

GREEN CHANNEL MECHANISM UNDER THE INDIAN COMPETITION LAW REGIME

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INTRODUCTION:

From a time when there were not enough foreign exchange reserves to sustain for a couple of weeks to a time of liberalisation, globalisation and privatisation, the developing Indian economy has come a long way. The trade has increased many folds which in turn has led to creation of a fiercely competitive market. The advantages of such a market are technological advancements, increase in choice with the consumers and innovation among others. However, such competition can sometimes take forms like formation of cartels which can have adverse impact on the market and ultimately on the consumers. Therefore, regulation of such a competitive market is pertinent in a developing economy.

After independence, Monopolies and Restrictive Trade Practices Act, 1969 (“MRTP Act, 1969”) was enacted to establish a command and control regime in India. However, the absence of an appropriate regulator and the need to establish an active competitive environment led to the enactment of the Competition Act, 2002. However the same was brought into force completely in 2011 only. The Act is based on the European and American competition laws which had been enacted in the 19th and 20th century, however required amendments in those laws have been made taking into account the increased complexities and the development of the economy. In India, the law has not been able to adapt to the growing complexities in the structure and models of the businesses.

Mergers and Acquisitions are immensely significant for the growth of the economy. In India, all mergers and acquisitions have to be approved by the Competition Commission of India (“CCI”) in light of “relevant market” but the process is tedious and time consuming even though the merger or acquisition, prima facie, will not have appreciable adverse impact on competition in India. The process sometimes leads to avoidance of the merger or acquisition itself because of

costs and delays in deal timelines. It is pertinent to note that the CCI has not rejected any merger or acquisition till date on the basis of appreciable adverse impact and modifications have been ordered in 2.6% of the cases only.

Therefore the Competition Law Review Committee which submitted its report in July 2019¹ recommended the introduction of a Green Channel Mechanism for combination notifications in order to enable faster regulatory approval of those mergers and acquisitions which have no appreciable adverse effect on competition in India. The committee also recommended that combinations arising out of the Corporate Insolvency Resolution Process should also be eligible for Green Channel approval².

This mechanism has been in practice in all the major economies of the world and was recommended to be introduced by the Raghavan Committee and the same was reiterated by the Competition Law Review Committee. Under this mechanism, the parties have to give a notification and a declaration in case they believe that the proposed combination fulfils all the requirements. Such combinations would be deemed to be approved by the CCI. This mechanism has been brought into force by an amendment in August 2019³. This paper deals with pre-amendment position, the detailed mechanism, drawbacks of the mechanism and the recommendations to improve the mechanism.

¹ Ministry of Corporate Affairs, *Report of the Competition Law Review Committee submitted to Union Finance and Corporate Affairs Minister*, PRESS INFORMATION BUREAU (May 11, 2020, 11:00 AM), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=192629>.

² REPORT OF THE COMPETITION LAW REVIEW COMMITTEE, http://www.mca.gov.in/Ministry/pdf/ReportCLRC_14082019.pdf (last visited May 12, 2020).

³ Khaitan & Co., *CCI Notifies 7th Set Of Amendments To Merger Regulations: Green Channel Now A Reality!*, MONDAQ (May 16, 2020, 12:00 PM), <https://www.mondaq.com/india/antitrust-eu-competition-/837508/cci-notifies-7th-set-of-amendments-to-merger-regulations-green-channel-now-a-reality>.

PRE AMENDMENT POSITION:

Competition laws around the world deal with ex-post regulation i.e. intervention by the competition regulatory authorities after the market abuse has already taken place.⁴ However in some cases, there is ex-ante regulation as well to prevent abuse through merger control. The object of such regulation is to avoid and prevent foreclosure of competition which can be harmful for the welfare of the consumers and the market as a whole⁵.

It is pertinent to note that pre-entry restrictions were removed from the MRTP Act, 1969 in 1991 only to be re-introduced on the recommendation of the Raghavan Committee. The Committee had recommended that combinations, which are above a certain threshold, should be challenged only if they adversely affect the competition and welfare. Earlier notification of such combination was voluntary however the same was made mandatory in 2007 as it was feared that CCI would miss out on certain important developments which would hamper its functioning as a regulatory body.

