



The Dialogue™
INFORM ENGAGE IDEATE

Written Comments

COMPETITION COMMISSION OF INDIA'S DRAFT REGULATION ON COMBINATIONS



WRITTEN COMMENTS

COMPETITION COMMISSION OF INDIA'S DRAFT REGULATION ON COMBINATIONS

Authors- Saksham Malik, Bhoomika Agarwal and Aman Mishra

Designer- Akriti Jayant

The Dialogue™ is a public policy think tank with a vision to drive a progressive narrative in India's policy discourse. Founded in 2017, we believe in facilitating well-researched policy debates at various levels to help develop a more informed citizenry, on areas around technology and development issues. The Dialogue™ has been ranked as the world's Top 10 think tanks to watch out for, by the Think Tank and Civil Societies Programme (TTCSP), University of Pennsylvania in their 2020 and 2021 rankings.

For more information

<https://thedialogue.co>

Suggested Citation

Malik, S, Agarwal, B & Mishra, A. (2023), Written Comments on Competition Commission of India's Draft Regulations on Combinations, The Dialogue™

Catalogue No.

TD/CLP/WC/0923/02

Publication Date

September 27, 2023

Disclaimer

The facts and information in this report may be reproduced only after giving due attribution to the authors and The Dialogue™

Contents

1. Introduction	1
2. Key Themes	2
2.1. Calculating certain considerations for 'Value of Transaction'	2
2.2. Scope of Incidental Arrangements and Time Period	3
2.3. Scope of Substantial Business Operations in India	5
2.4. Filing Fees	6
2.5. Opportunity to be Heard	8
2.6 Green Channel Combinations and Schedule I Exemptions	9

1. Introduction

The recent Competition (Amendment) Act, 2023 (2023 Act), has introduced various changes to provisions relating to merger control in the Competition Act, 2002 (the Act). Notably, the 2023 Act introduced the Deal Value Threshold (DVT) as a new notification threshold. Under the DVT, a transaction will require prior approval of the Competition Commission of India (CCI/ Commission) if (i) the transaction value is more than INR 2,000 crore and (ii) the target has substantial business operations in India.

To further expand on the revamped merger control regime, on September 5, 2023, the CCI published the draft "Competition Commission of India (Combinations) Regulations, 2023" (DCR) for public consultation. The DCR includes new notification criteria of the 'deal value threshold', codification of the pre-consultation stage, reduction in the overall timeline for assessment of combinations, updated filing fees, the introduction of an intermediate time limit of 30 days for forming a prima facie opinion among other changes. The Dialogue is pleased to submit its comments on certain crucial aspects of the draft regulations.

2. Key Themes

2.1. Calculating certain considerations for 'Value of Transaction'

As per regulation 4(1) of the DCR, consideration for covenants in the nature of non-compete clauses and future occurrences would also be included while calculating the value of the transaction. It is imperative to gain a comprehensive understanding of what constitutes an 'uncertain future event' in the context of combinations and how the parties involved can make determinations in this regard. Clarity on these may be needed since, at present, these considerations are not necessarily calculated or quantified by the parties when entering into transactions.

2.1.1. Relevant Clause

Regulation 4(1) of the DCR describes the factors for calculating the value of a transaction as below:

4. Value of transaction and substantial business operations in India.

(1) The value of transaction for the purpose of clause (d) of section 5 of the Act shall include every valuable consideration, whether direct or indirect, immediate or deferred, cash or otherwise, including but not limited to, the following consideration:—

(a) for any covenant, undertaking, obligations or restrictions imposed on seller or any other person, other than acquirer, in the nature of non-competition or otherwise;

...

(e) for occurrence or non-occurrence of any uncertain future event as per estimates of the acquirer.

2.1.2. Key Considerations

a. The absence of clear guidance to determine the consideration for non-compete provisions may result in challenges for the parties to the combination. From a commercial perspective, a non-compete clause is typically not allocated a distinct, quantifiable value. Therefore, the impact of non-compete provisions on the value of the transaction will be difficult to determine.

b. The provision also allows for the inclusion of consideration for uncertain future events as per the estimates of the acquirer. Future instances may be valued to the extent that they are certain or likely to happen, for instance, consideration for transfer of shares at a future date. However, for 'uncertain future events', it may prove challenging for parties to value the same without clear guidance.

