

Introductory Notes to Forms

1. Purpose

- 1.1 As per sub-section (2) of section 6 of the Competition Act, 2002 (“**Act**”), any person or enterprise, who or which proposes to enter into a combination shall give notice to the Competition Commission of India (“**Commission**”) in the form as may be specified, disclosing the details of the combination, and the fee which may be determined by regulations, within thirty days of (i) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be; (ii) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section. Such notice may be given in Form I or Form II, as specified in Schedule II to the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”), in accordance with the provisions of the Act read with the Combination Regulations.
- 1.2 In terms of sub-regulation (2) of regulation 5 of the Combination Regulations, the notice under sub-section (2) of section 6 of the Act shall ordinarily be filed in Form I as specified in Schedule II to the Combination Regulations, duly filled in and accompanied by evidence of payment of requisite fee by the party(ies) to the combination. In cases where the parties to the combination fail to give notice under sub-regulation (2) of section 6 of the Act, the notice may also be required to be filed under sub-regulation (2) of regulation 8 of the Combination Regulations, pursuant to directions of the Commission in this regard. The text of the Act and the Combination Regulations can be found on the Commission’s website.
- 1.3 The forms provided in Schedule II to the Combination Regulations (including the notes to respective forms) constitute an integral part of the Combination Regulations.
- 1.4 Form I specifies the information that must be provided by the person or enterprise who or which proposes to enter into a combination and in accordance with sub-regulation (2) of regulation 5 of the Combination Regulations, a notice under sub-section (2) of section 6 of the Act should ordinarily be given in Form I for combinations, wherein:
- 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 not 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 not more than twenty five per cent (25%) in the relevant market.

- 1.5 In accordance with sub-regulation (3) of regulation 5 of the Combination Regulations, in the event the combined market share of the parties to the combination is higher than those provided above, a notice should preferably be given in Form II as specified in Schedule II to the Combination Regulations. In terms of sub-regulation (5) of regulation 5 of the Combination Regulations, in cases where the parties to the combination have filed notice in Form I and the Commission requires information in Form II to form its prima facie opinion whether the combination is likely to cause or has caused appreciable adverse effect on competition within the relevant market in India, it shall direct the parties to the combination to file notice in Form II.
- 1.6 In terms of sub-section (11) of section 31 of the Act, the Commission is required to pass an order or issue direction in accordance with provisions of Section 31 of the Act within two hundred and ten days from the date of the notice given to the Commission under sub-section (2) of section 6 of the Act. Further, in accordance with sub-regulation (1) of regulation 19 of the Combination Regulations, the Commission shall form its prima facie opinion as to whether a combination is likely to cause or has caused an appreciable adverse effect on competition within the relevant market in India within thirty working days of the receipt of such notice.
- 1.7 In view of the stipulated timelines, it is essential that the Commission is provided the requisite information needed to examine the notice and to determine whether the combination has or is likely to have an appreciable adverse effect on competition in the relevant market in India, in a timely manner. This includes information that must be provided at the time of notification.

2. Who must file the notice?

In accordance with sub-regulation (1) of regulation 9 of the Combination Regulations, in case of an acquisition or acquiring of control of the enterprise, the acquirer shall file the notice. In terms of sub-regulation (3) of regulation 9 of the Combination Regulations, in case of a merger or amalgamation, parties to the combination shall jointly file the notice.

3. Requirement of complete and correct information

- 3.1 In terms of sub-regulation (1) of regulation 14, the notice filed under regulation 5 or regulation 8 of the Combination Regulations shall not be valid unless it is in conformity with the Combination Regulations. Therefore, it is necessary, *inter alia*, that information provided in the notice is complete and correct. The parties to the combination should ensure that the information contained in the notice has been carefully prepared. Please note that lack of complete information and/or submission of incorrect information may lead to invalidation of the notice or may significantly delay the process of inquiry and examination of the notice.

- 3.2 In the event the Commission 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. In such cases, the Commission may give an opportunity of being heard to the parties to the combination before treating the notice as invalid under sub-regulation (1) of regulation 14.
- 3.3 Please note that under Section 44 of the Act, an omission to furnish material information or making of false statements may lead to imposition of penalties. In addition to the same, the Commission may also impose a fine under Section 45 of the Act.

4. Notification Process

- 4.1 In terms of regulation 13 of the Combination Regulations, the duly filled in notice is required to be delivered along with a copy and an electronic version thereof to the Commission's office.
- 4.2 In case the notifying party has requested confidentiality with respect to information or document(s) submitted during the inquiry, the non-confidential version thereof is required to be additionally filed along with an electronic copy. Please note that under regulation 35 of Competition Commission of India (General) Regulations, 2009 read with regulation 30 of the Combination Regulations, a request for confidentiality may be made only if making the document or documents or part or parts thereof public will result in disclosure of trade secrets or destruction or appreciable diminution of the commercial value of the information or can be reasonably expected to cause serious injury. The notifying party(ies) should clearly state the reasons and justification for requesting confidentiality and the implications for the business of the parties to the combination from the disclosure of such information/documents. Further, in case request for confidentiality is made by the parties to the combination, it shall be substantiated with cogent reasons and detailed explanation for grant of such confidential treatment. 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 same will cause serious injury, shall not be sufficient ground for accepting the request for confidentiality. Further, in accordance with sub-regulation (3) of regulation 30 of the Combination Regulations, an affidavit regarding grant of confidentiality should also be filed along with the letter making request for grant of confidentiality.
- 4.3 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 should be provided. For body corporates organised/incorporated under foreign laws, the following documents may be submitted:
- a. for body corporates which are required to pass board resolutions for such authorisation, 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 enterprises are not required to pass a board resolution for such authorisation, an authorisation 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. The said authorisation should be printed on the company letter head and should, wherever applicable, bear the company seal or its equivalent as per the applicable law; and
- c. In the event any document submitted by the notifying party(ies) are in a language other than English, translation in English of the said document is required to be provided.