

# **APPENDIX I**

## **Frequently Asked Questions**

### **I. Combination and Jurisdictional Thresholds**

#### **1. What are the applicable competition laws / rules / regulations in respect of merger, amalgamations and acquisition transactions?**

Following statutory provisions apply to mergers, amalgamations and acquisitions from competition law perspective:

- a.) [Competition Act, 2002](#)
- b.) [The Competition Commission of India \(Procedure in regard to the transaction of business relating to combinations\) Regulations, 2011](#)
- c.) [The Competition Commission of India \(General\) Regulations, 2009](#)
- d.) [Notification No. S.O. 93\(E\) dated January 8, 2013](#)
- e.) [Notification No. S.O. 673\(E\) dated March 4, 2016](#)
- f.) [Notification No. S.O. 674\(E\) dated March 4, 2016](#)
- g.) [Notification No. S.O. 675\(E\) dated March 4, 2016](#)

#### **2. What is a combination in terms of the Competition Act, 2002?**

Any acquisition, merger or amalgamation that meets the following jurisdictional thresholds, as provided in Section 5 of the Competition Act, 2002 (“**Act**”), is a “combination” for the purpose of the Act. The thresholds relate to the assets and turnover of the parties to the combination, i.e., target enterprise and acquirer (or acquirer group) / merging parties (or the group to which merged entity would belong).

At present, thresholds prescribed under the Act (as enhanced by the Central Government *vide* its [Notification No. S.O. 675\(E\) dated March 4, 2016](#)) are as under:

		<u>Assets</u>		<u>Turnover</u>
<b>Enterprise Level</b>	<b>India</b>	> INR 2000 crore	<b>OR</b>	> INR 6000 crore
	<b>Worldwide (with India component)</b>	>USD 1 bn with at least INR 1000 crore in India		>USD 3 bn with at least INR 3000 crore in India
<b>OR</b>				
<b>Group Level</b>	<b>India</b>	> INR 8000 crore	<b>OR</b>	> INR 24000 crore
	<b>Worldwide (with India component)</b>	> USD 4 bn with at least INR 1000 crore in India		> USD 12 bn with at least INR 3000 crore in India

**3. I am a party to a transaction. Do I need to notify the transaction to the Competition Commission of India (“CCI”)?**

The Act requires mandatory notification of all combinations within stipulated timelines. Combinations must be notified to CCI within 30 days of a trigger event (see further answer to Question no. 9) and cannot be given effect to until the expiry of certain deadlines (see further answer to Question no. 26).

**4. Which entities’ assets and turnover should I consider to ascertain whether a transaction meets the jurisdictional thresholds?**

In case of an acquisition of assets, shares, voting rights or control, the value of assets and turnover of the acquirer(or acquirer group, for calculating group-level thresholds) and the target enterprise, whose assets, shares, voting rights or control are being acquired, are required to be taken into account for calculating jurisdictional thresholds. (See [Section 5\(a\) of the Act](#))

In case of acquisition of control by a person over an enterprise when such person already has direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, the value of assets and turnover of the enterprise(or group to which the enterprise would belong, for calculating group-level thresholds) over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control, are required to be taken into account for calculating jurisdictional thresholds. (See [Section 5\(b\) of the Act](#))

In case of mergers / amalgamations, the value of assets and turnover of the enterprise (or group, for calculating group-level thresholds) remaining after the merger or created as a result of the amalgamation should be taken into account for calculating jurisdictional thresholds. (See [Section 5\(c\) of the Act](#))

**5. While assessing assets and turnover of the parties/groups to a transaction, which year’s value of assets and turnover are to be considered?**

The value of assets is determined by taking into account the book value of assets shown in the audited books of accounts of the enterprise for the financial year immediately preceding the financial year in which (a) the proposal relating to merger/amalgamation was approved by the Board of Directors of the enterprises concerned; or (b) any agreement or other document for acquisition was executed (See [sub-section \(2\) of Section 6 read with Explanation \(c\) to Section 5 of the Act](#))

Value of turnover is also determined by applying the same principle.