In India, *Section 5 of the Competition Act, 2002*⁶ provides that the enterprises which propose to enter into combinations that fall within such thresholds have to notify the CCI before entering into such combinations⁷. After receiving the notification, the CCI analyses the impact of the combination (merger or acquisition) within 210 days. Before this period of 210 days expires, the proposing parties cannot consummate the proposed combination. The combination is approved only if no appreciable adverse effect is caused or is likely to be caused by the combination. However if it is concluded that such effect if caused or is likely to be caused then CCI will either approve it with modifications or reject the combination as a whole⁸.

In terms of procedural requirements as provided under the *CCI (Procedure in regard to the transaction of business relation to combinations) Regulations, 2011* (“Combination Regulations”), information about the acquirer and its group was required to be furnished. The parties had to furnish 2 summaries of the combination- one of 500 words and the other of 2000

⁴ Rafal Nagaj and Brigita Zuromskaite, *Ex post regulations as method of the public policy in the regulated sectors*, 16 PUBLIC POLICY AND ADMINISTRATION, 543 (2017), <https://www.mruni.eu/upload/iblock/6ea/2.pdf>.

⁵ ABIR ROY, COMPETITION LAW IN INDIA 210 (2nd ed. 2018).

⁶ Competition Act, 2002, § 5, No. 12, Acts of Parliament, 2003 (India).

⁷ Competition Act, 2002, § 6, No. 12, Acts of Parliament, 2003 (India).

⁸ Competition Act, 2002, § 31, No. 12, Acts of Parliament, 2003 (India).

words. In the longer summary of 2000 words, the parties had to provide an analysis of the likely impact of the combination on the competition in the relevant market in which the parties operate.⁹

The object of such timelines and procedural requirements is to prevent market abuse by analysing the proposed merger or acquisition so as to understand its impact on competition in India. However, the mandatory requirement of 210 days for merger implementation increased costs for the parties as well as the society.

UNDERSTANDING THE CCI GREEN CHANNEL MECHANISM:

The general structure of the Competition Act, 2002 requires the parties to notify the combination to the CCI by delivering a notice under Section 6 of the Act. After the notification, CCI has the power to either accept, reject or suggest modifications in the notified combination and without approval from the CCI, the combination cannot be consummated. However, in 2019, the Combination Regulations were amended wherein the Regulation 5A providing for Green Channel mechanism was notified for combinations¹⁰. As per the mechanism, once the notification under Form I is filed, the combination can be consummated without the prior approval from CCI. The mechanism has been explained below for better understanding:

- *Qualifying criteria:* The criteria for availing the Green Channel mechanism has been provided under Schedule III to the Combination Regulations.¹¹

The parties to the combination, their respective group entities and/or entity in which they, directly or indirectly, hold shares and/or control:

1. do not produce/provide similar or identical or substitutable products or services;
2. are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in products or provision of services which are at different stage or level of production chain; and

⁹ The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, Reg. 13(1B), Gazette of India, pt. III sec. 4 (May 11, 2011).

¹⁰ The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, Reg. 5A, Gazette of India, pt. III sec. 4 (May 11, 2011).

¹¹ The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, Schedule III, Gazette of India, pt. III sec. 4 (May 11, 2011).

3. are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in products or provision of services which are complementary to each other.

These overlaps have to be inspected in relation to a “relevant market”. To qualify for the green channel mechanism, the parties to the transaction should not overlap in any plausible relevant market. The absence of overlaps must be confirmed not only amongst the transacting parties but also their respective organisations and the entity in which parties, directly or indirectly, hold shares and/or exercise control.¹²

- *Procedure*: If the combination falls under the criteria mentioned above then the following procedure can be opted by the parties:
 1. Notice in Form I (given in Schedule II)¹³ as per Regulation 5 of the Combination Regulations has to be filed with the CCI. Form I has been simplified by the amendment to the Combination Regulations.
 2. Along with the notice, a declaration as per Schedule IV of the Combination Regulations has to be filed.¹⁴ It is a positive declaration confirming that the combination falls under the Green Channel and there are no overlaps at any level as given under Schedule III.
 3. A summary of the combination in about 1000 words has to be submitted to the CCI as well. It will consist of name of the parties; nature and purpose of the combination; products, services and business of the parties and the respective markets of the parties.¹⁵
 4. Upon filing of the notice, along with declaration and summary, and the acknowledgement thereof, the combination will be deemed to be approved by the CCI under Section 31(1) of the Competition Act.

