



## Competition Commission of India Amends the Long Form notification, Form II

In a welcome move, the Competition Commission of India (CCI) has amended, revamped and simplified the long form notification, i.e., Form II, used for notifying combinations under the Competition Act, 2002.

Form II is recommended to be filed for transactions where the parties have more than a 15% market share in horizontally overlapping market(s) or more than a 25% market share in case of a vertically related market. By way of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2022 (**Amendment Regulations 2022**), the CCI has reduced the level of information / documents required to be provided under a Form II notification and has streamlined the structure of the Form II. This will simplify the filing process for parties going forward.

The Amendment Regulations 2022 will come into force on 1 May 2022 (i.e., a Form II filed on or after 1 May 2022 will need to comply with the new requirements). The key changes introduced are discussed below:

- 1. Deletion of certain queries:** The CCI has deleted various queries from Form II. These largely pertain to queries which were arguably not relevant for the CCI's assessment and needlessly increased the information / data requirements for parties. These relate to:
  - a) financial statements for additional years: Previously, financial statements for the previous two years and quarterly financials for the current year had to be submitted. This requirement has now been done away with; Form II now only requires financials for the last year (consistent with the requirements of the short Form I);
  - b) distribution / pricing information: The queries relating to distribution facilities, modes of transportation, compliance with language requirements, promotional material and certain pricing related queries for the overlapping products have been deleted;

- c) certain market conditions: The queries relating to certain market conditions such as barriers to entry, economies of scale, access to raw materials / necessary infrastructure, minimum viable scale, optimal plant size, capacity utilisation rate, production volumes, in-house consumption and existence of specialised suppliers have been removed;
- d) bankruptcy / winding up proceedings: The queries pertaining to bankruptcy or winding-up proceedings involving the parties have been deleted;
- e) filings with other authorities: The queries on details of intimation to the High Court / the Company Law Board / the Securities and Exchange Board of India relating to the proposed transaction have been removed; and
- f) charter documents: The need to provide charter documents such as the Memorandum of Association and list of top shareholders of the parties has been done away with.

With these deletions, the level of information / data required to be submitted in a Form II will considerably decrease and both the parties and the CCI can now focus on more relevant information / data required to do the competition assessment.

- 2. Increase in duration of market facing data:** The duration of market facing data (i.e., size of the market, market share of the parties and competitors and details of top 5 customers and suppliers) required to be submitted has increased from 3 years to 5 years.
- 3. Detailed analysis of vertical / complementary activities:** Previously, the data requirements for vertical / complementary activities were considerably less as compared to the data required for horizontal overlaps. The CCI has revised this approach, and now requires detailed information / data for vertical / complementary activities (similar to the level of data it required for horizontal overlaps). For all vertical / complementary activities, parties will now need to provide





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detailed information / data in relation to market size, market shares, details of top 5 competitors, customers and suppliers (all for the last 5 years), market conditions including regulatory landscape, ease of switching, HHI and CR4 index, R&D details, entry and exit details, import and export details, etc. Therefore, going forward, parties will need to provide a more detailed analysis for vertical / complementary activities.

**4. Details of shareholding / rights held in any other entity operating in the overlapping / vertical / complementary market(s):** Parties are now required to disclose if they have shareholdings in or exercise control (through other means) over any other entities operating in the identified overlapping

/ vertical / complementary market(s) (this requirement had been previously included in the short Form I but had not been included in the long Form). Parties will also need to additionally disclose the specific rights held in such entities (including the nature of veto rights or right to appoint a Director / Observer).

Overall, the new changes are in line with the CCI's goal to improve ease of doing business in India and reduce the information burden on the parties. However, it can be regarded as a "mixed bag" as it has also increased the duration of market facing information to be submitted by the parties, and the level of information / data required for vertical / complementary relationships.

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