



# Competition Law

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September 2024 saw the last leg of new statutory provisions come to life, after the Competition Commission of India (**CCI / Commission**) and Ministry of Corporate Affairs (**MCA**) released the revamped Combination Regulations, deal value threshold/ and many more. In this edition we cover all the legal updates, and a recent market study on the diagnostic medical equipment market in India.

## **CCI APPROVES TRANSFER OF THE AUTO BODY BUSINESS OF MAGNA INDIA TO THE KRISHNA GROUP**

CCI vide an order dated [28.05.2024](#), approved the transfer of the chassis and body-in-white (**BIW**) business division of Magna Automotive India Private Limited (**Target Business**) to SKH M India Private Limited, part of the Krishna Group that manufactures automotive components for OEMs.

The Commission identified horizontal overlaps between the Krishna Group and the Target Business in the manufacture and supply of chassis components for Utility Vehicles (**UVs**), chassis components for compact and mid-sized passenger cars, BIW components for UVs, and BIW components for compact and mid-sized passenger cars. In chassis components for UVs, the combined market share was fairly significant at 30-35%. However, the CCI noted that the following points were worked in favour of the transaction:

- (a) The incremental market share increase was low.
- (b) The Krishna Group's facilities were located inside the vendor parks of certain OEMs (Maruti Suzuki and Suzuki Motors), which supply the components to these OEMs. Geographical proximity to OEMs appears to be a significant commercial factor for both OEMs and OESs, in order to avoid significant transport costs. After excluding sales within vendor parks, the market shares were lower.
- (c) These were typically bidding markets, and it did not appear that the Krishna group and the Target were close competitors.
- (d) The OEMs do not award the business for all the chassis and/or BIW components of a particular vehicle to a single OES, to ensure diversification and prevent supplier disruptions.

Consequently, the Commission unconditionally approved the transaction.

## **CCI APPROVES ACQUISITION OF SHARES OF SNEHA FARMS BY MITSUI**

Vide an order dated [25.06.2024](#), the approved the acquisition of 25.01% equity share capital of Sneha Farms Private Limited by Mitsui, a worldwide conglomerate engaged in numerous businesses such as energy, infrastructure projects, mobility, chemicals, mineral and metal resources. On the other hand, Sneha Farms operates within the poultry industry in India.

The Commission found the activities of Mitsui and Sneha Farms exhibit (i) horizontal overlaps in the segment for manufacture and sale of fish feed in India; and (ii) potential vertical linkages in the segment for manufacture and sale of feed additives in India (*upstream segment*); and the segment for manufacture and sale of animal feed in India (*downstream segment*). However, the commission approved the combination since it was not likely to cause any change in competition dynamics due to the miniscule market shares of the parties and the presence several competitors.

## **MARKET STUDY ON DIAGNOSTIC MEDICAL IMAGING EQUIPMENT**

In August, the CCI published its [Market Study on Diagnostic Medical Imaging \(DMI\) Equipment Industry in India](#), with Deloitte as a Study Partner.

The Report found that the value chain for CT scans and MRI machines is complex, comprising of various stakeholders and key participants including equipment suppliers such as: (a) original equipment manufacturers (**OEMs**); (b) used and refurbished equipment suppliers; (c) importers and independent dealers; (d) after-sale service providers; (e) third-party service providers; (f) hospitals and diagnostic centres; and (g) patients.

According to the Report, the markets for new CT Scan and MRI machines are both fairly concentrated with the top five OEMs (GE, Siemens, Canon / Toshiba, Philips, and Fujifilm / Hitachi) holding approximately 98% of market share with respect to cumulative number of CT scan machines installed,

and similarly the top five (Siemens, GE, Philips, United Imaging, and Fujifilm / Hitachi) holding over 91% in the MRI market in India on the basis of revenue.

Moreover, the market has moderate to high barriers to entry in the form of costs, access to technical expertise, import dependency, and brand preference which present challenges to emerging domestic manufacturers of the equipment.

However, the Report also found that there was a market for refurbished machines at a lower price point that catered to several hospitals and diagnostic chains, and there appeared to be sufficient degree of competition in the after sales market for new equipment as well as refurbished equipment. Despite the concentrated market and high costs, hospitals and diagnostic centres, particularly the larger private chains, were able to negotiate favourable terms with OEMs, and the majority of the patients surveyed were satisfied with the choices available between hospitals and diagnostic centres although they found the prices charged to be on the higher side.

The Report's recommendations include (i) enhancing local manufacturing by starting with assembly units and progressing to full-scale production, (ii) infrastructure development through public-private partnerships, and importantly (ii) that OEMs should provide more transparency in the pricing of equipment, spare parts, and after-sales services so that a proper life-cycle cost estimate could be made. Additionally, open market access for spare parts should be provided to original equipment suppliers and independent service operators to foster a competitive environment.

