



# Regulation of Combinations

Workshop on “Competition Act,2002”  
for Officers of Deptt of Shipping

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# Combinations

- Combination covers
  - Acquisition of shares/voting rights/assets
  - Merger
  - Amalgamation
  - Acquiring control over another enterprise in the same line of business
- Any combination which causes or is likely to cause appreciable adverse effect on competition is void



# Threshold

- High threshold limits
- Combining parties' assets in India > Rs 1000 cr or turnover > Rs 3000 cr
- If combining parties are a group, assets in India > Rs 4000 cr or turnover > Rs 12000 cr
- Assets in India and outside India > US\$ 500 m or turnover > US\$ 1500 m
- If any of the combining parties belong to a group and any one of them is outside India, assets > US\$ 2 b or turnover > US\$ 6 b
- Domestic nexus



# Investigation into a combination

- Mandatory notification regime - notice to CCI within 30 days
- CCI can inquire into a combination on its own but not beyond 1 year of the combination taking place
- Penalty for not notifying the Commission



# Notification & Determination

- Two Forms – Form 1 (long form) & Form 2 (short form)
- Determination within 30 days when Form 1 used or within 60 days when Form 2 used
- If show cause notice not received within 30/60 days, combination shall be deemed to have been approved.
- Law permits a maximum of 210 days



# Who should notify

- Both parties jointly except in case of acquisition, the acquirer
- File information regarding the target company to the extent available
- Notify when 15% or more equity or voting rights being acquired
- Notify when acquisition of assets leads to control

# Certain transactions declared not harmful



- Acquisition of current assets
- Bonus or Rights issue
- Intra-group transfers of shares
- Creeping acquisition by promoters
- Amended or renewed tender offer
- Acquisition by underwriter



# Factors to be considered -1

- Actual and potential competition through imports - imports/trade agreements
- Entry barriers- sunk cost/technological lead
- Concentration level - CR, HHI
- Countervailing power
- Likelihood of increase in prices or profit margins
- Effective competition after combination
- Substitutes — actual or potential



## Factors to be considered - 2

- Market share
- Removal of maverick competitor
- Extent of vertical integration
- Failing business
- Nature and extent of innovation
- Contribution to economic development
- Whether benefits outweigh the adverse impact



# Procedure of Investigation

- Issue of show cause notice
- May call for report from DG
- Prima facie opinion that the combination causes or is likely to cause AAEC – direct parties to publish details calling for written objections
- May call for additional information from parties



# Other Unique Features

- Reference by/to statutory authorities
- Reference by Central/State government
- Competition Advocacy - education
- International co-operation
- Effects Doctrine
- Competitive neutrality



# Scope

- Covers all economic agents – producers, service providers, traders, sellers, buyers, etc.
- All public sector enterprises, Central or State, are within its purview
- Even government departments engaged in commercial activities are within its purview



# Compliance

- Non-compliance can have serious consequences – both monetary and non-monetary
- Behavioral as well as structural remedies - division of enterprise
- Penalties
- Compliance programme for each enterprise is necessary



# Thank You

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