#### **6. What is meant by the principle of attributability?**

In combinations involving a series of inter-related steps/transactions, where assets are transferred to an enterprise for the purpose of such enterprise entering into an agreement relating to an acquisition/merger/amalgamation with another person or enterprise, the value of assets and turnover of the transferor enterprise shall be attributed to the value of assets and turnover of the transferee enterprise for the purpose of calculation of thresholds under Section 5 of the Act.

(See [Regulation 5\(9\) of the Combination Regulations](#)) (See [Case No. C-2013/12/144, EtihadAirways/Jet Privilege & Jet Airways](#); and [Case No. C-2015/10/333 APGDC/GDF SuezEnergy/Shell/GAIL](#))

#### **7. Do I need to notify the creation of a joint venture?**

Yes, if one or more enterprises transfer its assets to a joint venture company, then the formation of joint venture is treated as a notifiable combination, provided that jurisdictional thresholds are met after applying the principle of attributability. (See response to Question 6 above and [Regulation 5\(9\) of the Combination Regulations](#)) (See [Case No. C-2014/04/164, MAIL/IOCL/BPCL/HPCL/MAFFFL](#) & [Case No. C-2015/06/283, Google/Ethicon](#))

## **II. Pre-Filing Consultation**

### **8.I require certain clarifications on the filing procedures / interpretation of the Act and Combination Regulations. Can I contact CCI before making a filing? Can I also discuss a draft Form I with CCI before making a filing?**

Parties intending to file a notice with the CCI are encouraged to approach the CCI for an informal pre-filing consultation in case of any doubts / queries. However, the advice given during pre-filing consultation is non-binding and may not necessarily reflect the views of the CCI.

A request for pre-filing consultation on substantive issues should be made by the parties intending to file a notice at the earliest and at least 10 days before the intended date of filing, to allow time for allocating a case team for the pre-filing consultation. A copy of draft application comprising of Form I/II/III, as the case may be, and supporting documents, should be forwarded along with the request for scheduling a pre-filing consultation. For further details, please refer to the [information on pre-filing consultation](#) on the CCI website.

In addition to the above, CCI also provides pre-filing consultation on interpretational issues relating to Sections 5 and 6 of the Act and the Combination Regulations. In such cases, a request for pre-filing consultations must be sent at least 5-7 days before the meeting is requested to be scheduled. Complete and sufficient details regarding facts of the case including the sector/relevant market, legal provisions, decisional practices of the CCI and of other jurisdictions (if available and material to the facts of the case) should be provided in the request for pre-filing consultations on interpretational issues.

The email seeking pre-filing consultation may be sent to the email id: [cciconsult@nic.in](mailto:cciconsult@nic.in) with the subject "Request for pre-filing consultation on interpretational issues".

### III. Filing Notices of Combinations

#### 9. When should I notify a combination to CCI?

In case of mergers or amalgamations, a notice under Section 6(2)(a) of the Act is required to be filed with CCI within 30 days of the board resolution approving the merger or amalgamation passed by the board of directors of the enterprises concerned with such merger or amalgamation.

In the case of an acquisition, a notice under Section 6(2)(b) of the Act is required to be filed with CCI within 30 days of the execution of any agreement or other document for acquisition.

(See [Section 6\(2\) of the Act](#))

#### 10. I have not filed a notice for a combination with CCI within the given timelines. What are the consequences of this failure to notify?

Filing a notice for a combination which meets jurisdictional thresholds is mandatory under Section 6(2) of the Act. Failure to notify would attract a penalty, under Section 43A of the Act, which may extend to one per cent of the total turnover or assets of the combination, whichever is higher. (See [Section 6\(2\) and Section 43A of the Act](#)) ([Case No. C-2015/01/241, GE/Alstom](#); [Case No. C-2015/02/249, Piramal/Shriram](#); [Case No. C-2015/06/283, Google/Ethicon](#); and [Case No. 2015-07297, Baxalta/Baxter](#))

#### 11. Is there any exemption from notifying acquisitions of a small enterprise?

Yes. As per [Notification No. S.O. 674\(E\) dated March 4, 2016](#), acquisitions where enterprises whose control, shares, voting rights or assets are being acquired (i.e. the target enterprise), have assets of not more than Rs. 350 crore in India or turnover of not more than Rs. 1000 crore in India, are exempt from Section 5 of the Act for a period of 5 years (i.e., up to March 3, 2021). Accordingly, a notice for such acquisitions need not be filed with CCI.

