



Competition Commission of India

New Merger Control Regime of India

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Regulation of Combinations

- Combination defined, includes mergers & amalgamation, acquisition of shares, assets above thresholds and domestic nexus (S 5)
- Combination must be above thresholds defined in terms of total assets or turnover plus domestic nexus (S 5)
- Mandatory pre-notification (S 6 (2))
- Suspensive regime (S 6 (2A))
- Assessment of anti-competitive effect based on listed factors (S 20(4))



Thresholds

(Stand Enhanced by 50%)

		Assets Total (In India)	Turn over Total (In India)
Only in India	No Group	Rs. 1000 cr	Rs. 3000 cr
	Group	Rs. 4000 cr	Rs. 12000 cr
In and outside India	No Group	US \$ 500 m (Rs. 500 cr)	US \$ 1500 m (Rs. 1500 cr)
	Group	US \$ 2000 m (Rs. 500 cr)	US\$ 6000 m (Rs. 1500 cr)



Orders on Combinations

- Competition Commission of India can:
 - Approve
 - Approve with modifications
 - Not approve
- If no order within 210(180) days, the combination deemed to have been approved
- Regulations specify shorter time limits- stage I & II
- Approval with Structural and/or Behavioural remedies



Review Period (s)

Country	Stage One	Stage Two
EU	25-35 W days	90-125 W days (35+125=160 W days or 224 days in the least)
France	5-8 weeks	Additional 4 months. Further extended by 4 more weeks (thus 5 ½ Months in total)
Spain	1 month	7 months
Singapore	30 W days	120 W days (30+120=150 W days)
China	30 W days	90-150 W days
Mexico	40 C days	145 (in complex cases)
Japan	30 C days	120 C days (more if information is late)
USA	30/15 C days	-----
Germany	1 month	3 months (1+3= 4 months)
India	30 c days (draft regulations)	180 C days (128 w days)

Indian time caps not very different from major jurisdictions



Wide consultations

- Extensive consultations with Business Associations, Industry Chambers, Law Firms, Consumer Groups
- Took guidance from Advisory Committee (an expert body)
- An international conference on “India’s New Merger Notification Regime (INMNR)” held on 15/16, March, 2008 in New Delhi, by IBA & others
- Delegates from ICN, EU, FTC, ACCC, IBA, ABA & leading legal firms across the world attended
- Benefitting from the experience of mature, functioning jurisdictions
- Almost a continuous dialogue



Draft Regs : Salient Features-I

- Industry friendly- Graded Fees- Size of Acquisition(Rs 500 Cr/1000 Cr/More: Rs 10/20/40 Lacs) (R 9)
- Pre-Merger Consultations (R 12)
- Incentive for Early Compliance (R 13 & 18)
- Early Clearance Facilitation- Information from Third Parties (R 18)



Draft Regs : Salient Features-II

- Self Imposed Cap on Commission of 30/180 days (R 18 & 25)
- Opportunity of Being Heard (R 21)
- Independent Trustees for Modification (R 24)
- Aggrieved and Party – S 53 B(R 26)
- Legal Certainty- Cut Off Date (R 28)



Fresh From the Oven

March 4, 2011

- June 1, 2011 appointed as the date on which Sections 5,6,20,29,30 and 31 of the Act shall come into force
- Target enterprise of small sizes exempted from definition of combination (Rs 250/750 Crores)
- The value of assets / turnover enhanced by 50 % in Section 5 of the Act
- 'Group' exercising less than 50% of voting rights in other enterprise exempted from Section 5 of the Act



Indian Law vs. Older Regimes

- Pre and Post 1990 experience of EU
- Brown Shoe Company - US -India
- Pre and Post 1976 experience of USA
- Predatory pricing – draft regulations (Expl (b) S 4 (2))
- Much more clarity – right from beginning
- A very good law – to begin with



ICN Guiding Principles

- Sovereignty
- Transparency
- Non-discrimination
- Procedural fairness
- Efficient, timely, and effective review
- Coordination
- Convergence
- Protection of confidential information



I Nexus to reviewing jurisdiction

Recommended Practices of ICN

- A. Appropriate nexus
- B. Appropriate standards of materiality as to the level of “local nexus”
- C. Nexus based on activity within jurisdiction- w.r.t atleast two parties to the transaction

Slide 12

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Merger Notification & Review (N&P) subgroup developed RPs for Merger Notification to facilitate convergence-adopted by ICN-April 2006-non binding
jum, 09-03-2008



RP I - Indian position

- *Local nexus further clarified through implementing regulations*
- *Domestic nexus of assets of Rs. 500 crore (US \$ 125 m) or turnover of Rs. 1500 crore (US \$ 375 m) given in the Act*



II Notification thresholds

- Clear and understandable
 - Based on objectively quantifiable criteria
 - Based on information readily accessible to the merging parties
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- *Based on assets and turnover and not in terms of subjective criterion (S 5)*
 - *Based on readily available information*



III Timing

- A. Permitted to notify upon a good faith intent
- B. No deadline for notification if closing prohibited
- C. Reasonable time to file following a clearly defined triggering event if closing not prohibited

➤ *Flexibility – other document*



IV Review periods

- A. Be completed in a reasonable time
- B. Incorporate procedures for expedited review of transactions not raising concern
- C. Initial waiting period should expire within a specified period and any extended waiting period within a determinable time frame in suspensive jurisdictions
- D. Initial review be completed in a specified period and extended review be completed within a determinable time frame in a non-suspensive jurisdictions
- E. Tailored procedures for particular circumstances¹⁶



