

ERGO

Analysing developments impacting business

CCI SIMPLIFIES FORM II NOTIFICATION FORMAT – TO COME INTO EFFECT FROM 1 MAY 2022

2 April 2022

Introduction and Background

In a welcome move, the Competition Commission of India (**CCI**) has published the revised format of Form II (long form) to notify reportable transactions. While the overhauled format was published on 31 March 2022 by way of amendment to the CCI (Procedure in regard to the transaction of Business relating to Combinations) Regulations, 2011 (**Combination Regulations**), the requirement to comply will come into effect from 1 May 2022.

A Form II is typically required to be filed with the CCI where parties to a notifiable transaction (ie, transactions that breach prescribed financial thresholds) have a combined market share of over 15% (in horizontally overlapping markets) or over 25% (in vertically overlapping markets). Transactions involving a lesser combined market share of the parties can be notified by way of Form I (short form).

The present format of Form II, which comprises 13 queries, is fairly repetitive and at times, ambiguous in its scope. Moreover, some of the questions are excessive and seek voluminous information with little or no bearing on the competition analysis.

The revised Form has not only reduced the number of queries to 7 but has improved the overall structure of the Form II by, inter alia, clubbing similar questions under a common head. The queries can broadly be classified into the following heads:

- (i) information about the merger/acquisition/amalgamation (including a description of the merger/acquisition/amalgamation, value of the transaction, rights to be acquired by the parties, timelines, etc.);
- (ii) corporate information about the parties (including details of financial values, shareholders, directors/key employees, downstream investments, group structure, etc.);
- (iii) business related information (including a list of business activities of the parties/group/portfolio companies, offices/factories, trademarks, etc.);
- (iv) information in relation to overlapping markets (including details of structure of the market, market size, market share of the parties and competitors, suppliers,

customers, legal framework, recent R&D activities, recent entry and exits from the market, impex details, etc.); and

- (v) analysis of the likely impact of the merger/acquisition/amalgamation on competition and economy.

Comment and Takeaways:

This amendment was in the offing for a while and has finally seen the light of the day. The amended Form enlists more meaningful questions fundamental to competition impact assessment and does away with several onerous and superfluous questions.

While the format of Form II has been streamlined and simplified, the enhanced rigour to capture all the material information relevant to carry out competition analysis is clearly discernible. For instance, the revised Form II format has introduced the requirement for providing quantitative market facing data for the last 5 years in relation to market size, market share of the parties and competitors, and customers and suppliers (as opposed to the current requirement of providing data for only 1 year). This will likely aid the CCI to appreciate the market dynamics better and over a longer span of time, and allow it to reach a more informed decision.

The revised Form II format also reveals striking similarities with the Form I format queries. For instance, the query on foreign investment, country of origin, complementary overlaps, alternate plausible markets, etc. find mention in the updated Form II format as well.

This development resonates with the CCI's continuous efforts to proactively adopt business friendly processes, especially in the context of merger control. In August 2019, the CCI had simplified the Form I format and also introduced the Green Channel route under which a transaction without any overlaps between the parties will be deemed approved upon filing. In a similar vein, in 2020, the CCI issued the guidance note to Form I which provided further clarity to stakeholders. With the simplification of the Form II format, the CCI has reinforced its commitment to contribute to the central government's "ease of doing business" initiative.

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