It may be noted that this *De Minimis* exemption is applicable only to acquisitions and is not applicable to mergers or amalgamations.

#### 12. Do the thresholds in the *De Minimis* exemption apply to the value of assets/turnover of the unit/business/division being acquired?

No. The value of assets and turnover provided in the *De Minimis* exemption apply to the 'enterprise' whose control, shares, voting rights or assets are being acquired; and not to the value of the target assets/division/business being acquired. ([Notification No. S.O. 674\(E\) dated March 4, 2016](#))

#### 13. Are there any combinations which are normally not required to be notified to CCI?

Yes. As per Regulation 4 of the Combination Regulations, the categories of combinations mentioned in Schedule I are ordinarily not likely to cause an appreciable adverse effect on competition ("AAEC") in India and therefore, notice under sub-section (2) of section 6 of the Act need not normally be filed in respect of these combinations. (See [Regulation 4, read with Schedule I to the Combination Regulations](#))

#### **14. I am a banking company? Do i need to notify a combination to the CCI**

Any share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement are not subject to filing requirement under Section 6(2) of the Act. Therefore, approval of the CCI is not required in respect of these transactions.

However, such acquirers are required to file details of the acquisition in [Form III](#) with the CCI within 7 days from the date of the acquisition. The details of the acquisition in Form III must include the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be. (See [Section 6\(4\) and Section 6\(5\) of the Act](#))

Further, any combination pertaining to a banking company in respect of which the Central Government has issued a notification under Section 45 of the Banking Regulation Act, 1949 is exempt from filing requirements for a period of 5 years. ([Notification No. S.O. 93\(E\) dated January 8, 2013](#))

#### **15. The Act requires a notice to be filed within 30 days of “execution of any agreement or other document for acquisition”. What is the meaning of the term “other document”?**

The “*other document*” means any binding document, by whatever name called, conveying an agreement or decision to acquire control, shares, voting rights or assets.

In cases where a public announcement has been made in terms of the SEBI Takeover Code, regarding an acquisition (of shares, voting rights or control), the public announcement shall be deemed to be the “*other document*”.

In cases of hostile acquisitions, the “*other document*” shall be any document executed by the acquiring enterprise, by whatever name called, conveying a decision to acquire control, shares or voting rights.

(See [Section 6\(2\)\(b\) of the Act](#) and [Regulation 5\(8\) of the Combination Regulations](#))

#### **16. How do I notify a combination to CCI?**

The notice in respect of a combination is required to be filed in original, along with one (1) copy, and an electronic copy thereof, with the registry of the CCI. The notice should be complete in all respects (must be filed in required format) and accompanied by filing fees. (See [Regulation 13\(1\) of the Combination Regulations](#)) (See also response to Question no. 22 below)

In the event the parties are claiming confidentiality on certain information provided by them in the notice, a public version of the notice, and an electronic version thereof, is also required to be filed. (See [proviso to Regulation 13\(1\) of the Combination Regulations](#)) (See also response to Question no. 24 below)

The notice must also be accompanied by summary(ies) of the combination, as required in terms of [Regulations 13\(1A\) and 13\(1B\) of the Combination Regulations](#), along with separate electronic copies thereof.

Detailed instructions on how to file a notice are set out in the [Introductory Notes to Forms, Notesto Form I](#) and [Regulations 5, 9, 10, 11, 12, 13 and 30 of the Combination Regulations](#).