## REGULATORY UPDATE

The last leg of the revamped statutory provisions of the Competition Act, 2002 relating to combinations, and their attendant regulations were all enforced in September (also covered in our earlier [Update](#)), namely:

### **Provisions relating to Combinations**

- i. **Deal Value Threshold enforced** – If the value of any transaction exceeds INR 20 Bn (~USD 238 Mn), provided the target as substantial business operations in India, then such a transaction would be subject to notification before the CCI. There is a lot of fine print to this of course but India now joins the likes of US, Germany and Austria in adding an additional

layer of scrutiny to the existing turnover and asset tests.

- ii. **Open Offers** – An acquirer is permitted to implement an open offer without prior approval provided that: (a) the notice for the transaction is given to the CCI within 30 days of the acquisition, and, (b) the acquirer does not exercise any voting rights except in relation to liquidation or insolvency proceedings.
- iii. **Timelines** – the *prima facie* approval timeline has now been changed to 30 calendar days as opposed to 30 working days earlier, and the maximum merger review timeline has been reduced from 210 to 150 calendar days.
- iv. **Review Process** – The amended combination review process overhauls the process relating to the issuance of statement of objections, proposal of modifications, etc.

### **Criteria for Exemption of Combinations Rules, 2024**

The Exemption Rules will effectively replace the erstwhile Schedule I exemptions. However, key differences include:

- i. **Affiliate** – an entity will be considered an affiliate of another if it has: (a) 10% or more of shares or voting rights, or (b) the ability appoint a director or observer, or (c) access to commercially sensitive information.
- ii. **Underwriters, stockbrokers, and Mutual Funds** – Acquisition for the first two are exempt up to 25% of shares or voting rights while in the case of mutual funds it is up to 10%.
- iii. **Additional acquisition of shares** – Incremental acquisition of less than 10% are exempted provided that pursuant to the acquisition there is no: (a) change in control, (b) representation on the board, and (c) access to commercial sensitive information. In case there are horizontal, vertical, or complementary linkages (either actual or potential), the incremental increase must be less than 5 percent and the total less than 10 percent.

### **De Minimis Threshold and Green Channel get their own set of Rules**

The existing De Minimis target exemption and the Green Channel provisions have been incorporated in the statute and accompanying Rules. Thus, as per the existing position, any combination where the assets and turnover of the target in India is less than

INR 4500Mn (~USD 53.55 Mn) (in assets), and INR 12,500Mn (USD 148.75Mn) (in turnover), then it would be exempt from filing.

Section 6(4) of the Competition Act covering the green channel filing route has also been notified along with the now been accompanied with [relevant rules](#).

#### **Combination Regulations 2024**

The CCI issued the new Combinations Regulations, 2024 replacing the 2011 Regulations (the draft regulations were covered in our earlier newsletter [here](#)). Broadly all the changes which were proposed vide the draft Combination Regulations edition of the Newsletter, have been incorporated. Few of the relevant amendments include:

- i. Placeholder for deal value threshold in the forms;
- ii. Codification of pre-filing consultations;
- iii. Filing Fees increase with INR 3Mn (~USD 35,700) for Form I and INR 9Mn (~USD 107,100) for Form II.

#### **CCI (General) Regulations, 2024**

After enforcing the combination provisions, the CCI turned its attention to the remaining enforcement piece. As covered in our [Competition Law Newsletter \(July 2024\)](#), the CCI proposed an overhaul of the General Regulations of 2009, and the new [General Regulations of 2024](#) have now been notified. Some of key changes:

- i. **Introduction of Miscellaneous Applications** – an application filed with the CCI post the final order, for which the fee has been fixed at a significant INR 60,000 (~ USD 714) for companies with turnover between INR 20 Mn and up to INR 500 Mn, and a staggering INR

0.3 Mn (~USD 35,700) for companies above this.

- ii. **Monitoring Agencies for settlements and commitments** – While the CCI has been appointing monetary agencies in merger control cases previously, with the newly enforced provisions, it will have the power to appoint agencies to oversee the implementation of the order of the CCI in Settlement and Commitment mechanism.
- iii. **Investigation timeline** – The time period for the DG to complete the investigation and submit its report has been extended from previous 60 days to 90 days, although its unlikely to make a material difference considering investigations normally take up to a year or more.
- iv. **Opportunity for cross examination:** An express provision has been introduced requiring the DG to offer cross examinations in all cases where he seeks to rely on oral submissions made against any other person.
- v. **Increase in the filing fees:** The fees for filing of the information under Section 19(1) of the Act has been increased for the [second time](#), since November 2019.

The enforcement of the General Regulations also fills an important lacuna in the enforcement regime. The pre-amendment statute did not provide any express power to the CCI to disagree with the findings of the DG in case the DG recommended contravention of the Act after the investigation. However, such provision has now been expressly provided in the statute as well as the attendant regulations.

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