

General Statement

The Competition Commission of India (Combinations) Regulations, 2024

1. The Competition Act, 2002 (**Act**) was amended on 11th April 2023, *vide* the Competition (Amendment) Act, 2023 (**Amendment Act**). Among other things, the Amendment Act introduced (i) an additional notification criterion *i.e.*, deal value threshold for mergers and acquisitions; (ii) enabling provision allowing open market transactions subject to certain conditions; and (iii) amendment to the scheme for review of combinations.
2. In view of the significant changes introduced by the Amendment Act, CCI proposed the draft Competition Commission of India (Combinations) Regulations, 2023 (**Draft Regulations**) for enabling the changes so introduced by the Amendment Act. The Draft Regulations were placed on the website of CCI inviting written comments from the stakeholders from 5th September 2023 to 25th September 2023.
3. CCI received comments from 39 stakeholders within the aforesaid period from various stakeholders which included industry associations, legal fraternity, policy think tanks, academia, etc. CCI has carefully examined the comments received and based on its past experience as well as international best practices, certain changes have been incorporated in the Draft Regulations to ensure there is no uncertainty and ambiguity in the regulatory framework. Accordingly, CCI has today notified the Competition Commission of India (Combinations) Regulations, 2024 (**Combinations Regulations 2024**).
4. In terms of Section 64A(b) of the Act, this general statement is being published to provide CCI's response to the public comments.
5. The Combinations Regulations 2024 *inter alia* provide for the following:
 - a. Value of transaction and criteria for substantial business operations in India;
 - b. Exercise of rights in case of open offer and acquisitions on stock exchanges;
 - c. Procedure for review of combinations;

- d. Procedure for modification to the proposed combination.
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6. In the context of Regulation 2(1)(c) of the Draft Regulations relating to the concept of ‘relevant date’ for the purposes of determining value of transaction, stakeholders highlighted that the terms ‘accorded’ and ‘approval’ when read in the context of an ‘agreement or other document’ could even mean a date on which corporate approvals for the execution of the same are accorded thereby implying ambiguity in the inference of the trigger document for mergers and amalgamations and instances of acquisitions. CCI, after examining the same, amended the definition of ‘relevant date’ as provided in Regulation 2(c) by making necessary changes.
 7. Regarding Regulation 4(1)(a) of the Draft Regulations relating to the consideration paid for any covenant, undertaking, obligations, or restrictions imposed on the seller or any other person, other than the acquirer, in the nature of non-competition or otherwise, stakeholders expressed difficulty in ascertaining the standalone value of non-compete covenants. In this regard, CCI is of the view that if no separate consideration has been ascribed to the non-compete covenant or consideration attributable to the non-compete covenant is already included in overall consideration, then nothing is to be added to the value of the transaction for the same. Accordingly, necessary change has been made to the regulation.
 8. With regards to Regulation 4(1)(c) of the Draft Regulations, the stakeholders pointed out that it would be unfeasible to include the value of subsequent arrangements into the deal value of the initial transaction, as these arrangements may not even be contemplated at the time of the initial transaction. CCI has examined the same and amended Regulation 4(1)(c) to make the scope of value of arrangements as more specific by introducing a specific payment dimension for a given time frame. Accordingly, the regulation now provides that payments to be made are to be added to the value of the transaction if the arrangement(s) are entered into as a part of the transaction or incidental thereto. Further, the amount payable during two (2) years from the date on which the transaction would come into effect is to be added to arrive at the value of the transaction.
 9. Regarding Regulation 4(1)(d) the stakeholders have highlighted concern regarding the manner of estimating the value of securities. In this regard, CCI observes that where the

option exercise price is pre-determined, the same shall be considered. However, if the exercise price is based on the future outcome specified under the transaction documents, as per clause 4(1)(e) of the draft regulations, best estimate shall be considered. As regards the issues of valuation which may arise in this context, new explanations (f), (g), and (h) have been provided. Regulation 4(1)(d) of Draft Regulations has also been amended which would now include only call option and shares to be acquired thereof assuming full exercise of such option.

10. The stakeholders expressed concern that the use of ‘any uncertain future event’ in Regulation 4(1)(e) of the Draft Regulations creates ambiguity for parties to accurately account for the value of the transaction. Further, Regulation 4(1)(e) read with Explanation (g) may result in parties being obligated to notify all transactions where they cannot determine the value of transaction with certainty. In this regard, CCI is of the view that this provision does not impose any additional condition/requirement on the parties, rather it provides flexibility and certainty by providing that this consideration may be included as per best estimates of the acquirer. Nevertheless, Regulation 4(1)(e) has been amended to determine the consideration payable, as per best estimates, based on the future outcome specified under the transaction documents. An explanation (h) to Regulation 4(1) has also been inserted to provide more clarity in this regard.
11. Regarding the condition of “deemed inter-connection” in Explanation (c) to Regulation 4(1) of Draft Regulations, stakeholders stated that it may lead to inflation of the value of the transaction due to the inclusion of value of other unrelated acquisitions done in the ordinary course of business in a two-year period. CCI observed that inference of “deemed inter-connection” can result in automatic contravention of notification obligations and not the mere consideration of the value of such transactions. The inclusion of consideration for such transactions is necessary to deter the splitting of a transaction. To address the concern of the previous transaction being deemed as inter-connected, CCI has amended Explanation (c) to Regulation 4(1) by removing the words “deemed to be an inter-connected transaction”.
12. Stakeholders stated that the value of consideration in Explanation (d) to Regulation 4(1) of Draft Regulations be limited to the transaction’s actual consideration. Recognising

the issue involved and as it was not the intent of CCI to consider enterprise value, the said Explanation has now been deleted.