¹² Diva Rai, *Analysis of CCI's Green Channel Mechanism for M&A*, IPLEADERS (May 16, 2020, 12:00 PM), <https://blog.ipleaders.in/analysis-of-ccis-green-channel-mechanism-for-ma>.

¹³ The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, Schedule II, Gazette of India, pt. III sec. 4 (May 11, 2011).

¹⁴ The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, Schedule IV, Gazette of India, pt. III sec. 4 (May 11, 2011).

¹⁵ The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, Reg. 13(1A), Gazette of India, pt. III sec. 4 (May 11, 2011).

5. Pre filing guidance can be obtained from the case team in CCI in order to clear ambiguities before filing the notice in Form I.¹⁶ However, the pre filing consultation/guidance is not binding on the CCI.¹⁷

- *Penalty:*

Where the CCI finds that the combination does not fall under Schedule III or the declaration is incorrect, the notice given by the parties and the approval granted by the CCI shall be declared void ab initio and the combination shall then be dealt with in accordance with the provisions of the Act.¹⁸

The CCI will deal with such combinations under Section 44 and Section 20(1) of the Competition Act, wherein the filing of wrong/incomplete information may attract penalty and such notification may be looked into by the CCI in order to assess the ability of the combination to cause an appreciable adverse effect on competition up to 1 year from date of effect. A penalty ranging between Rs. 50 lakhs to Rs. 1 crores has been provided under Section 44.¹⁹

An opportunity of hearing will be given to the parties to prove that the combination falls under Schedule III and the declaration is not incorrect.

- *Advantages of the Green Channel Mechanism:* The Competition Law Review Committee discussed the following advantages in its report²⁰:

1. Green channel is an automatic route for approval of combinations which will reduce time and costs of transactions significantly.
2. This mechanism will allow the CCI to continue its role in monitoring notifiable combinations which may pose genuine competition concerns.
3. The mechanism will allow businesses in India to consolidate with minimal regulatory compliance and will aid them to gain from economies of scale and to compete globally.

¹⁶ Competition Commission of India, *Competition Commission of India (CCI) introduces Green Channel clearance for Merger & Acquisitions*, COMPETITION COMMISSION OF INDIA (May 13, 2020, 11:00 AM), https://www.cci.gov.in/sites/default/files/press_release/PR82019-20.pdf.

¹⁷ Competition Commission of India, *Consultation prior to filing of notice of the proposed combination under sub section (2) of section 6 of the Competition Act, 2002*, COMPETITION COMMISSION OF INDIA (May 13, 2020, 11:00 AM), https://www.cci.gov.in/sites/default/files/cci_pdf/PFCguidancenote.pdf.

¹⁸ The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, Reg. 5A, Gazette of India, pt. III sec. 4 (May 11, 2011).

¹⁹ Competition Act, 2002, § 44, No. 12, Acts of Parliament, 2003 (India).

²⁰ REPORT OF THE COMPETITION LAW REVIEW COMMITTEE, http://www.mca.gov.in/Ministry/pdf/ReportCLRC_14082019.pdf (last visited May 12, 2020).

4. The combinations that are notified other than by way of Green channel, can serve as a signal for the CCI and CCI can benefit from the connotation associated with the notification.
 5. The mechanism will help in recalibrating transaction costs for businesses, enforcement costs for the CCI in relation to the development goals of the country and benefit will be accrued to all industry participants including consumers through the merger control regime.
- *Proposed amendments in Draft Competition Amendment Bill 2020 (“draft bill”):²¹*

In relation to the green channel mechanism, amendment to Section 6 has been recommended in the draft bill in order to incorporate the mechanism within the Act itself. It has been provided that a notice under Section 6(4) will be filed if a combination fulfils the criteria specified by the Central government and accordingly a separate notice under Section 6(2) is not required.

