

APPENDIX V

Statutory Timelines for Merger Review

A. Provisions for Review under the Act:

1. Under Section 31(11) of the Competition Act, 2002 (“Act”), if the Competition Commission of India (“Commission”) does not, on the expiry of a period of two hundred ten days from the date of notice given to the Commission under Section 6(2), pass an order or issue direction in accordance with the provisions of the Sections 31(1) or 31(2) or 31(7) of the Act, the Combination shall be deemed to have been approved by the Commission.
2. In this regard, the following statutory timelines have been prescribed under Sections 29 and 31 of the Act, read with relevant regulations of Competition Commission of India (Procedure in regard to the Transaction of Business relating to Combinations) Regulations, 2011 (“Combination Regulations”):
 - i. The Commission shall form its *prima facie* opinion under sub-section (1) of section 29 of the Act within thirty working days of receipt of the said notice. (Regulation 19(1) of the Combination Regulations)
 - ii. Where the Commission is of the *prima facie* opinion that a combination is likely to cause, or has caused an appreciable adverse effect (“AAEC”) on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted. (Section 29(1))
 - iii. Upon receipt of parties’ response to the show cause notice, the Commission may call for a report from the Director General (“DG”) or may proceed with the case directly (Section 29(1A)). Upon receipt of parties’ response to the show cause notice, if the Commission is still *prima facie* of the opinion that the combination has, or is likely to have, an AAEC, it shall, within seven working days from the date of receipt of the parties’ response or the receipt of the DG report, whichever is later, direct the parties to the said combination to publish details of the combination within ten working days of such direction. (Section 29(2))
 - iv. After the publication of details of the combination by the parties, the Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published under Section 29(2). (Section 29(3))¹

¹It may be noted that the Act does not set out a specific period for the public to provide its comments on the details of the combination published under Section 29(2) of the Act. However, Section 29(3) of the Act stipulates that where the Commission invites any particular person or member of the public to file written objections, if any,

- v. Upon the expiry of the fifteen working day period in which comments to the publication of details of a combination has been sought, the Commission may, within fifteen working days, call for such additional or other information as it may deem fit from the parties to the said combination. (Section 29(4))
- vi. The additional or other information called for by the Commission shall be furnished by the parties referred to in Section 29(4), within fifteen days from the expiry of the period specified in Section 29(4). (Section 29(5))
- vii. After receipt of all information and within a period of forty-five working days from the expiry of the period specified in Section 29(5), the Commission shall proceed to deal with the case in accordance with the provisions contained in Section 31. (Section 29(6)) Under the provisions of Section 31 of the Act, the Commission may either:
 - a) approve the combination if it is of the opinion that the combination does not or is not likely to have an AAEC, under Section 31(1); or
 - b) direct that the combination shall not take effect if it is of the opinion that the combination has or is likely to have an AAEC, under Section 31(12); or
 - c) propose appropriate modification to the combination, if it is of the opinion that AAEC can be eliminated by suitable modification to the combination (Section 31(3)).
- viii. Where the Commission has proposed modification to the combination under Section 31(3), parties who accept the modification proposed shall carry out such modification within the period specified by the Commission. (Section 31(4))
- ix. If the parties to the combination do not accept the modification proposed by the Commission under Section 31(3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under Section 31(3). (Section 31(6))
- x. If the Commission does not accept the amendment submitted under Section 31(6), then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under Section 31(3). (Section 31(8))
- xi. If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in Section 31(6) or within a further period of thirty working days referred to in Section 31(8), the combination shall be deemed to have

to the details of the combination published, such objections must be provided within fifteen working days from the date of publication. Accordingly, in order to maintain uniformity in terms of the Act and the time period provided to persons to provide objections on a proposed combination, the Commission typically invites comments/objections/suggestions on the combination from the public within fifteen working days from the date of publication.

an AAEC on competition and be dealt with in accordance with the provisions of this Act. (Section 31(9))

