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Analysing developments impacting business

HALLOWEEN SURPRISE: CCI HIKES MERGER FILING FEES

31 October 2019

By way of a notification published on 30 October 2019 (Amendment), the Competition Commission of India (CCI) has yet again amended the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (Combination Regulations). The Amendment, effective from 30 October 2019, has enhanced the filing fee which is payable along with the merger notification to the CCI for a pre-merger approval. The Amendment marks the third instance where the filing fee has been increased by the CCI. The first such amendment was in February 2012 followed by a further enhancement in the filing fee in March 2014.

The revised filing fees are as set out below:

- The filing fee to be remitted for a Form I filing has been increased from INR 1,500,000 (Indian Rupees One million five hundred thousand) (approx. USD 21,200 (US Dollars Twenty-one thousand two hundred)) to INR 2,000,000 (Indian Rupees Two million) (approx. USD 28,250 (US Dollars Twenty-eight thousand two hundred and fifty)).
 - Form I is a short Form and typically filed where the market shares of the parties are comparatively lower.
- The filing fee to be remitted for a Form II has been increased from INR 5,000,000 (Indian Rupees Five million) (approx. USD 70,600 (US Dollars Seventy thousand six hundred)) to INR 6,500,000 (Indian Rupees Six million five hundred thousand) (approx. USD 91,800 (US Dollars Ninety-one thousand eight hundred)).
 - Form II is filed where the combined market share of the parties to the transaction who are horizontally placed in the relevant market, i.e. are competitors, is more than 15% or if the combined market share of the parties is more than 25%, in case the parties are vertically placed in the downstream/upstream relevant markets.

Comment:

With this move, the year has witnessed two amendments to the Combination Regulations in quick succession - the first amendment was passed in August 2019 on the introduction of the green channel mechanism. There is unfortunately no relaxation for parties pursuing the green channel notification route as the Form I filing fee

continues to equally apply to such filings.

Interestingly, one of the recommendations from the Competition Law Review Committee (CLRC) is to empower the CCI to charge an *ad valorem fee* (for eg, based on transaction value) for merger filings. However, the current amendment continues to go with the existing *straight jacket* applicability of the filing fee based on the format of the merger notice (ie, whether Form I or Form II). As such, the principles echoed in the CLRC recommendation remain visibly absent in the amended framework.

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