Upon filing of notice and acknowledgement thereof, the proposed combination will be deemed to be approved under Section 31(1) of the Act. However if within 1 year of the consummation of the combination, as provided under Section 20(1) of the Act²², it is found that the requirements are not being fulfilled or the information/declaration provided is materially incorrect or incomplete then the approval to the combination will be void ab initio and the CCI can impose appropriate penalties on the parties.

DRAWBACKS OF THE CCI GREEN CHANNEL MECHANISM:

The Green Channel Mechanism was introduced with a novel objective of facilitating Merger & Acquisition transactions by reducing the cost of time. However novel the object, the mechanism has created more confusion than it sought to reduce. There are many stumbling blocks in the Green Channel Mechanism that has been identified:

- *Cumbersome process:*

The bedrock of this new mechanism is that, deemed approval is provided only to those transactions which do not have any horizontal or vertical overlaps and those which are not likely to cause appreciable adverse effect on competition in India. This means that, all combinations which violate the qualifying criteria laid down under Schedule III are

²¹ Draft Competition (Amendment) Bill, 2020, § 6, Bills of Parliament, 2020 (India).

²² Competition Act, 2002, § 20, No. 12, Acts of Parliament, 2003 (India).

declared by the CCI as *void ab initio*.²³ The problem here is that, there is no time limit prescribed within which CCI can up with such a decision. Absence of time limit within which the Regulator can initiate and complete its inquiry increases the transaction cost and leads to uncertainty which is devastating for the Merger & Acquisition market. This also raises questions on the efficacy and expediency of the Green Channel which it originally sought to provide. The direct consequence of a transaction being declared *void ab initio* is that the parties will have to start the entire procedure afresh. In addition to this the parties will also be held liable for gun-jumping under section 44 of the Competition Act, 2002 which come with a huge penalty of minimum INR 50 Lakhs and a maximum of INR 1 Crore.

A solution to this problem is to expressly include the provisions of Section 20 of the Competition Act, 2002 in the amended regulations. Section 20 provides that CCI can inquire into the vires of a combination only within a period of 1 year from the closing date of the combination. Competition Law Review Committee had said in its report that provision of section 20 will apply only if the same is provided in the new Form. Hence by including the provision of Section 20 in the new Form for Green Channel approval, the CCI can set the time limit for inquiring into the validity of the combination.

- *Difficulty in meeting the qualifying criteria:*

The qualifying criteria under Schedule III for being eligible to utilise the Green Channel Mechanism is very rigid. The requirement under Schedule III is not only restricted to the parties of the combination, but also extends to their group entities, subsidiaries, associate companies, indirect investees or any other entity in which the parties hold shares or control.²⁴ The Green Channel Mechanism does not provide a threshold for the percentage of shares, which means that theoretically even 1 share can disqualify the parties from using the benefits of the Green Channel Mechanism. Even a slight overlap will oust most of the parties from the ambit of Green Channel Mechanism. Having such deeply penetrating qualifying criteria will render most of the big companies and private equity groups

²³ The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, Reg. 5A, Gazette of India, pt. III sec. 4 (May 11, 2011).

²⁴ Rashmi Birmole, From Enforcer to Facilitator: Analyzing CCI's Green Channel for M&A clearance in India, THE CBCL BLOG (May 15, 2020, 6:00 PM), <https://cbcl.nliu.ac.in/competition-law/from-enforcer-to-facilitator-analyzing-ccis-green-channel-for-ma-clearance-in-india/>.

ineligible under the Green Channel Mechanism. Consequently, the mechanism will remain suitable only for a small set of companies.²⁵

The Competition Law Review Committee in its report had stated that, any such mechanism for deemed approval of combinations must not be cumbersome,²⁶ but that recommendation was not taken seriously as Form-1 requires the parties to ensure that none of their group entities or other related entities have any horizontal or vertical overlaps. The new mechanism has increased the due diligence burden of the parties as now the parties will be required to undertake the de-licencing of the business of their indirect investees as well to ensure that there is no horizontal, vertical overlap in the proposed combination.

