse effect on competition, the Commission shall deal with the notice as per the provisions of the Act.

The Commission may initiate enquiry in the following manner:

- Identification of the relevant market, consisting of relevant product market and relevant geographic market
- Consideration whether the Combination has appreciable adverse effect on competition in the relevant market in India
- Approval, rejection, or approval with modification of the Combination

APPEAL:

Any person aggrieved by the order / direction / decision of the Commission may appeal to Competition Appellate Tribunal (COMPAT) to hear and dispose of appeals and orders relating to notification of combination, inquiry by the Commission and penalties.

An appeal has to be filed within 60 days of receipt of the order /direction / decision of the Commission (CCI).

CONCLUSION:

The intention of the Act or the Competition Commission of India (CCI) is not to prohibit the combinations but to check the combinations which are going to affect the competition in the market. It is imperative to protect the market in order to protect the interest of the common man of the country and at the same time the interest of companies. Therefore CCI makes changes in the regulations in order to meet the requirement of current market position.

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