13. Stakeholders suggested that the value of transaction should not take into account ancillary costs such as legal fees, fees for the approval from CCI, *etc.*, as these costs are not connected with the value of the transaction. CCI has taken cognizance of this and added Explanation (e) to Regulation 4(1) of the Combinations Regulations 2024.
14. Stakeholders sought clarity on the aspect of assumption of full subscription of an open offer at the sole discretion of the acquirer and not a mandatory obligation. In this regard, Explanation (d) to Regulation 4 (1) has been inserted in Combinations Regulations 2024, to ensure that the person giving the notice shall assume full subscription to the offer for the purpose of computation of value of transaction.
15. Further, stakeholders highlighted that the presumption to notify a transaction, under Explanation (g) to Regulation 4(1) of Draft Regulation, will create an onerous obligation on parties to notify where the transaction value is subject to any uncertainty. Upon examination of these concerns, the amended Explanation (g) to Regulation 4 (1) of the Combination Regulations 2024, now provides that in case the value of transaction cannot be established with reasonable certainty by the board of directors or any other approving authority of the person obligated to file a notice under these regulations, the value of the transaction may be considered as exceeding the amount specified in clause (d) of Section 5 of the Act.
16. With respect to Regulation 4(2) of the Draft Regulations, many stakeholders raised concerns and/or sought clarity regarding the metric for assessment of Substantial Business Operations (**SBO**) of the target enterprise in India. CCI, after duly examining the concerns highlighted by the stakeholders, has amended Regulation 4(2) and introduced the first metric of SBO, which would only be applicable for digital services and also provided the definition of the terms 'digital service', 'business user', and 'end user' by inserting Explanation (d), (e) and (f) to Regulation 4(2) of the Combination Regulations 2024, respectively. In addition to the above, it has been decided that *vide* the newly inserted Explanation (c) to Regulation 4(2), the proportion of business users

or end users, shall be computed on the basis of an average of such users, for three hundred and sixty five days preceding the relevant date.

17. With respect to the threshold of 10% applicable to the other two metrics of determining the SBO of the target enterprise in India, *i.e.* Gross Merchandise Value (**GMV**) and turnover, the stakeholders highlighted that it is not significant portion of a party's business in India for it to be considered as substantial. CCI has now indicated a threshold in terms of absolute value for turnover as well as GMV to be read along with the 10% threshold.
18. Further, specifically in regard to the 'user' and 'GMV' based criteria for determining the SBO of the target enterprise in India, stakeholders indicated that there is a lack of clarity on whether the 10% threshold is required to be met "in India". Accordingly, CCI has now inserted the reference to "in India" for the 'user' and 'GMV' based criteria in Regulation 4(2) of the Combination Regulations 2024.
19. In relation to Regulation 6(b) of the Draft Regulations, the stakeholders highlighted that on a conjoint reading of Section 6A of the Amendment Act, Regulation 6(b), and declaration under Schedule II to the Draft Regulation, there appears to be an inconsistency between the timeline and conditions on the availability of rights with the acquirer under Regulation 6(b). Considering the comments received from stakeholders, Regulation 6(b) of the Draft Regulation has been deleted and the declaration under Schedule II to the Draft Regulations has also been amended.
20. In relation to Regulation 15(5) of the Draft Regulations, the stakeholders highlighted that in case CCI directs that a new notice is required to be filed, the 30-day mandatory timeline for such re-notification would be onerous and may compromise the quality. Based on the suggestions of the stakeholders, the period for re-notification has now been extended to forty-five (45) days by making necessary amendments in the proviso to Regulation 15(5) of the Combinations Regulations 2024.
21. Stakeholders highlighted that Regulation 21(1) of the Draft Regulations does not provide a time period for publication of details of the combination, which creates ambiguity over the timeline required to be followed. CCI has amended the regulation

accordingly, to provide a time period of seven (7) days for publication of details of the combination.

22. Stakeholders suggested that the time period for a party to communicate its acceptance or non-acceptance of modifications proposed by CCI under Regulation 25(1) seems insufficient and the same may be increased to twenty-one (21) days. However, CCI is of the view that timelines prescribed are in sync with the overall framework and parties may seek an extension of time by submitting an undertaking for exclusion of time from the statutory limit of 150 days. Accordingly, the suggestion was not accepted.

23. Stakeholders highlighted that the Draft Regulations do not provide clarity regarding their applicability, when notified, to (i) transactions that have been signed, but not consummated, prior to the enforcement of the Draft Regulations; (ii) transactions consummated under the existing merger control regime and (iii) transaction that been notified under the provisions of the Competition Commission of India (Procedure in regard to the transactions of business relating to combinations) Regulations, 2011, and is pending as on the date of notification of Combination Regulations 2024. CCI has amended Regulation 33 and introduced Regulation 34 to clarify the same.