- xii. If the Commission does not, on the expiry of a period of two hundred and ten days from the date of notice, pass an order or issue direction in accordance with the provisions Sections 31(1), 31(2) or 31(7), the combination shall be deemed to have been approved by the Commission. (Section 31(11))
- xiii. For the purposes of determining the period of two hundred and ten days specified in Section 31(11), the period of thirty working days specified in Section 31(6) and a further period of thirty working days specified in Section 31(8) shall be excluded.(Explanation to Section 31(11))
- xiv. Where any extension of time is sought by the parties to the combination, the period of two hundred and ten days shall be reckoned after deducting the extended time granted at the request of the parties. (Section 31(12))

B. EXTENSIONS OF TIME SOUGHT BY PARTIES

1. Under Section 31(12), where any extension of time is sought by the parties to the combination, such extensions of time are to be deducted from the period of two hundred and ten days. In this regard, two possible interpretations of Section 31(12) may be advanced:
 - (i) That the exclusion of extensions of time from two hundred and ten days apply only in relation to extensions sought by parties' for their submissions to the Commission under Section 31, i.e., parties' submissions to the Commission under Sections 31(6) and 31(8); **or**
 - (ii) That the exclusion of extensions of time from two hundred and ten days apply in relation to **all extensions** sought by parties' for their submissions to the Commission. This includes parties' response(s) to Commission under Regulation 14, Regulation 5(4), Regulation 19(2), Section 29(1), Section 29(2) Section 29(4), Section 29(5) **and** Sections 31(6) and 31(8).
2. Explanation to Section 11 expressly provides that time taken by the parties to amend the modifications under Section 31(6) and time taken by parties to accept the Commission's modification under Section 31(8), will not be included in the period of two hundred and ten days. It appears that if the intention of the Legislature was to exclude extensions of time taken by parties to file responses under Section 31² alone, then Section 31(12) would have expressly referred to the said sub-sections of Section 31. Since no specific reference has been made to Sections 31(6), 31(8) or any other sub-sections of Section 31 in Section 31(12), it would appear that the exclusion of time under Section 31(12) applies to all extensions of time sought by parties during the course of the Commission's assessment of a

²Parties responses to the Commission under Section 31(6) and Section 31(8) of the Act.

combination (including therefore parties' responses to the Commission, as listed at paragraph 1(ii)above).

3. It is also pertinent to note that the provision of Section 31(12) follows after and flows directly from the provision of Section 31(11)(which provides for the time limit of two hundred and ten days for the Commission to pass its order on a combination); and does not relate solely to the Explanation to Section 31(11) (which provides for exclusions of time from two hundred and ten days under Sections 31(6) and 31(8)). Hence, it would appear that had the intention of the Legislature been to make Section 31(12) applicable solely to those extensions of time sought by parties for the purposes of providing responses to the Commission under Sections 31(6) and 31(8), Section 31(12) would have been made applicable only as a further explanation or proviso to the Explanation of Section 31(11) and not as a standalone provision set out in Section 31 of the Act.
4. Accordingly, since: (a)no specific reference has been made to any other sub-sections of Section 31 in Section 31(12); and (b) the provision of Section 31(12) appears to flow directly from Section 31(11), it would appear that the exclusion of time referred to in Section 31(12) applies to all extensions of time sought by parties during the course of the Commission's assessment of a combination (including parties' responses to the Commission as listed at paragraph 1(ii)above).

C. Tabular representation of Timelines³

Section / Regulations	Action	Time period under the Act / Regulations	Running number of days (T = Date of notice)	
			Minimum	Maximum
Notice under 6(2) to <i>prima facie</i> opinion (including 19(3))	1 st <i>prima facie</i> opinion	30 working days (40 – 42 calendar days)	T + 39	T + 41
29(1)	Show Cause Notice – response to be submitted	30 calendar days	T + 69	T + 71
29(2)	Commission to direct Parties to publish details of combination	7 working days (9 – 11 calendar days)	T + 78	T + 82
29(2)	Parties to publish details	10 working days (12 – 14 calendar days)	T + 90	T + 96
29(3)	Commission to call for additional or other information	15 working days (19 – 21 calendar days)	T + 109	T + 117
29(4)	Commission to request parties to file additional information	15 working days (19 – 21 calendar days)	T + 128	T + 138
29(5)	Parties to provide such additional information	15 calendar days	T + 143	T + 153
29(6)	Commission to proceed with case under Section 31, i.e., the Commission may either: a. Approve the combination under Section 31(1); or b. Disapprove the combination under Section 31(2); or c. Propose modification under Section 31(3).	45 working days (61 – 63 calendar days)	T + 204	T + 216⁴

