

COMPETITION NEWS ALERT

April 11, 2020

A Primer to “Green Channel”- automatic approval route for certain combinations

While all other regulatory functions of the fair trade regulator, the **Competition Commission of India (CCI)** remain suspended during the ongoing national lockdown due to COVID 19 pandemic , [the “green channel” route is still available to the corporates](#) . We provide a brief introduction on the origin and what constitutes the “green channel” and what further clarifications have been provided by CCI recently vide its latest Notification dated 27th March 2020 , as a ready reference , to facilitate self assessment by parties.

What is a Green Channel route ?

Based on one of the recommendations made in the report of the Competition Law Review Committee¹ to this effect , the CCI , taking a pro-active stance , adopted and implemented the “Green Channel” by amending the *Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 (“Amended Combination Regulations”)* vide a Gazette notification dated 13 August 2019 . The “Green Channel” route provides for automatic approval of certain combinations under the Competition Act 2002 (the Act) . Combinations qualifying for the Green Channel are deemed to be approved on the date of receipt of the acknowledgment of filing of the Notice in **Form 1** in CCI . The parties desirous of taking this deemed approval route are required to *self access* the transactions to check if they will qualify for the Green Channel route or not. This eliminates the statutory 210 days time limit prescribed under the Act for *ex-ante* examination of combinations by CCI to see if they may cause *appreciable adverse effect on competition* in the relevant market or not before grant of CCI approval, and enables the parties to implement the transactions immediately without waiting for CCI approval .

What are the eligibility criteria for Green Channel notifications?

Newly inserted Schedule III of the Amended Combination Regulations provides guidance to parties for self assessment to see whether the combination is eligible for the Green Channel route . It provides that if after considering all plausible alternative market definitions, the transacting parties do not have any

- (i) Horizontal overlaps (i.e., they must not be already producing any similar, identical or substitutable products/services); or

¹ The Competition Law Review Committee (CLRC) was set up by the Central Government on 1st October 2018 to review the Competition Act 2002 and the Rules and Regulations framed thereunder . The CLRC submitted its report on the 26th July 2019.

COMPETITION NEWS ALERT

April 11, 2020

- (ii) Vertical overlaps (i.e., they must not be engaged in activities at different stage or level of the production chain); or
- (iii) Complementary overlaps² (i.e., products/services when combined and used together enhance the value of the combined good/service).

Further, the overlaps have to be checked not only between the parties to the combination and their respective group entities but also with any entity in which they may , directly or indirectly , hold shares and/or control. The phrase, “directly or indirectly hold shares and/or control”, however, only includes entities where a party has:

- (i) Direct or indirect shareholding of 10% or more; or
- (ii) A right or ability to exercise any right that is not available to an ordinary shareholder; or
- (iii) A right or ability to nominate a director or observer in another enterprise.

Form and fee for filing a Green Channel notification

The Green Channel notification has to be filed in the *amended*³ **Form I** along with a self declaration as provided in **Schedule IV** of the Amended Regulations.

The declaration has to certify that the: (i) Proposed combination does not have any horizontal, vertical or complementary overlaps; (ii) The combination is not likely to cause an adverse effect on competition; (iii) The parties have not made a false statement or omitted to state a material particular.

Since the Green Channel notification is also be filed in Form I, the filing fee of INR 20,00,000/- (Rupees Twenty Lakhs Only) as prescribed in Regulation 11 of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 shall be applicable.

Is there any risk in availing the Green Channel route?

As stated above , to avail the Green Channel route , the parties essentially need to undertake a prior self-assessment check concerning the overlaps and the effect on competition. It needs to be noted that the self declaration to be filed with the Notice in Form 1 provides that in the event the CCI subsequently holds that the transaction does not qualify for the Green Channel Approval route or if any of the particulars provided

² For further clarification on complimentary products for green channel route please see our Competition News Alert dated April 03 ,2020 [here](#)

³ For revised Guidance notes on Form I for green channel route please see our Competition News Alert dated April 03 ,2020 [here](#)

COMPETITION NEWS ALERT

April 11, 2020

along with the Form I notice is incorrect, the automatic approval granted under the Green Channel route shall be void *ab initio*. However, it is provided that the CCI shall hear the notifying party(ies) before revoking the automatic approval under the Green Channel route.

Please also note that in such a situation where the CCI revokes the automatic approval given under the Green Channel route, the parties may be liable for proceedings under Section 44 of the Act. Further, if the parties consummate the transaction, they may also be liable for proceedings under Section 43 A of the Act . Section 44 of the Act provides that a person who makes a false statement or omits to furnish material information to the CCI in relation to a combination, shall be liable for a penalty which is not less than INR 50,00,000/- (Rupees Fifty Lakhs Only) but may extend to INR 1,00,00,000/- (Rupees One Crore Only). Further Section 43A provides that in the event a party consummates a combination without prior approval of the CCI, such party shall be liable for penalty which may extend to one percent of such total turnover or the assets of such a combination, whichever is higher.

Conclusion:

The introduction of the Green Channel route is a pro business development and a right step to mitigate/avoid unnecessary regulatory delays for transactions that do not require a scrutiny from competition angle .The CCI's pro active stance is a welcome step towards further improving the ease of doing business in India. As on 10 April 2020, the CCI has approved 11 combinations through the Green Channel route.

For any further information/clarification, please feel free to write to:

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