RP IV - Indian position

- *Form 1 / Form 2*
- *30 days*
- *Final determination in a definite time-180 days*
- *Compares well with mature jurisdictions including ICN examples EU and France*
- *Outer limit of review in a fraction of cases. Majority early termination*
- *Parties free to pursue other clearances*



V Requirements for initial notification

- A. Limited to verify exceeding thresholds, determine competitive issues, meriting further investigation and take steps necessary to terminate the review if no further investigation
- B. Avoid unnecessary burdens on parties to transaction with no material competitive concern
- C. Pre notification guidelines possibility
- D. Limit translation and formal authentications burdens



RP V - Indian position

- *Transactions not having AAEC clarified*
- *Short/Full Form (Forms 1 & 2) comparatively – less information in short form*
- *Matters of less concerns-Schedule 1 - fast track*
- *IAS 17 or International IAS 14 - main products – readily available*
- *English – authentic version*
- *Pre-notification consultation*

VI Conduct of merger investigations



- A. An effective, efficient, transparent and predictable merger review process
- B. Opportunity meeting/discussions at key points
- C. Advice to parties not later than beginning of stage II inquiry why not cleared within initial review period
- D. Investigation completion without undue delay if no definitive deadlines
- E. Avoid unnecessary/unreasonable costs/burden on merging/ third parties
- F. Due regard for legal privileges and confidentiality doctrines



RP VI - Indian position

- *Matters of less concern – 30 days*
- *After 30 days, one more window - may be 90 – 100 days*
- *If not asked to publish after first reply - clear*
- *Opportunity before final opinion*
- *No extra burden except publication*
- *Confidentiality*



VII Procedural fairness

- A. To merging and third parties with legitimate interest
- B. Sufficient, timely information on facts/competitive concern forming basis of proposed adverse decision and meaningful opportunity to respond before a final adverse order
- C. Third parties allowed to express views
- D. Process is implemented fairly , efficiently and consistently
- E. Opportunity for timely review by a separate adjudicative body of final adverse decision on merits



RP VII - Indian position

- *S 29 (2) / Regulations – Opportunity of being heard*
- *Third parties allowed S 29 (3)*
- *The Commission – an Expert Body(15 yrs)-*
 - *International trade, Economics, Business, Commerce, Law, Finance, Accountancy, Management, Industry, Public affairs or Competition Matters*
- *Review by CAT*
- *Experts in competition matters (25 years)*
 - *Competition matters, International trade, Economics, Business, Commerce, Law, Finance, Accountancy, Management, Industry, Public affairs, Administration*
- *Guidelines on review - future road map*



VIII Transparency

- A. High level of transparency subject to appropriate protection of confidential information
- B. W.r.t. to jurisdictional scope of law, decision making procedures, principles and criteria used by agency to apply substantive review
- C. Making information about law, policy and practice readily available to the public



RP VIII - Indian position

- *Regulations*
- *Decisions on website*
- *Information about law, policy and practice on website*
- *Procedure on substantive assessment – future*
- *Further guidelines – as we go*



IX Confidentiality

- A. Business secrets etc. subject to confidentiality protection
- B. Promote transparency of confidentiality laws, policy and practice applicable
- C. Should defer contacts with third parties until the transaction is public without adverse effect on investigation
- D. Balance between confidentiality of third party submissions and procedural fairness
- E. Avoid unnecessary public disclosure of confidential information in a pending transaction²⁶



RP IX - Indian position

- *Clear confidentiality norms*
- *Followed best practices*
- *Public version and confidential version*
- *Review not public before publication (S 29 (2))*
- *Reasoned order for confidentiality*
- *Staff accountable to maintain confidentiality*
- *Consent before disclosure*



X Inter agency coordination

- A. Coordinate review of mergers raising competitive issues of common concerns
- B. Coordination in accordance with applicable laws/other legal instruments and doctrines
- C. Tailored to particular transaction and need of the agency
- D. Encourage and facilitate parties's cooperation in merger coordination process
- E. Seek remedies tailored for domestic competitive concerns and avoid inconsistency with remedies with other reviewing jurisdictions

➤ *Guidelines in future*



XI Remedies

- A. Should address identified competitive harm
- B. Should provide a transparent frame work for proposal, discussion and adoption of remedies
- C. Procedures to ensure that remedies are effective and easily administrable
- D. Means to ensure implementation, monitoring and enforcement

➤ *Guidelines - as we cruise along*



XII Competition agency powers

- A. Authority and tools necessary for effective enforcement of applicable laws
 - B. Sufficient staffing and expertise for enforcement
 - C. Sufficient independence for objective application and enforcement
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- *Professional approach all along*
 - *Economists 40% , Lawyers 40% and Financial Analysts etc. 20%*
 - *Training – high priority*

XIII Review of merger control provisions



- A. Periodical review for continual improvement
- B. Reforms that promote convergence towards best practices
 - *Following best practices – right from start*



Indian law in global context

- WTO : *“Law is broadly comparable to those of other jurisdictions with effective laws in this area and, for the most part, embodies a modern economics - based approach” (Trade Policy Review of India 2007)*
- OECD : *“close to state-of-the-art” (Economic Survey India Report 2007)*
- Lesson : *India the most hot and safe spot for any M&A*



Dessert

- **Taste of the pudding lies in eating**
- **Party is on from June 1, 2011**
- **Please wait till June 1, 2011 to enjoy the flavor**



Thank you

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