



सत्यमेव जयते



15.05.2020

PRESS RELEASE No. 10/2020-21

Inviting public comments regarding examination of non-compete restrictions under regulation of combinations

The Competition Commission of India (Commission) has been looking at non-compete restrictions stipulated in mergers and acquisitions while reviewing combinations. Notifying parties are required to furnish information on non-compete restrictions for the purpose of its examination. The Commission has issued a Guidance Note explaining the circumstances under which a non-compete restriction would be regarded as ‘ancillary’ or ‘not ancillary’. The Guidance Note provides that 3 years of non-compete obligation is usually justified in case of transfer of goodwill and know-how and two years in case of transfer of goodwill alone. It further provides that the scope of non-compete shall be restricted to the business sold and the territory where it was conducted. However, a finding that the restriction is not ancillary does not raise any presumption of infringement under the provisions of the Act.

2. It has been observed that prescribing a general set of standards for assessment of non-compete restrictions may not be appropriate in modern business environments. While it may be possible to conduct a detailed examination on case by case basis, the same may, however, not be feasible considering the timelines followed in combination cases.

3. The Commission, therefore, proposes to omit paragraph 5.7 of Form I in the Combination Regulations¹ that seeks information regarding non-compete restrictions agreed between the parties to combination and justification for the same. This would allow the parties flexibility in determining non-compete restrictions, while also reducing the information burden on them. However, the parties will be responsible for ensuring that their non-compete arrangements are competition compliant. Competition concerns, if any, that may arise from non-compete restrictions can be looked into under Sections 3 and/ or 4 of the Act.

4. A copy of the draft amendment to the Combination Regulations is available on the website of the Commission (www.cci.gov.in). Comments are invited from the public and may be emailed to combination.cci@nic.in by June 15, 2020.

¹ Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011