- *Undefined terms give rise to ambiguity:*

Several essential terms which form a part of the qualifying criteria are left undefined like “*Alternative Markets*” and “*Complementary*”. Complementary goods have never been defined by the CCI nor interpreted by the courts in the context of Competition Law. However, one does stumble upon the interpretation of the terms in the context of Intellectual Property Rights and Economics. Complementary goods were defined as “same, similar, cognate or allied goods and services”. In other words, “goods or services of the same description” as propounded in *Unilever Plc v. Golden Assam Tea Depot*.²⁷ Basic economic principles provide that complementary goods are those that tend to sell together, demand for one translate into demand for another. In *Harish Motichand Sariya v. Ajanta India Limited*²⁸ toothbrush and toothpaste were held to be cognate or allied goods as in economic terms, they sell together.²⁹

Due to lack of jurisprudence in the Indian Context, it would be prudent to rely on the interpretations derived by foreign jurisdictions. For instance, the European Commission has stated that, “*complementary overlaps—referred to as conglomerate mergers—take place between parties that are active in closely related markets.*”³⁰

²⁵ Vinay Shukla & Simone Reis, *CCI’s Green Channel Mechanism: One Step Forwards, Two Steps Back*, NISHITH DESAI ASSOCIATES (May 12, 2020, 5:30 PM), <http://www.nishithdesai.com/information/news-storage/news-details/article/ccis-green-channel-amendments-one-step-forward-and-two-steps-back.html>.

²⁶ REPORT OF THE COMPETITION LAW REVIEW COMMITTEE, http://www.mca.gov.in/Ministry/pdf/ReportCLRC_14082019.pdf (last visited May 12, 2020).

²⁷ *Unilever Plc v. Golden Assam Tea Depot*, (2018) SCC Bom 17083.

²⁸ *Harish Motichand Sariya v. Ajanta India Limited*, 2003 (6) Bom CR 178.

²⁹ *JSB Cement v. Assam Roofing Ltd*, (2017) SCC Cal 5180.

³⁰ Vinay Shukla & Simone Reis, *CCI’s Green Channel Mechanism: One Step Forwards, Two Steps Back*, NISHITH DESAI ASSOCIATES (May 12, 2020, 5:30 PM), <http://www.nishithdesai.com/information/news-storage/news-details/article/ccis-green-channel-amendments-one-step-forward-and-two-steps-back.html>.

These includes, mergers involving suppliers of complementary products or products that belong to the same product range. The European Commission has always opined that an acquisition involving takeover of a firm involved in development and manufacture of consumable dental products and medical devices by a firm involved in manufacture of dental equipment has conglomerate effects.

Similarly, *Microsoft's acquisition of LinkedIn* too was examined for conglomerate effects. But in both these case, surprisingly no horizontal or vertical overlap was found despite the similarity in the nature and characteristics goods and service offered.

The term “*Alternative Market*” is also not defined in the Act, or the rules. But a *term nearer to that is, “Relevant Market”*³¹ which includes “*Relevant geographic Market*” and “*Relevant Product Market*”. The former comprises of the area in which conditions of competition for marketing of goods and services remain homogeneous and that market can be distinguished from the conditions prevailing in the neighbouring areas. This geographical market as defined in the Competition Act, 2002 has been limited to the territorial jurisdiction of India. Therefore it is unclear whether or not the introduction of the term “*Alternate Market*” is likely to extend the benefit of Green Channel Mechanism to combinations in foreign jurisdictions. If the benefit of the mechanism is extended to foreign combinations, it means that, as per the qualifying criteria for the Green Channel route, if the large foreign conglomerate has no overlaps in India with the large Indian competitor, then the Green Channel route could be used for this acquisition. This would be counter-intuitive as an entry of a global conglomerate would most likely impact competition in the market and should therefore be assessed before assuming an approval.