2.1.3. Other Frameworks

a. As per the 'Guidance on Transaction Value Thresholds for Mandatory Pre-merger Notification (Section 35 (1a) GWB and Section 9 (4) KartG)¹ (Guidance) payment for non-competition by the seller must also be included unless they are already completely covered by other elements of the consideration.²

b. The Guidance states that when non-competition payments are associated with a merger, it's considered connected if a different consideration value would have been agreed upon without the non-

¹ Bundeskartellamt. (2022, January). Para 11, Guidance on transaction value thresholds for Mandatory Pre-merger Notification. https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitfaden/Leitfaden_Transaktionswertschwelle.pdf?__blob=publicationFile&v=2

² Id at para 11.

competition clause.³ It further notes that since non-competition payments are typically included in the purchase price, independent assessments of non-competition's value are of limited practical significance.⁴

c. The Guidance also discusses the considerations related to future and variable components of purchase prices. These components include payments contingent on specific company parameters, milestones, or future events like earn-out payments tied to corporate performance metrics or milestones in drug approval processes and future license payments.⁵ The value of such payments, even if they occur at different times, must be determined during the merger notification.⁶

d. This involves calculating the present value of future payments using discounting methods.⁷ Information on future payments, payment dates, and interest rates should be based on assumptions.⁸ Companies must transparently describe these assumptions for the competition authority to verify their plausibility, particularly when future payments depend on uncertain factors like turnover targets. The Guidance acknowledges the uncertainty of future payments and emphasises the need to explain any weighting based on probabilities used to calculate their value.⁹

2.1.4. Recommendations

a. Two particular areas that require attention are the inclusion of non-competition clauses and future occurrences in calculating the value of transactions. The lack of clarity on their meaning and scope may lead to different and conflicting interpretations by the Commission and the parties to the combination. The CCI may consider removing, revising or adding more nuance to these provisions for clarity.

b. A substantial amount of granularity is required in case these inclusions are kept in the combination regulations. More clarity on consideration for non-competition may be provided by the regulations, considering that non-competition is not always a 'separate amount' and is usually included in the purchase price. The Commission may refer to the Guidance issued by Germany and Austria for the same.

c. The CCI may consider providing further information on how future occurrences would be computed. Certainty on potential components of future occurrences and methods/manner of calculation may be provided. A significant level of detail and nuance may be required to ensure these provisions are comprehensive and clear.

2.2. Scope of Incidental Arrangements and Time Period

The DCR provides that any incidental arrangements made during two years from the date on which the transaction comes into effect would be covered under consideration while calculating the value of the transaction.

2.2.1. Relevant Clause

Regulation 4(1) of the DCR describes the factors for calculating the value of a transaction as below:

4. Value of transaction and substantial business operations in India.

³ *Id at para 61.*

⁴ *Id at para 63.*

⁵ *Id at para 15.*

⁶ *Id at para 29.*

⁷ *Id at para 30.*

⁸ *Id at para 33.*

⁹ *Id at para 34.*

(1) The value of transaction for the purpose of clause (d) of section 5 of the Act shall include every valuable consideration, whether direct or indirect, immediate or deferred, cash or otherwise, including but not limited to the following consideration: –

(a) ...

(b) for all inter-connected steps as read in sub-regulation (4) and (5) of regulation 9 of these regulations;

*(c) For arrangement(s) entered into as a part of the transaction or **incidental arrangement(s)** entered into **anytime during two years from the date on which the transaction would come into effect** including but not limited to technology assistance, licensing of intellectual property rights, usage rights to any product, service or facility, supply of raw materials or finished goods, branding and marketing”*

2.2.2. Key Consideration

a. The term ‘incidental arrangement’ lacks a clear definition and is significantly broad, potentially encompassing a wide range of agreements. It might not be ideal to presume that all ‘incidental arrangements’ have necessarily been made or anticipated towards a specific strategic objective of the particular combination.

b. Furthermore, certain transactions between the two parties that are not necessarily connected with the combination will come under the scope of the value of transactions because of the two-year time period mentioned under the DCR.

c. The specification of a two-year period also gives the parties opportunities to avoid scrutiny from CCI by entering into arrangements outside the mentioned period. Furthermore, it may also impact CCI’s ability to look into arrangements beyond two years by restricting it to the set time period.

d. If read with Explanation (e) to the Clause, the relevant time period may be inferred to be as long as 4 years. The prolonged time frame surrounding the transaction may lead to an influx of filings that do not meaningfully satisfy the deal value threshold but are notified nonetheless to avoid penalties. This is not in consonance with the legislative intent of the recent amendments, which seek to streamline the merger control framework and reduce the administrative burden on the CCI.