It may be noted that under Section 29(6) of the Act, the Commission has 45 working days (i.e., 61 to 63 calendar days) to proceed with the case under Section 31 of the Act. Once these days are included in a case timeline, a period of 204 to 216 would be completed – this would approximately tally-in with the 210 day deadline for the Commission to complete its assessment of a case under Section 6(2A) of the Act.

Once parties have provided additional information to the Commission (under Section 29(5) of the Act), the onus is on the Commission to propose modifications to parties under Section 31(3) of the Act. At this stage of the case, the timeline is calculated at 143 to 153 days.

Assuming the Commission would take, at the very least, a minimum of 15 working days (19 – 21 calendar days) to, assess the responses to the show cause notice and additional information submitted by parties, and propose adequate modifications to correct the AAEC caused by a combination. This would render the timeline at **T+162 / T+174⁵** (minimum / maximum).

In such cases:

³Regulation 19(1) of the Combination Regulations was amended in July 2015 such that the Commission is provided 30 working days (prior to the amendment 30 calendar days) to form a *prima facie* opinion on the combination.

⁴It may be noted that under the timelines provided in the Act itself, it is not possible to complete the assessment of the combination within the 210 day period provided under Section 31(11) of the Act.

⁵ This is calculated as T + 143 / T + 153 days+15 working days (i.e., 19 / 21 calendar days).

- (i) if the period taken by parties to accept modification of 30 working days (40 – 42 calendar days) is included in the period of 210 days, then the case timeline would be calculated at T + 202 / T + 216 days. Thus, in such cases, either the Commission has minimal time to pass its order approving the combination under Section 31(1) read with Section 31(4) of the Act; or the statutory timeline is clearly exceeded, and the combination would be deemed approved.
- (ii) However, where the parties do not accept the modification and propose amendment to the modification, then the period of 30 working days would be excluded and **the timeline would continue to run at T+162/ T+174 days**. This would give the Commission approx. 36 to 48 calendar days (this is 210 – (T+155 / T+164)) to assess the amendments proposed by the parties and either accept or reject the modification.

Based on the above, it can be seen that:

- If the period of 30 working days taken by parties to propose amendments to the Commission's modification under Section 31(6) is excluded, then a combination case may be assessed within the statutory timeline of 210 days;
- However, **if the period of 30 working days taken by parties to accept amendments to the Commission's modification under Section 31(4) is included, the assessment and approval of the combination would take between 202 to 216 days**; and would most likely exceed then statutory timeline of 210 days.

It may be noted that as per the timelines above, there is minimal time for the Commission to complete the following tasks:

- (i) Commission to issue its show cause notice under Section 29(1) that it is of the *prima facie* opinion that the combination causes an AAEC;
- (ii) For the Commission to request parties for additional information after receipt of public comments to the publication of the combination;
- (iii) For the Commission to assess, examine and approve or reject amended modifications proposed by parties; and
- (iv) Draft the order on the combination under Section 31(1) or 31(2) of the Act.

In addition, the above timelines assume that there are no clock stops (i.e., no defect letters and no additional information requests) until the Commission issues its *prima facie* opinion on the combination under Section 29(1) of the Act. Thus, the time periods set out by the timeline above assume that all information provided by parties, including a notice, is correct and complete and that there would be no gaps or inconsistencies in the information submitted by parties, which is rarely the case.

It may also be noted that according to the statutory timelines of Section 29 and 31 above, there would no time for the DG to investigate a combination and prepare a report, as contemplated by Section 29(1A) of the Act.

It also assumes that there are no public holidays during the weekdays.