



# Competition Commission of India

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## Salient Features of

## CCI (Combination) Regulations 200\_

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# REGULATION 5

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- ❑ There were concerns that S 5 may result in unnecessary filing of notices without any competition issues
- ❑ R 5 is to facilitate business transactions having no significant competition concerns
- ❑ Inspiration taken from USA, Canada, Belgium etc.
- ❑ The type of transactions covered under regulation 5 are



# REGULATION 5 (contd.)

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## ■ Acquisition

- of shares/ voting rights not exceeding 15%, provided not leading to control,
- of assets not directly related to business, solely as investment, or in ordinary course of business, provided not leading to control,
- of shares/ voting rights where the acquirer hold more than 50% of shares/voting rights before acquisition
- by succession, will, etc.
- of current assets in ordinary course of business



## REGULATION 5 (contd.)

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- by foreign state,
- in the process of under writing,
- pursuant to a bonus or right issue or sub division of shares
- pursuant to an order of the Commission
- by Central / State Govt.
- within a group
- of 5% of shares/voting rights per year permitted under SEBI takeover code



## REGULATION 5 (contd.)

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- specifically exempt under statute of parliament
- ❑ Amended or renewed tender offer
- ❑ Where each of at least two of the combining parties do not have assets / turnover of Rs 200 / 600 crores in India



# REGULATION 6

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- ❑ There was a concern that there should be flexibility with the business to notify a combination
- ❑ Any document indicating bonafide intention can trigger filing at the option of the person filing notice
- ❑ Flexibility for time of filing notice introduced without liability for not filing notice in time
- ❑ This conforms with ICN best practices



# REGULATION 6 (CONTD.)

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- ❑ After filing of notice the clock of 210 days begins and Commission has to reach the decision
- ❑ If, for any reason, a party chooses to use Form 2 although Form 1 only may capture the information needed for competition assessment, Commission will have to make extra efforts
- ❑ Such instances are to be discouraged in view of overall limit of 210 days and self imposed limit of 30 days for first look
- ❑ Therefore self imposed limit for first look of notice in Form 2 kept at 60 days



# REGULATION 6 & 7

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- ❑ Forms (R 6)
  - simple notification forms seeking absolutely essential information
  - Two forms stipulated for notice
    - Form 1
    - Form 2 – for combinations not likely to cause AAEC including those between Indian and foreign companies
  
- ❑ Form 3 for information to be filed by banks/PFIs/FIIs/ VCFs (R 7)





# REGULATION 12

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- ❑ Fee pattern of different jurisdictions studied
- ❑ Broadly following are the patterns:
  - Uniform fee – Canada, Austria, Mexico
  - Fees for service – Germany, OFT
  - Tiered fee – based on complexity – Austria, US, Zambia, Spain
- ❑ In the first draft ‘tiered fee model’ followed
- ❑ Wide spread concerns that it may be an incentive to the Commission to take the issues to next stage of investigation



# REGULATION 12 (CONTD.)

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- Uniform fee model followed now
- A uniform fee of Rs. 40 lakhs along with all the notices (R 12)
- Provision for payment of fee through electronic clearing service ( R 13)
- Possibility of filing of notice through electronic mail (R 15)



# REGULATION 18

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- ❑ There are different time lines provided in law for different actions by the parties
- ❑ If, for any unforeseen reasons, the parties are not able to do as directed within the timelines asked for, there is no provision in law to address such situations
- ❑ Provision for providing additional time at various stages of compliance on the request of parties in this regulation
- ❑ Time outs for additional time granted



# REGULATION 19

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- Belated notices may be accepted by the Commission beyond 30 days
- At the discretion of the Commission
- Commission to record reasons for admission of belated notice
- Liability from penalty u/s 43A does not get extinguished



# REGULATION 20

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- ❑ Genuine situations may arise where there are some mistakes – not intentional but may be material
- ❑ A mechanism for rectification of typographical/ arithmetical errors provided in this regulation



# REGULATION 21

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- ❑ Different time lines are given in different sections for either the Commission or party
- ❑ They may be dispute/ confusion about how to compute these time lines
- ❑ When time is counted from a given day, that day is excluded in computation
- ❑ If any time limit expires on a day when Commission is closed, the limit will end on the following day



# REGULATION 22

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- ❑ There may be instances, where on account of ongoing negotiations, information given in notice may undergo a change
- ❑ If it does not significantly impact competition assessment, changes can be accepted by the Commission



# REGULATION 24

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- ❑ There may be possibilities that the parties may become non-compliant along the way
- ❑ Such contingencies not provided for in law
- ❑ Provision of a best judgement order by the Commission on the basis of material on record





# REGULATION 26

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- ❑ CA 02 expects a decision by the Commission after all information is received under S 29(5)
- ❑ There may be a situation where the Commission may need some information/clarification at this stage also
- ❑ For such situations, the Commission is empowered to seek additional information



# REGULATION 27

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- ❑ During consultative process, there was a concern about the cap of 210 days together with suspensive regime for a final decision
  
- ❑ As not all the combinations are likely to cause competitive concerns, the first prima facie decision to be taken in 30/60 days for Form 1 and Form 2 respectively
  
- ❑ Self imposed limitation on Commission



## REGULATION 27 (contd.)

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- ❑ If communication of decision not received by parties, provision of deemed approval under R 27
- ❑ Introduced to end lingering uncertainty in lesser time
- ❑ Based on ICN best practices and practice in mature regimes



# REGULATION 36

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- Direction to publish needs to be communicated fast as it involves action by parties
- Secretary under obligation to communicate the direction expeditiously
- Provision for electronic transmission in R 36 for fast communication



# REGULATION 39

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- Competition assessment being a very specialized job may require expert assistance
- Provision for such help kept in R 39
- To provide the opinion of the experts to the parties ensures natural justice



# REGULATION 41

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- ❑ There is no provision in CA 02 for personal appearance before passing an order
  
- ❑ Natural justice calls for an opportunity of being heard before any final decision
  
- ❑ Provided through this regulation



# REGULATION 46

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- Law mandates modifications in the combinations within a time specified by the Commission
  
- Unforeseen situations may make it difficult for the parties to carry out modification in the time limits
  
- Provision for giving additional time for carrying out modifications



# REGULATION 54

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- ❑ Implementation of orders may, at times, be very involved and time consuming process
  
- ❑ Commission may call for the persons with requisite expertise
  
- ❑ Provision for appointing independent trustees, at cost of parties, for overseeing compliance of remedies





# REGULATION 55

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- ❑ Section 57 of CA 02 puts restrictions on disclosure of information relating to parties
  
- ❑ This provision on confidentiality further clarified in R 55 r w GR 38
  
- ❑ Further details given in general regulations
  
- ❑ Exchange of information with competition authorities subject to waiver from parties



***THANKS***