2.2.3. Other Frameworks

a. As per the Guidance on transaction value thresholds for Mandatory Pre-merger Notification,¹⁰ the value of the consideration relates only to the proposed merger project in question.

b. Instead, a case-by-case assessment has to be carried out to determine whether individual acquisitions that are closely connected in material terms and timing should be regarded as parts of a single merger, in which case the considerations of the individual transactions would also be included in the calculation of that merger’s consideration value.

2.2.4. Recommendations

a. To provide clarity regarding calculating the value of transactions, the CCI may consider elucidating the scope of ‘incidental arrangements’ to offer certainty to involved parties.

¹⁰ Bundeskartellamt. (2022, January). Para 13, Guidance on transaction value thresholds for Mandatory Pre-merger Notification. https://www.bundeskartellamt.de/SharedDocs/Publikation/EN/Leitfaden/Leitfaden_Transaktionswertschwelle.pdf?__blob=publicationFile&v=2

b. The CCI may further consider revising or removing the scope of the two-year period to assess transactions. Instead, it may adopt a case-by-case approach where the CCI evaluates the specific circumstances of each transaction to determine the appropriate timeframe for scrutiny. This would prevent strategic long-term conduct aimed at evading scrutiny. Furthermore, it will allow the CCI flexibility to assess arrangements beyond the aforementioned period when necessary.

c. Furthermore, to avoid the inclusion of unrelated transactions in the calculation of the value of transactions by the parties to the combination, the CCI may specify a list of transactions that are not directly connected to the combination and would be excluded, regardless of the two-year timeframe. This will lead to the avoidance of unnecessary filings before the Commission.

2.3. Scope of Substantial Business Operations in India

The DCR outlines the criterion that will be used to assess whether the target enterprise has substantial business operations within India. These criteria for assessing substantial business operations within India depend on the number of users, subscribers, customers, or visitors, among other parameters. However, a lack of clarity on these broad terms may lead to uncertainty amongst relevant stakeholders.

2.3.1. Relevant Clause

Regulation 4 (2) of the DCR describes the criteria for assessing whether an enterprise has substantial business operations in India as below:

“For the purpose of proviso to clause (d) of section 5 of the Act, the enterprise referred therein would be deemed to have substantial business operations in India, if: (a) the number of its users, subscribers, customers, or visitors, at any point in time during a period of twelve months preceding the relevant date is 10% or more of its total global number of users, subscribers, customers or visitors, respectively; or (b) its gross merchandise value for the period of twelve months preceding the relevant date is 10% or more of its total global gross merchandise value; or (c) its turnover during the preceding financial year, in India, is 10% or more of its total global turnover derived from all the products and services.”

2.3.2. Key Considerations

a. A possible concern may arise from the ambiguity surrounding the term ‘users’, particularly in its possible inclusion of active and inactive users. It might encompass anyone who has registered for the service but no longer actively engages with it. Including these users may lead to an incorrect assessment of the extent to which a party has substantial operations in India.¹¹

b. Furthermore, the provision includes ‘visitors’ within its scope. The number of visitors that merely visit a website, as against actual subscribers or users, may not have substantial implications for the company’s competitive advantage or business operations in India. Referring to visitors as a basis for calculating substantial business operations would also require that the entity gather user data for a reliable calculation of ‘unique’ visitors, which may raise privacy concerns and be incompatible with the new data privacy law.

c. The criteria for substantial business operations do not incorporate an exemption for combinations that fall below a specific threshold, meaning that all combinations, regardless of their size, are subject to

¹¹ Competition Commission Of India. (2019, November). Proceedings against Canada Pension Plan Investment Board and ReNew Power Limited under Chapter VI of the Competition Act, 2002 . Competition Commission of India, GOI. https://www.cci.gov.in/combination/order/details/order/1137/0/orders-section43a_44

evaluation. However, certain transactions may have significantly low scale, basis their turnover and other parameters, making it unlikely for them to have substantial business operations in India.