- *The mechanism cannot be used for block deals that happen on stock exchanges:*

When the Green Channel Mechanism was introduced, the expectation was that the Green Channel would be allowed for block deals that happen on the stock exchanges. The block deals are negotiated but not via agreements. Such block deals aim to lock-in the price and that cannot legitimately happen if parties have to notify the CCI and wait for an approval.³² Therefore it was envisaged that such a mechanism of deemed approval would immensely help in promoting block deals. However, with the qualifying criteria being so rigid, it will

³¹ Competition Act, 2002, § 2(r), No. 12, Acts of Parliament, 2003 (India).

³² Rashmi Birmole, From Enforcer to Facilitator: Analyzing CCI's Green Channel for M&A clearance in India, THE CBCL BLOG (May 15, 2020, 6:00 PM), <https://cbcl.nliu.ac.in/competition-law/from-enforcer-to-facilitator-analyzing-ccis-green-channel-for-ma-clearance-in-india/>.

be almost impossible for parties to the block deal to utilise the advantage of the Green Channel Mechanism.

- *Pre-filing guidance system is of little help:*

The CCI is expecting that the pre-filing guidance system established by it would become the foundation for the success of the Green Channel Mechanism. The Competition Law Review Committee in its report, also acknowledged that success of the Green Channel Mechanism would hinge a great deal on existence of robust pre-filing consultation between the parties and the CCI.³³ However, contrary to the expectation of the CCI, the pre-filing guidance system would be of very little help to the parties as it is non-binding and informal. CCI, clearly mentions in guideline 9 that, “*Guidance would be given as an additional assistance facility, and would not be deemed to be the opinion of the Commission in any manner, whatsoever, and such guidance will not be binding on the commission. The consultation will be held in strict confidence and without prejudice to the assessment of the case on receipt of the formal notice.*”³⁴ Due to its non-binding character, the CCI would still be in a position to challenge a combination and declare it *void ab initio*.

COMBINATIONS APPROVED UNDER CCI GREEN CHANNEL MECHANISM:

Since the implementation of the Green Channel Mechanism, various combinations have been approved under it.

- *Acquisition of Essel Mutual Fund by Sachin Bansal owned BAC Acquisitions Private Limited.*
This is the first acquisition cleared under the Green Channel Mechanism. BAC Acquisition is a company set up by Sachin Bansal to develop business automation and computerised platform.³⁵ There is no horizontal or vertical overlap as the target company is involved with the business of mutual funds, completely different from that of the acquirer.
- *Acquisition of Hero Future Energies Global Limited by Abu Dhabi Future Energy Company.*

³³ REPORT OF THE COMPETITION LAW REVIEW COMMITTEE, http://www.mca.gov.in/Ministry/pdf/ReportCLRC_14082019.pdf (last visited May 12, 2020).

³⁴ Competition Commission of India, *Consultation prior to filing of notice of the proposed combination under sub section (2) of section 6 of the Competition Act, 2002*, COMPETITION COMMISSION OF INDIA (May 12, 2020, 11:00 AM), https://www.cci.gov.in/sites/default/files/cci_pdf/PFCguidancenote.pdf.

³⁵ *Sachin Bansal's BAC Acquires Essel Mutual Funds*, LAFFAZ, (May 11, 2020, 10:00 AM) <https://laffaz.com/sachin-bansals-bac-acquires-essel-mutual-fund/>.

This acquisition puts to rest the confusion pertaining to extraterritorial application of the Green Channel Route. It is amply clear that it applies to combinations involving foreign companies as well. The acquirer in an international company involved in providing clean and renewable energy solutions in energy, water, urban development and clean technologies. On the other hand, the target company is engaged in the implementation of power projects and generation of power through renewable sources of energy, among other activities. There is an element of vertical overlap in this combination, however it has not come within the scrutiny of the CCI yet. This combination is set to open renewable energy sector opportunity in India.

