



ADVOCACY SERIES

5

Competition Act, 2002

PROVISIONS RELATING TO

# Combinations



Fair Competition  
for Greater Good

भारतीय प्रतिस्पर्धा आयोग  
COMPETITION COMMISSION OF INDIA



# VISION

*To promote and sustain an enabling competition culture through engagement and enforcement that would inspire businesses to be fair, competitive and innovative; enhance consumer welfare; and support economic growth.*

# MISSION 2020

*Competition Commission of India aims to establish a robust competitive environment through*

© *proactive engagement with all stakeholders, including consumers, industry, government and international jurisdictions*

© *being a knowledge intensive organization with high competence levels*

© *professionalism, transparency, resolve and wisdom in enforcement.*

## **DISCLAIMER**

*This quick guide is published as part of the Competition Advocacy and Awareness Programme of the Competition Commission of India (the Commission). Its contents should, in no way, be treated as official views of the Commission. Readers are advised to carefully study the Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007 and the Competition (Amendment) Act, 2009, and seek legal advice, wherever necessary.*



## INTRODUCTION

The Competition Act, 2002 (as amended), [the Act], follows the philosophy of modern competition laws and aims at fostering competition and protecting Indian markets against anti-competitive practices. The Act prohibits anti-competitive agreements, abuse of dominant position and regulates combinations (mergers and acquisitions) with a view to ensure that there is no adverse effect on competition in India. The provisions of the Act relating to regulation of combinations have been enforced with effect from 1st June, 2011<sup>1</sup>.

## WHAT IS COMBINATION?

Broadly, combination under the Act means acquisition of control, shares, voting rights or assets, acquisition of control by a person over an enterprise where such person has direct or indirect control over another enterprise engaged in competing businesses, and mergers and amalgamations between or amongst enterprises when

<sup>1</sup> See, Central Government notification S.O. 479(E) dated 4th March, 2011.

the combining parties exceed the thresholds set in the Act. The thresholds are specified in the Act in terms of assets or turnover in India and abroad. The words combination and merger are used interchangeably in this booklet.

Entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India is prohibited and such combination shall be void.

## THRESHOLDS FOR COMBINATIONS UNDER THE ACT

India is one of the fastest growing economies in the world. The growth process is driven both by organic and inorganic (through the mergers and acquisition route) growth of enterprises. It is neither feasible nor advisable to review all the mergers and acquisitions. It is natural to presume that in the case of small size combinations there is less likelihood of appreciable adverse effect on competition in markets in India. The Act provides for sufficiently high thresholds in terms of assets/turnover, for mandatory notification to the Commission.



The Act also provides for revision of the threshold limits every two years by the government, in consultation with the Commission, through notification, based on the changes in Wholesale Price Index (WPI) or fluctuations in exchange rates of rupee or foreign currencies<sup>2</sup>. Vide notification S.O. 480 (E) dated 4th March, 2011, the government has enhanced the value of assets and turnover mentioned in section 5, by fifty percent. The current thresholds for the combined assets/turnover of the combining parties are as follows:

**Individual:** Either the combined assets of the enterprises would value more than (INR) 1,500 crores in India or the combined turnover of the enterprise is more than (INR) 4,500 crores in India. In case either or both of the enterprises have assets/turnover outside India also, then the combined assets of the enterprises value more than

<sup>2</sup> Sub-section (3) of section 20 of the Act.

US\$ 750 millions, including at least (INR) 750 crores in India, or turnover is more than US\$ 2250 millions, including at least (INR) 2,250 crores in India.

**Group:** The group to which the enterprise whose control, shares, assets or voting rights are being acquired would belong after the acquisition or the group to which the enterprise remaining the merger or amalgamation would belong has either assets of value of more than (INR) 6000 crores in India or turnover more than (INR) 18000 crores in India. Where the group has presence in India as well as outside India then the group has assets more than US\$ 3 billion including at least INR 750 crores in India or turnover more than US\$ 9 billion including at least INR 2250 crores in India.

The term Group has been explained in the Act. Two enterprises belong to a “Group” if one is in position to exercise at least 26 per cent voting rights or appoint at least 50 per cent of the directors or controls the management or affairs in the other<sup>3</sup>. Vide notification S.O. 481 (E) dated 4th March, 2011, the government has exempted “Group” exercising less than fifty per cent of voting rights in other enterprise from the provisions of section 5 of the Act for a period of five years.