2.3.3. Other Frameworks

a. While the framework in Japan does not explicitly include parameters of 'users' or 'visitors',¹² there are instances of the same in Germany and Austria. In the digital sector, Germany and Austria consider user numbers (monthly active users) and website access frequency (unique visitors) as potential indicators for assessing the significance of domestic operations during mergers and acquisitions.¹³ Austria also takes into account the location of the target company, but it must have domestic market-oriented activities for it to be considered significant.¹⁴ In Germany, the key factor is using assets for business activities, not just their location.¹⁵

b. Both Germany and Austria allow for certain exemptions based on turnover. In Germany, the Bundeskartellamt will not deem it significant if the target company's turnover in Germany is below €5 million, provided this turnover sufficiently represents its market position and competitive potential.¹⁶ Furthermore, for Austria, although legislators have not established a fixed threshold, the Bundeswettbewerbsbehörde frequently determines that there is no local activity when the domestic target companies' turnover is less than €500,000, assuming that this turnover accurately represents the target company's market position and competitive potential.¹⁷

2.3.4. Recommendations

a. The Commission may provide a clear and comprehensive definition of 'users' to explicitly distinguish between active and inactive users. This clarification will help companies accurately assess their local presence, ensuring inactive users do not unduly impact the evaluation of a platform's operations and competitive advantage.

b. The CCI may consider not including visitors as a parameter for calculating local nexus, considering its limited significance for substantial business operations and competitive advantage. Alternatively, it may provide how unique visitors can be calculated, keeping in mind user privacy and compliance with data privacy laws.

c. Furthermore, in line with the practice in Germany and Austria, the CCI can develop an exemption to promote ease of doing business in India. These exemptions may be based on turnover or other parameters.

2.4. Filing Fees

The DCR prescribes the revised filing fees that must be paid along with the notice in Form I or II. The revised filing fees are significantly higher than the previous filing fees for Form I and Form II and can impact an entity's ability to file notifications.

2.4.1. Relevant Clause

Regulation 11 of the DCR describes the amount of fee to be paid with Form I and Form II as follows:

¹² Japan Fair Trade Commission. (2019, December 17). Policies Concerning Procedures of Review of Business Combination. https://www.jftc.go.jp/en/legislation_gls/imonopoly_guidelines_files/191217policy.pdf

¹³ Bundeskartellamt. (2022, January). Para 67, Guidance on transaction value thresholds for Mandatory Pre-merger Notification.

¹⁴ *Id at para 68.*

¹⁵ *Id at para 69.*

¹⁶ *Id at para 82.*

¹⁷ *Id at para 83.*

“The amount of fee payable along with the notice in Form I or Form II as specified in schedule I to these regulations, as the case may be, shall be as under: -

(a) where the notice is filed in Form I, the fee payable shall be rupees thirty lakh (Rs. 30,00,000) only;

(b) where the notice is filed in Form II, the fee payable shall be rupees ninety lakh (Rs. 90,00,000) only.”

2.4.2. Key Consideration

a. The fees payable to the CCI by parties involved in a combination have significantly increased. The initial Form I fee, previously INR 15 Lakhs, was raised to INR 20 Lakhs in 2019 and is now proposed to be further increased to INR 30 Lakhs.

b. As for Form II, the initial fee, INR 50 Lakhs, was increased to INR 65 Lakhs in 2019 and is currently proposed to be raised to INR 90 Lakhs. This upward trend in fees has the potential to impede the ability of parties to engage with the Commission on filings and may have implications for the ease of doing business in India.¹⁸

2.4.3. Other Frameworks

a. The CCI has consistently offered cost-effective fee structures for various purposes, including the information filing fee. The CCI has adopted a nuanced approach in multiple aspects, where fees are not rigidly fixed but are based on several factors. For instance, when submitting information to the CCI, the fee varies based on the category of the filer. If an ‘individual’ files the information before the CCI, the fee is INR 5,000, but it can go up to INR 5 Lakhs for companies having turnover above INR 50 crores.¹⁹ Similarly, the recently published draft commitment²⁰ and settlement²¹ regulations included a turnover-based fee structure.

b. Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations 2021 provides a similar framework. In case of public issue of debt securities and/or non-convertible redeemable preference shares, the issuer, while filing a draft offer document with the stock exchange(s) has to pay a non-refundable fee of 0.00025% of the issue size, subject to a minimum of INR 25,000 and a maximum of INR 50 Lakhs.²²

c. As per the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, before making an initial public offer, the issuer must pay fees while filing the draft offer document. However, the fee is determined based on the size of the issue. For example, if the size of the issue is less than or equal to INR 10 crore, a flat charge of INR 1 lakh has to be paid. If the issue size is