#### **17. Does CCI provide facility of e-filing?**

Yes, CCI also introduced an online system for e-filing of notices through its online portal "[efilingcci.gov.in](http://efilingcci.gov.in)" wherein a notice (in Form I only) can be filed with CCI electronically. As of now, the facility of e-filing is available only in respect notice filed in Form I. Please note, CCI has set the cut-off limit for filing a notice through e-filing as the 20<sup>th</sup> day from the relevant trigger event, so that the notice may be scrutinized in detail and minor gaps in information may be identified and communicated to the parties in a timely manner. Further details on the process of e-filing may be seen at <http://www.cci.gov.in/what-e-filing>

#### **18. What documents should be filed along with the notice in Form I?**

Generally, following documents are required to be filed along with the notice (in Form I).

- i. Certified copy of the authorization in favour of a person signing the notice in the prescribed format.
- ii. Copy of the proof of payment of filing fee.
- iii. Copies of approval of the proposal relating to merger/amalgamation and/or agreement /other document executed in relation to the acquisition or acquiring of control. iv. An authorization letter in favour of a person located in India who is authorized to receive communication(s) on behalf of the notifying party(ies) from the CCI.
- v. Certified copy(ies) of the order(s)/decision(s) passed in other jurisdictions where the proposed combination has been filed and approved.
- vi. Copies of the most recent annual report and accounts of the parties to the combination.
- vii. Copies of all presentations prepared by or for or received by any members of the board of management, or the board of directors, or the supervisory board, as applicable in the light of the corporate governance structure, or the other person(s) exercising similar functions (or to whom such functions have been delegated or entrusted), or the shareholders' meeting, analysing the combination (only in cases wherein there are overlapping goods/services between the parties to the combination or the parties to the combination are engaged in different stages of production/supply/distribution/storage/sale and service or trade in products or provision of services or the parties to the combination are engaged in supply of complimentary, noncompeting but related goods/services).
- viii. Two summary prepared in accordance with [sub-regulation \(1A\) and \(1B\) of regulation 13 of the Combination Regulations](#).
- ix. An affidavit in support of the request for confidentiality as specified in [regulation 42 of the Competition Commission of India \(General\) Regulations, 2009](#) (“**General Regulations**”)

However, it may be noted that this is not an exhaustive list of documents to be filed along with the notice and, depending on the nature of the combination, other documents may also be required to be filed.

(See [Form I](#), [Form II](#), [Introductory Notes to Forms](#) and [Notes to Form I](#))

#### **19. Who should file the notice with CCI?**

In case of acquisitions, the acquirer is required to file the notice. In case of mergers or amalgamations, all the parties to the combination are required to jointly file the notice. (See [Regulations 9\(1\), 9\(2\) and 9\(3\) of the Combination Regulations](#))

## 20. Is there any fee to be paid along with the notice?

At present, the filing fee for notice filed in Form I is Rs 15,00,000 and that for notice filed in Form II is Rs 50,00,000 (See [Regulation 11 of the Combination Regulations](#)). No fee is payable for filing the notice in Form III.

## 21. Who can sign the notice?

Any person who is duly authorized by the notifying party may sign the notice (See [Regulation 9\(1\) and 9\(3\) of the Combination Regulations](#)). In the event the notifying party is an Indian company, a certified copy of the board resolution authorizing the said person(s) to sign the notice must be submitted along with the notice. For body corporate organized/incorporated under foreign laws, the following documents may be submitted:

- a. for body corporates which are required to pass board resolutions for such authorization, a certified copy of the board resolution authorizing the said person(s) to sign the notice;
- b. for body corporates which, under the laws applicable to such entities, are not required to pass a board resolution for such authorization, an authorization letter issued by any of any of the key managerial personnel (i.e., Chief Executive Officer or the Managing Director, Company Secretary, Director, Chief Financial Officer or their equivalent as per the applicable law) in favour of the person signing the notice may be submitted. The said authorization should be printed on the company letter head and should, wherever applicable, bear the company seal or its equivalent as per the applicable law.

(See [Introductory Notes to Forms](#) and [Notes to Form I](#))

## 22. Which form do I use for filing a notice with CCI?

Notifying parties have the discretion to file a notice either in [Form I](#) or [Form II](#), as set out in Schedule II of the Combination Regulations. However, in the following cases, a notice should preferably be given in Form II:

- a. The parties to the combination are engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable services and the combined market share of the parties to the combination after such combination is more than fifteen per cent (15%) in the relevant market; and
- b. The parties to the combination are engaged at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or trade in goods or provision of services, and their individual or combined market share is more than twenty five per cent (25%) in the relevant market.