The above thresholds are presented in the form of a table below:

	APPLICABLE TO	ASSETS		TURNOVER	
In India	Individual	₹1,500 cr.		₹ 4,500 cr.	
	Group	₹ 6,000 cr.		₹ 18,000 cr.	
In India and outside		ASSETS		TURNOVER	
		Total	Minimum Indian Component	Total	Minimum Indian Component
	Individual parties	\$ 750 m	₹ 750 cr	\$ 2,250 m	₹ 2,250 cr
	Group	\$ 3 bn.	₹ 750 cr.	\$ 9 bn.	₹ 2,250 cr.

<sup>3</sup> Explanation (b) to section 5 of the Act.

The turnover shall be determined by taking into account the values of sales of goods or services. 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. The value of assets shall include the brand value, value of goodwill, or Intellectual Property Rights etc. referred to in explanation (c) to section 5 of the Act.

## EXEMPTION NOTIFICATIONS

In exercise of the powers conferred by clause (a) of Section 54 of the Act, the Central Government, in public interest, has exempted:

- ✓ an enterprise, whose control, shares, voting rights or assets are being acquired has either assets of the value of not more than INR 250 crore in India or turnover of not more than INR 750 crore in India from the provisions of Section 5 of the said Act for a period of five years.<sup>4</sup>
- ✓ a banking company in respect of which the Central Government has issued a notification under Section 45 of the Banking Regulation Act, 1949, from the application of the provisions of Sections 5 and 6 of the Act for a period of five years.<sup>5</sup>

## COMBINATIONS IN RESPECT OF WHICH NOTICE NEED NOT NORMALLY BE FILED

The Combination Regulations provide that notice in respect of certain combinations, specified under Schedule I, need not normally be filed with the Commission as those transactions are ordinarily not likely to cause appreciable adverse effect on competition in India.

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<sup>4</sup> Ministry of Corporate Affairs notification S.O.48 (E) dated 4<sup>th</sup> March 2011

<sup>5</sup> Ministry of Corporate Affairs notification S.O.93 (E) dated 8<sup>th</sup> January, 2013



## SCHEDULE I TO THE COMBINATION REGULATIONS

(1) An acquisition of shares or voting rights, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of section 5 of the Act, solely as an investment or in the ordinary course of business in so far as the total shares or voting rights held by the acquirer directly or indirectly, does not entitle the acquirer to hold twenty five per cent (25%) or more of the total shares or voting rights of the company, of which shares or voting rights are being acquired, directly or indirectly, or in accordance with the execution of any document including a share holders' agreement or articles of association, not leading to acquisition of control of the enterprise whose shares or voting rights are being acquired.

(1A) An acquisition of additional shares or voting rights of an enterprise by the acquirer or its group, not resulting in gross acquisition of more than five per cent (5%) of the shares or voting rights of such enterprise in a financial year, where the acquirer or its group, prior to acquisition, already holds twenty five per cent (25%) or more shares or voting rights of the enterprise, but does not hold fifty per cent (50%) or more of the shares or voting rights of the enterprise, either prior to or after such acquisition:

Provided that such acquisition does not result in acquisition of sole or joint control of such enterprise by the acquirer or its group.

- (2) An acquisition of shares or voting rights, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of section 5 of the Act, where the acquirer, prior to acquisition, has fifty percent (50%) or more shares or voting rights in the enterprise whose shares or voting rights are being acquired, except in the cases where the transaction results in transfer from joint control to sole control.
- (3) An acquisition of assets, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of section 5 of the Act, not directly related to the business activity of the party acquiring the asset or made solely as an investment or in the ordinary course of business, not leading to control of the enterprise whose assets are being acquired except where the assets being acquired represent substantial business operations in a particular location or for a particular product or service of the enterprise, of which assets are being acquired, irrespective of whether such assets are organized as a separate legal entity or not.
- (4) An amended or renewed tender offer where a notice to the Commission has been filed by the party making the offer, prior to such amendment or renewal of the offer:  
  
Provided that the compliance with regulation 16 relating to intimation of any change is duly made.
- (5) An acquisition of stock-in-trade, raw materials, stores and spares, trade receivables and other similar current assets in the ordinary course of business.

- (6) An acquisition of shares or voting rights pursuant to a bonus issue or stock splits or consolidation of face value of shares or buy back of shares or subscription to rights issue of shares, not leading to acquisition of control.
- (7) Any acquisition of shares or voting rights by a person acting as a securities underwriter or a registered stock broker of a stock exchange on behalf of its clients, in the ordinary course of its business and in the process of underwriting or stock broking, as the case may be.
- (8) An acquisition of shares or voting rights or assets, by one person or enterprise, of another person or enterprise within the same group, except in cases where the acquired enterprise is jointly controlled by enterprises that are not part of the same group.
- (9) A merger or amalgamation of two enterprises where one of the enterprises has more than fifty per cent (50%) shares or voting rights of the other enterprise, and/or merger or amalgamation of enterprises in which more than fifty per cent (50%) shares or voting rights in each of such enterprises are held by enterprise(s) within the same group:

Provided that the transaction does not result in transfer from joint control to sole control.