¹⁸ Competition Commission of India. (2009, May). Regulation 10, The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. Competition Commission of India, GOI. <https://www.cci.gov.in/combination/legal-framework/regulations/details/1/0>

¹⁹ Competition Commission of India. (2009). Regulation 13 r/w Schedule VI. How to file information before the Competition Commission of India?. Competition Commission of India, GOI. <https://www.cci.gov.in/filing/atd>

²⁰The Competition Commission of India (Commitment) Regulations, 2023. Regulation 8. Competition Commission of India, GOI. (2023).

<https://cci.gov.in/images/stakeholdersttopicsconsultations/en/draft-commitment-regulations1692788680.pdf>

²¹ The Competition Commission of India (Settlement) Regulations, 2023. Regulation 9. Competition Commission of India, GOI. (2023).

<https://www.cci.gov.in/images/stakeholdersttopicsconsultations/en/draft-settlement-regulations1692787026.pdf>

²²The Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations 2021. Regulation 13 r/w Schedule VI. SEBI. (2021, August).

<https://www.sebi.gov.in/legal/regulations/jul-2023/web-upload-of-the-securities-and-exchange-board-of-india-issue-and-listing-of-non-convertible-securities-regulations-2021-last-amended-on-july-6-2023-73664.html>

more than INR 10 crore but less than or equal to INR 5000 crore, 0.1 per cent of the issue size has to be paid as a fee.²³

d. In the United States, there are different filing fees in relation to the difference in the transaction size as determined under Section 7A (a)(2) of the Clayton Act. For instance, For transactions with a size less than \$161.5 million, the filing fee is \$30,000. In cases where the transaction size is not less than \$161.5 million but less than \$500 million, the fee increases to \$100,000. This goes up to \$2.25 million as the size of the transaction increases.²⁴

2.4.4. Recommendations

a. To facilitate a more business-friendly environment and ensure accessibility to a broader range of acquirers, the CCI may consider reducing the fees. This adjustment is essential as the current fee structure may not be feasible for all acquirers and, in certain instances, may pose challenges for both the acquirer and the target.

b. Exploring a graded approach based on specific criteria, such as the transaction's size, may require consideration. This approach could provide a fair and balanced fee structure that considers the varying scales of transactions and the associated regulatory requirements. Similar strategies, as evidenced above, have been adopted by SEBI and the US.

2.5. Opportunity to be Heard

Subsequent to the submission of the notice, if there are any changes to the information furnished to the Commission during the ongoing proceedings under the Act, the Commission will evaluate the significance of these modifications.

If the Commission determines that these changes are affecting the factors for determining the appreciable adverse effect on competition, then, upon recording reasons, the Commission may deem the notice invalid, all without providing the parties to the combinations an opportunity to be heard.

2.5.1. Relevant Clause

Regulation 15 of the DCR describes intimation of any change in the information provided by the parties to the Commission as below:

“(4) Where the Commission is of the view that the change is likely to affect the factors for the determination of the appreciable adverse effect on competition significantly, it may after recording reasons, treat the notice already filed as not valid.

(5) Where the Commission has held a notice to be not valid under sub-regulation (4), the Secretary shall convey the decision of the Commission to the person who has given notice within seven days of the decision of the Commission:

²³ The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018. Regulation 25 r/w Schedule III. SEBI. (2018, September).

https://www.sebi.gov.in/legal/regulations/may-2023/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-last-amended-on-may-23-2023-_72390.html

²⁴ John Newman, Amy Ritchie. (2023, January). FTC announces 2023 update of size of transaction thresholds for Premerger Notification Filings and interlocking directorates. Federal Trade Commission. <https://www.ftc.gov/news-events/news/press-releases/2023/01/ftc-announces-2023-update-size-transaction-thresholds-premerger-notification-filings-interlocking>

Provided that the fee already paid shall be adjusted against the fee to be paid in respect of the new notice if the notice is given within a period of thirty days from the date of communication of the decision of the Commission.”

2.5.2. Key Consideration

a. The provision allows the CCI to invalidate a notice without giving the party an opportunity to be heard. Invalidating a notice can have significant consequences for the parties involved, including delays in the approval process and potential financial implications.