In cases where the parties to the combination have filed a notice in Form I and CCI requires information in Form II to form its *prima facie* opinion as to whether the combination is likely to



cause or has caused an AAEC within the relevant market, CCI shall direct the parties to the combination to file a notice in Form II.

(See [Regulations 5\(2\), 5\(3\) and 5\(5\) of the Combination Regulations](#))

**23. Does CCI grant confidentiality over information that I have submitted in a notice?**

In line with best practices, CCI treats all documents as confidential in terms of and subject to the provisions of Section 57 of the Act. In this regard, the notifying parties are required to submit a request for confidential treatment to the information filed by them. Such request can only be made if making public of such information or parts thereof will result in disclosure of trade secrets or destruction or appreciable diminution of the commercial value of any information or can be reasonably expected to cause serious injury.

(See [Regulations 13\(1\) and 30 of the Combination Regulations; Regulations 35 and 42 of the General Regulations](#) and [Section 57 of the Act](#))

**24. How do I make a confidentiality request over documents that I have filed with CCI?**

The confidentiality request must be submitted by the notifying parties in writing stating that a document or documents, or a part or parts thereof, be treated confidential, along with a statement setting out cogent reasons for such treatment and, to the extent possible, the date on which such confidential treatment shall expire. In this regard, it may be noted that mere statement(s) that the document(s) or information or part(s) thereof contain trade secret(s) or are of such commercial value that disclosure of the same will cause serious injury, shall not be sufficient ground for accepting the request for confidentiality. A request for confidential treatment of information should be accompanied by an affidavit stating that the conditions prescribed for the grant of confidential treatment set out in Regulation 35 of the General Regulations are satisfied. (See [Regulation 30 of the Combination Regulations](#) and [Regulations 35 and 42 of the General Regulations](#))

Please note that in the event the notifying party claims confidentiality on the information provided in the notice and /or responses or other documents submitted during the course of inquiry by the CCI, it is required to submit a public version of the notice and /or responses of other documents filed with the CCI. (See [Regulations 13\(1\) and 13\(2\) of the Combination Regulations](#) and [Regulations 35\(5\) and 35\(6\) of the General Regulations](#))

**25. After I have filed a notice with CCI, can I inform CCI of any change in the information provided in the notice?**

Parties are required to inform CCI of any change in the information provided in the notice to CCI, at the earliest, during the CCI's assessment of the combination. If the change in the information provided in the notice is likely to significantly affect the factors for the determination of AAEC or the CCI's assessment of the combination, the CCI may treat the notice filed as not valid, after providing parties an opportunity of being heard. (See [Regulation 16 of the Combination Regulations](#))

**26. Can I give effect to a combination before CCI has approved the combination?**



No. The provisions of the Act impose a standstill obligation on parties, i.e., parties must not give effect to the combination or any part thereof, before an order under Section 31 of the Act has been passed by the CCI or until expiry of 210 days from the date of giving notice to CCI, whichever is earlier. (See [Section 6\(2A\) of the Act](#)) (See also [Case No. C-2013/05/122, Etihad Airways/JetAirways](#) & [Case No. C-2015/07/297, Baxter/Baxalta](#))

**27. Are all combinations bound by the standstill obligation under Section 6(2A) of the Act?**

No. In cases of share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement, the acquirer may file a notice in Form III with the CCI, as provided in Schedule II to the Combination Regulations, within 7 days of completing the acquisition. (See [Sections 6\(4\) and 6\(5\) of the Act](#))

**28. Can CCI inquire into a combination which has not been notified to it?**

CCI may initiate *suo motu* inquiries into mergers, amalgamations and acquisitions that have not been notified to it, as to whether such a combination has caused or is likely to cause an AAEC. However, CCI will not initiate inquiries after the expiry of 1 year from the date on which the combination has taken effect. (See [Section 20\(1\) of the Act](#)) (See [Case No. C-2015/01/241, GE/Alstom](#) & [Case No. C-2015/02/249, Piramal/Shriram](#))

In such cases, CCI may commence proceedings under Section 43A of the Act for failure to file notice in terms of Section 6(2) of the Act.