- (10) A combination referred to in section 5 of the Act taking place entirely outside India with insignificant local nexus and effect on markets in India.

## COMBINATION NOTICE

The review process for combination under the Act involves mandatory pre-combination notification to the Commission. Any person or enterprise proposing to enter into a combination shall give notice to the Commission in the specified form disclosing the details of the proposed combination within 30 days of the approval of the proposal relating to merger or amalgamation by the board of directors or of the execution of any agreement or other document in relation to the acquisition, as the case may be. In case, a notifiable combination is not notified, the Commission has the power to inquire into it within one year of the taking into effect of the combination.

The Commission also has the power to impose a fine which may extend to one per cent of the total turnover or the assets of the combination, whichever is higher, for failure to give notice to the Commission of the combination.

Any combination for which notice has been filed with the Commission would not take effect for a period of 210 days from the date of notification 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.

## ACQUISITION OR FINANCING FACILITY BY PFIS, VCFS ETC.

In case of share subscription or financing facility or any acquisition, inter alia, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement, details of such acquisition are required to be filed with the Commission within seven days from the date of acquisition.

## PROCEDURE FOR INVESTIGATION OF COMBINATIONS



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.

### EVALUATION OF 'APPRECIABLE ADVERSE EFFECT ON COMPETITION'

The Act envisages appreciable adverse effect on competition in the relevant market in India as the criterion for regulation of combinations. In order to evaluate appreciable adverse effect on competition, the Act empowers the Commission to evaluate the effect of Combination on the basis of factors mentioned in sub section (4) of section 20.

Factors to be considered by the Commission while evaluating appreciable adverse effect of Combinations on competition in the relevant market:

- (a) actual and potential level of competition through imports in the market;
- (b) extent of barriers to entry into the market;
- (c) level of concentration in the market ;

- (d) degree of countervailing power in the market;
- (e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- (f) extent of effective competition likely to sustain in a market;
- (g) extent to which substitutes are available or are likely to be available in the market;
- (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- (i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- (j) nature and extent of vertical integration in the market;
- (k) possibility of a failing business;
- (l) nature and extent of innovation;
- (m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;
- (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

## APPEALS

Under the relevant provisions of the Act, an appeal to Competition Appellate Tribunal (COMPAT) may be filed within 60 days of receipt of the order /direction/decision of the Commission.

The Commission also has the power to impose a fine which may extend to one per cent of the total turnover or the assets of the combination, whichever is higher, for failure to give notice to the Commission of the combination.



# ORGANOGRAM

Chairperson

Member

Member

Member

Member

Member

Member

Maximum 7 Members (including Chairperson)

Economic Division

Combination Division

Anti-Trust Division

Legal Division

Investigation Division

Advocacy Division

Capacity Building Division

Secretariat

DG Office



# Regulations

notified by the Competition Commission of India

- ▶ The Competition Commission of India (Procedure for Engagement of Experts and Professionals) Regulations, 2009; (No. 1 of 2009)
- ▶ The Competition Commission of India (General) Regulations, 2009; (No. 2 of 2009)
- ▶ The Competition Commission of India (Meeting for Transaction of Business) Regulations, 2009; (No. 3 of 2009)
- ▶ The Competition Commission of India (Lesser Penalty) Regulations, 2009; (No. 4 of 2009)
- ▶ The Competition Commission of India (Determination of Cost of Production) Regulations, 2009; (No. 5 of 2009)
- ▶ The Competition Commission of India (General) Amendment Regulations, 2009; (No. 6 of 2009)
- ▶ The Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011; (No. 1 of 2011)
- ▶ The Competition Commission of India (Procedure in regard to the Transaction of Business relating to Combinations) Regulations, 2011

Above regulations  
are available at  
[www.cci.gov.in](http://www.cci.gov.in)

Advocacy Booklets  
by  
Competition Commission of India



Above booklets are available at  
[www.cci.gov.in](http://www.cci.gov.in)



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**COMPETITION COMMISSION OF INDIA**

Hindustan Times House, 18-20, Kasturba Gandhi Marg,  
New Delhi-110001, India  
Ph. +91-11-23473400 Fax +91-11-23704686  
Website : [www.cci.gov.in](http://www.cci.gov.in)