- *Acquisition of IDBI Asset Management Ltd. and IDBI MF Trustee Company Ltd. by Muthoot Finance Ltd.*

Muthoot Finance Ltd. acquired 100% equity shares of both the target companies. There is no vertical or horizontal overlap and the parties are not engaged in complementary business in India. The target companies function in the market for mutual funds, while the acquirer is a NBFC functioning in a different market area of banking and finance.³⁶

- *Acquisition of Adani Electricity Mumbai Ltd. and Adani Electricity Services Ltd. by Qatar Holdings LLC.*³⁷

Qatar Holdings acquired 25.1% of equity shareholding in both the target companies from Adani Transmission Ltd. There is no overlap between the parties and both the parties operate in different markets. Qatar Holdings is registered as a Foreign Portfolio Investor with SEBI and the target companies are involved in power distribution, transmission and generation business.

- *Acquisition of GVK Airport Holdings Ltd. (“GVKAHL”) by Green Rock B 2014 Ltd, National Investment and Infrastructure Co. and Indo-Infra Inc.*

There are no overlaps between GVK AHL and its subsidiaries and the acquirers (including their controlled portfolio companies) in India.³⁸ The activities of GVK AHL and its

³⁶ Ministry of Corporate Affairs, *Three Combination Gets Automatic Approval under CCI Green Channel Mechanism*, PRESS INFORMATION BUREAU (May 13, 2020, 11:00 AM), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=196018>.

³⁷ Ministry of Corporate Affairs, *Three Combination Gets Automatic Approval under CCI Green Channel Mechanism*, PRESS INFORMATION BUREAU (May 13, 2020, 11:00 AM), https://www.cci.gov.in/sites/default/files/notice_order_summary_doc/C-2019-12-710.pdf.

³⁸ Ministry of Corporate Affairs, *Three Combination Gets Automatic Approval under CCI Green Channel Mechanism*, PRESS INFORMATION BUREAU (May 13, 2020, 11:00 AM), https://www.cci.gov.in/sites/default/files/notice_order_summary_doc/C-2019-12-713.pdf.

subsidiaries (i.e. “MIAL” and “NMIA”) relate to the provision of airport services and services and activities incidental to air transportation such as operation of terminal facilities, airport activities, ground service activities at airside, and cargo handling services.³⁹

³⁹ Ministry of Corporate Affairs, *Three Combination Gets Automatic Approval under CCI Green Channel Mechanism*, PRESS INFORMATION BUREAU (May 13, 2020, 11:00 AM), https://www.cci.gov.in/sites/default/files/notice_order_summary_doc/C-2019-12-713.pdf.

CONCLUSION:

The Green Channel Mechanism is certainly an innovative measure put in place to promote the M&A market in India. However, the various road blocks have raised concerns amongst the market players that, whether the gains of time outweighs the Damocles' sword of uncertainty over the approval status of the combination. Nonetheless, the CCI and the Competition Law Review Committee deserve high appreciation for putting in place processes to ease the regulatory burden in India.

The authors believe, that the amendment would have been more effective if the following suggestions are take into consideration:

- The qualifying criteria should be limited only to the parties of the combination and must not penetrate down to their group entities, associate companies, indirect investees or subsidiaries.
- Alternatively, a percentage shareholding threshold could be provided, where existing interests in similar / vertically linked / complementary sectors below a certain percentage could have been disregarded for the applicability of the Green Channel.⁴⁰

Finally, although the Green Channel Mechanism seems to ease out the entire process, it may have in reality increased the burden of due diligence on the parties. The parties will now have to be extra careful in terms of accuracy and completeness of the information submitted under the Green Channel, as otherwise they run the risk of getting the entire transaction declared *void ab initio*.

There is always a hope that, further improvements will be made in the mechanism to feed the merger market in India.

⁴⁰ CCI's Green Channel Approval More Grey Than Green, CYRIL AMARCHAND MANGALDAS (May 12, 2020, 1:30 PM), <http://www.cyrilshroff.com/wp-content/uploads/2019/08/Client-Alert-CCI-Green-Channel.pdf>.

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