**IV. Inquiry into combinations**

**29. Does the Act impose any timelines on CCI to decide on a combination?**

CCI is required to pass an order or issue a direction on a combination in accordance with provisions of Section 31 of the Act within two hundred and ten days from the date of the notice given to CCI under Section 6(2) of the Act. This timeline is subject to the clock stops set out in Sections 31(11) and 31(12) of the Act. Further, the said timeline includes both Phase I and Phase II assessment of combinations by the CCI. (See [Sections 6\(2A\), 31\(11\) and 31\(12\) of the Act](#))

Further, in accordance with the provisions of Regulation 19(1) of the Combination Regulations, CCI is required to form its *prima facie* opinion as to whether a combination is likely to cause or has caused an AAEC within the relevant market in India within 30 working days of receipt of the notice. Please note that this timeline is subject to clock-stops provided in the relevant provisions of the Combination Regulations and the Act. (See [Regulations 5\(4\), 5\(6\), 9\(2\), 14\(2A\), 14\(5\), 19\(2\) and 19\(3\) of the Combination Regulations](#) and [Sections 31\(11\) and 31\(12\) of the Act](#))

**30. What does CCI consider to be a valid notice? What are the grounds for treating a notice as not valid?**

A notice filed by parties shall not be treated as valid, unless it is complete and in conformity with the provisions of the Act and the Combination Regulations. In particular, parties are advised to strictly follow the [Introductory Notes to Forms](#) and [Notes to Form I](#). (See [Regulations 14\(1\) and 14\(2A\) of the Combination Regulations](#))

**31. Does CCI provide parties with an opportunity to be heard before deciding to invalidate a notice?**

CCI may provide parties an opportunity of being heard before it decides to invalidate a notice.  
(See [Regulation 14\(2A\) of the Combination Regulations](#))

**32. In what situations does CCI provide parties an opportunity to make good the omissions in a notice?**

In the event, CCI discovers omissions in the notice, the notifying parties may be given an opportunity to urgently furnish the requisite information in accordance with the provisions of Regulation 14, except in cases where it is apparent that the omissions would hinder the proper inquiry of the proposed combination. (See [Regulations 14\(1\) and 14\(2A\) of the Combination Regulations](#) and [Notes to Form I](#))

**33. I have received a letter from CCI stating that the notice / response submitted by me has defects. What does this mean?**

A defect letter is an indication that the notice/response filed by you is either incomplete or is not in conformity with the relevant provisions of the Combination Regulations. The letter will generally indicate nature of defect / gaps in the notice. You would be given a time period within which to furnish the requisite information. In the event you fail to furnish the said information within the stipulated time, the notice filed by you, may be treated as not valid.

However, it may be noted that the time taken by you in removing such defects or furnishing the required information including document(s) shall be excluded from statutory time limits as explained in question no. 29 above.

(See [Regulations 14\(3\), 14\(5\) and 14\(6\) of the Combination Regulations, Introductory Notes to Forms and Notes to Form I](#))

**34. Can I seek an oral hearing with respect to a combination case which is pending before CCI? If yes, at what stages can an oral hearing be sought?**

Yes, parties to the combination may request CCI to give them an opportunity to be heard. If CCI deems it necessary, it will grant the permission for an oral hearing. Such request may be made at any time during the assessment of combinations undertaken by CCI. (See [Regulation 24 of the Combination Regulations](#))

**V. Miscellaneous**

**35. My previous year's financials are still being audited. How do I calculate assets and turnover for my companies?**

The onus of determining whether a transaction amounts to a notifiable combination rests on the parties. In case audited financial statements of the previous financial year are unavailable, you may determine notification requirements on the basis of unaudited financial statements or best available estimates.

However, failure to notify a transaction which satisfies jurisdictional thresholds based on audited financial statements of the previous financial year would attract penalty under the provisions of Section 43A of the Act.