

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

The 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 annexed. 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

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[To be published in the Gazette of India, Extraordinary, Part III, Section 4 dated
__ May, 2020]

**THE COMPETITION COMMISSION OF INDIA
NOTIFICATION**

New Delhi, the __ May, 2020

**The Competition Commission of India (Procedure in regard to the transaction of
business relating to combinations) Amendment Regulations, 2020**

F.No. CCI/CD/Amend/Comb. Regl./2020— In exercise of the powers conferred by section 64 of the Competition Act, 2002 (12 of 2003), the Competition Commission of India hereby makes the following regulations further to amend the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, namely:—

1. Short title and commencement.—

(1) These regulations may be called the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2020.

(2) They shall come into force on the date their publication on the official gazette.

2. In the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011,—

(1) In Schedule II, in Form I, Paragraph 5.7 shall be omitted.

Jyoti Jindgar, Secy. [I/c]
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Note: Principal regulations were published vide notification number F. No. 1-1/ Combination Regulations/2011- 12/CD/CCI in the Gazette of India, Extraordinary, Part III, Section 4, dated the 11th May, 2011 and were subsequently amended by,—

(a) The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2012 published vide F. No. 3-1/Amend/Comb.Regl./2012/CD/CCI in the Gazette of India, Extraordinary, Part III, Section 4, dated the 23rd February, 2012;

- (b) The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2013 published vide F. No. 3-1/Amend/Comb. Regl./2012/CD/CCI in the Gazette of India, Extraordinary, Part III, Section 4, dated the 4th April, 2013;
- (c) The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2014 published vide F. No. CCI/CD/Amend/Comb.Regl./2014 in the Gazette of India, Extraordinary, Part III, Section 4, dated the 28th March, 2014;
- (d) The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2015 published vide F. No. CCI/CD/Amend/Comb.Regl./2015 in the Gazette of India, Extraordinary, Part III, Section 4, dated the 01st July, 2015;
- (e) The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2016 published vide F. No. CCI/CD/Amend/Comb.Regl./2016 in the Gazette of India, Extraordinary, Part III, Section 4, dated the 07th January, 2016;
- (f) The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2018 published vide F. No. CCI/CD/Amend/Comb.Regl./2018 in the Gazette of India, Extraordinary, Part III, Section 4, dated the 09th October, 2018;
- (g) The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2019 published vide F. No. CCI/CD/Amend/Comb. Regl./2019 in the Gazette of India, Extraordinary, Part III, Section 4, dated the 13th August, 2019; and
- (h) The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Second Amendment Regulations, 2018 published vide F. No. CCI/CD/Amend/Comb.Regl./2019(2) in the Gazette of India, Extraordinary, Part III, Section 4, dated the 30th October, 2019.
