

THE COMPETITION COMMISSION OF INDIA AMENDS FORM II FOR NOTIFYING COMBINATIONS

The Competition Commission of India ('CCI') has amended¹ the existing Form II thereby amending Schedule II of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ('Combination Regulations'). The new Form II will come in effect from 1st May, 2022 and any combination filings required to be made in Form II on or after 1st May, 2022 will have to be made in the amended Form II.

As per Regulation 5 (3) of the Combination Regulations, the parties to the combination may file notice in Form II (which is the long form) especially where (i) the parties to the combination are engaged in business of similar, identical or substitutable goods or provision of services and their combined market share after the combination is more than 15% in the relevant market; or (ii) the parties to the combination are engaged at different stages or levels of the production chain and their individual or combined market share is more than 25% in the relevant market. Additionally, where parties to a combination have filed the notice in Form I, it may be directed by the CCI to file Form II if the CCI requires information in line of the requirements of Form II so as to frame a prima facie opinion whether the combination is likely to cause or has caused appreciable adverse effect on competition within the relevant market².

The changes made by the present amendment are with regard to the content as well as the format of Form II. As per the press release, the amendment to the Form II is a part of series of measures undertaken by the CCI towards ease of doing business, reducing the compliance burden on the parties and making the assessment of the combination more objective and focused. It is aimed to remove duplicity and limit the information requirement so that they remain focused and relevant to the objective of assessment of a merger, suitably clustering the information on common subject, streamlining the flow of information for better navigation and appreciation of material furnished in the notification³.

The changes made to the Form II are in line with the changes made to the shorter form i.e. Form I, revisions to which were made in the first quarter of the year 2020. Some of the significant changes to the Form II include information on complementary goods or services and details of market share, top competitors for a period of 5 years is to be provided. These information were already required to be provided in Form I and now have also been incorporated in Form II. Additionally, the structure of Form II appears to have improved.

With the amendments made to the Form II, the Form II appears to be more systematic in terms of the structure and type of information that is to be provided to the CCI for its assessment. It is hoped that provision of information in a more structured manner will reduce the burden on CCI and possibly the time taken by it for assessment of combinations that are required to be notified in Form II.

¹ Vide Gazette Notification F. No. CCI/CD/Amend/Comb. Regl./2022 dated 31st March, 2022

² Regulation 5(5) of the Combination Regulations.

³ Press Information Bureau of India, Government of India