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CCI re-affirms its strict standard in Green Channel Merger Filings

17 July 2025

Background

The Competition Commission of India (CCI) has, through a series of decisions over the past two and a half years, signalled that it conducts a post-mortem of Green Channel filings to verify whether they were correctly made. These orders make it clear that the Green Channel route is strictly available only where there are no business overlaps, whether horizontal, vertical, or complementary.

Originally introduced in 2018 as a fast-track approval route for transactions without overlapping markets, the Green Channel mechanism allows for deemed approval upon filing. However, recent enforcement actions reflect the CCI's unwavering stance that even minor or indirect overlaps can render a transaction ineligible for Green Channel route.

The latest order involving CA Plume Investments and Bequest Inc.'s acquisition of Quest Global Services reinforces this position. Key facts and takeaways follow.

Summary of facts

On 23 October 2023, CA Plume Investments and Bequest Inc. (**Acquirers**), both linked to the Carlyle Group, filed a notice under the Green Channel route for their proposed acquisition of up to 32.77% in Quest Global Services Pte. Ltd. (**Target**). The Acquirers declared that the transaction involved no horizontal, vertical or complementary overlaps between their portfolio entities and the Target's business.

The Target provides engineering and research & development services for designing and developing various products for major global OEMs in sectors like aerospace, automotive, and industrials.

The Acquirers originally asserted that they did not have any overlaps with Quest Global's activities, and hence the transaction qualified for Green Channel clearance.

However, upon further inquiry, the Acquirers acknowledged that some vertical or complementary interfaces might exist between their portfolio companies and the Target's services. They admitted that certain arrangements were in place between some of their portfolio companies and the Target, though these were neither essential nor critical inputs for either party. The overlaps were inadvertent and came to light only after a detailed review.

The CCI ultimately found that certain products and services offered by the Target and the Acquirers' affiliates could be bundled or offered jointly to common customers, suggesting potential vertical relationships or complementary linkages. In view of the cooperation extended by the Acquirers and their prompt admission of the oversight, the CCI imposed a nominal penalty of INR 4 lakh (approximately USD 4,500) for the incorrect Green Channel filing and directed them to refile the notice in Form I with complete disclosures.

Key takeaways

Tight Green Channel Criteria:

The CCI has made clear that even remote or potential overlaps—horizontal, vertical, or complementary—between any portfolio entities and the target can disqualify a transaction availing the Green Channel route.

Strict Liability for Gun-Jumping:

If overlaps exist and the Green Channel route is availed, the filing will be void and penalties may apply. The route is meant for clear-cut cases, not subjective judgements.

High Due Diligence Standards:

The CCI expects thorough diligence across all portfolio entities. Incomplete or surface-level checks, especially in complex structures, does not suffice.

No Immunity for Honest Mistakes:

Even genuine errors would not shield parties from penalty, though full cooperation and timely correction may lead to reduced penalties.

Conclusion

Green Channel filings were once popular, accounting for nearly 30% of the CCI's total filings in their early years. However, usage has declined following a series of penalty orders against parties who incorrectly claimed eligibility.

This latest order reaffirms the CCI's strict stance on Green Channel. Arguments about overlaps being minor or commercially irrelevant are unlikely to succeed. Where doubt exists, parties are advised to take a conservative approach and file under the standard Form I route to avoid violating the law.

Given rising enforcement in this area, deal teams and advisors should:

- conduct detailed assessments across all direct and indirect portfolio entities,
- build in sufficient time for due diligence, and
- avoid the Green Channel route if any linkages are identified.

The risks are clear: an incorrect Green Channel filing voids the deemed approval and may attract penalties, regardless of the transaction's competitive impact.

- *Anisha Chand (Partner) and Soham Banerjee (Counsel)*

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