2.5.3. Other Frameworks

a. As per regulation 16 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, the CCI earlier provided an opportunity to be heard to the parties before invalidating a notice.²⁵

b. OECD Recommendation of the Council on Merger Review²⁶ advises that parties should have the opportunity to present their case before a merger notice is invalidated following any change in the information provided in the merger notice.

c. ICN Guiding Principles For Merger Notification and Review describes procedural fairness. It specifies that before reaching a conclusive adverse decision on the merits, merging parties should receive notification of the competitive concerns forming the foundation for the proposed adverse decision. Moreover, they should be provided with the factual basis underlying these concerns and be allowed to articulate their perspectives regarding these issues.²⁷

2.5.4. Recommendations

The Commission may consider providing an opportunity to the party before invalidating a notice. This could ensure increased cooperation while striking a balance between protecting competition and safeguarding the parties' rights.

2.6 Green Channel Combinations and Schedule I Exemptions

The 2011 Regulations provide categories of combinations for which a notice may be filed under the Green Channel Route. Furthermore, the regulations provided a list of categories of transactions that need not normally be filed before the CCI. However, the updated draft regulations, i.e., the DCR do not include these provisions.

2.6.1 Relevant Clauses

Rule 5A of the 2011 Regulations, read with Schedule III, provides certain categories of combinations that can opt for the Green Channel Route.

5A. Notice for approval of combinations under Green Channel.-

²⁵ Competition Commission of India. (2009, May). Regulation 16, The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. Competition Commission of India, GOI. <https://www.cci.gov.in/combinatiion/legal-framwork/regulations/details/1/0>

²⁶OECD. (2005, March). Paragraph 3, OECD Recommendation on Merger Review. <https://www.oecd.org/daf/competition/oecdrecommendationonmergerreview.htm#:~:text=On%2023%20March%202005%2C%20the,towards%20internationally%20recognized%20best%20practices.>

²⁷ICN NP Working Group. (2018). Paragraph 4, Guiding Principles For Merger Notification and Review. InternationalCompetitionNetwork.org. https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/MWG_GuidingPrinciples.pdf

(1) For the category of combination mentioned in Schedule III, the parties to such combination may, at their option, give notice in Form I pursuant to regulation 5 along with the declaration specified in Schedule IV..."

Rule 4 of the 2011 Regulations, read with Schedule I, provides for categories of transactions which need not normally be filed.

4. Categories of transactions not likely to have appreciable adverse effect on competition in India.

In view of the duty cast upon the Commission under section 18 and powers conferred under section 36 of the Act, and having regard to the mandate given to the Commission to, inter- alia, regulate combinations which have caused or are likely to cause appreciable adverse effect on competition in terms of sub-section (1) of section 6 of the Act, it is clarified that since the categories of combinations mentioned in Schedule I are ordinarily not likely to cause an appreciable adverse effect on competition in India, notice under sub-section(2) of section 6 of the Act need not normally be filed.

2.6.2 Key Considerations

a. Although Form 1 r/w Schedule III of the DCR allows for filing a notice under the Green Channel Route, the regulations do not specify the categories of combinations that can be covered under the same. Under the 2011 Regulations, Schedule III allowed parties to file a green channel notice when a transaction does not result in horizontal overlaps or vertical or complementary linkages. However, provisions on these lines are lacking in the DCR. The absence of these provisions is likely to cause uncertainty for industry stakeholders.

b. The 2011 Regulations exempt certain transactions from filing before the CCI, considering these are ordinarily unlikely to cause appreciable adverse effects on competition in the Indian market. These exemptions are absent in the DCR. The absence may lead to transactions that are not likely to cause adverse effects being filed before the CCI and to uncertainty for parties looking to enter into transactions.

2.6.3 Recommendation

The CCI should consider providing filing exemptions for certain transactions and green channel categories of combinations under the combination regulations itself. It would ensure *firstly* that only those transactions which are likely to cause adverse effects are filed before the CCI and *secondly* that certain categories of combinations are able to meaningfully leverage the green channel route in an informed manner.



thedialogue.co



[LinkedIn | The Dialogue™](#)



[Twitter | The Dialogue™](#)



[Facebook | The Dialogue™](#)



[Instagram | The Dialogue™](#)