

sarvada

# INDIAN MERGER CONTROL IN

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## 2024 - 2025



## TRENDS AND TAKEAWAYS

# CONTENTS

## PART ONE

## INTRODUCTION

**MERGER CONTROL 2.0 : HOW HAS COMBINATION ASSESSMENT CHANGED? 01**

DEAL VALUE THRESHOLD 02

DE MINIMIS THRESHOLDS REVISED 04

'CONTROL' AMENDED: MATERIAL INFLUENCE STANDARD 05

GREEN CHANNEL 06

EXEMPTIONS 08

VOLUNTARY MODIFICATIONS 12

OPEN OFFER ALLOWED 13

REVIEW TIMELINES SHORTENED 13

**TRENDS IN DECISIONAL PRACTICE: CASE ROUNDUP 15**
LANDMARK DECISION: *INDEPENDENT SUGAR CORPORATION LTD. V. GIRISH SRIRAM JUNEJA AND ORS.* 16

- CONDITIONAL APPROVALS: INSIGHTS ON COMPLIANCE FROM DECISIONAL PRACTICE 21

ASSESSMENT OF OVERLAPS 22

- OVERLAPS DETERMINED BY SCOPE OF ACTIVITIES ONLY 22

- OVERLAPS MAY BE MAPPED WITH LIMITED PARTNERS ALSO 23

- EXISTING SUPPLY ARRANGEMENTS TO BE DISCLOSED AS VERTICAL LINKAGES 24

- INCLUDES ASSESSMENT OF CONGLOMERATE EFFECTS 25

ACQUISITION OF OPTIONALLY CONVERTIBLE SECURITIES: NOTIFIABILITY DETERMINED BEFORE CONVERSION AND NOT PRIOR 26

MODIFICATIONS AND COMMITMENTS OFFERED 27

- DIVESTMENT: *RELIANCE INDUSTRIES LIMITED/WALT DISNEY COMPANY* 28

- RING-FENCING TO PREVENT EXCHANGE OF COMMERCIALY SENSITIVE INFORMATION: *RUBY ASIA HOLDINGS II PTE. LTD./SINGTEL INTERACTIVE PTE. LTD.* 31

GUN-JUMPING - WHAT HAPPENED IN 2024 34

## PART TWO

**MICROTRENDS : WHAT CAN WE EXPECT IN 2025? 39**

## PART THREE

**OUR CONTRIBUTORS 41**



**2024** saw 128 combination filings with financial services constituting the bulk of these merger notifications, followed by healthcare and energy sector. The approval orders of the **Competition Commission of India (“CCI”)** highlight several new trends which will become **crucial considerations for investors and deal makers** going forward.

We also saw the coming into effect of several highly anticipated provisions of the **Competition (Amendment) Act, 2023 (“Amendment”)** with enabling rules and regulations in sync with the revised combination framework.

All in all, this marks a new era and complete overhaul of the Indian merger control regime.

## MERGER CONTROL 2.0:

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### HOW HAS **COMBINATION ASSESSMENT** CHANGED?

DEAL VALUE THRESHOLD

DE MINIMIS THRESHOLDS REVISED

'CONTROL' AMENDED:  
MATERIAL INFLUENCE STANDARD

GREEN CHANNEL

EXEMPTIONS

VOLUNTARY MODIFICATIONS

OPEN OFFERS ALLOWED

REVIEW TIMELINES SHORTENED

## DEAL VALUE THRESHOLD

Deal value threshold (“DVT”) is triggered when :

the **value of any transaction**, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds **INR 2000 crore** (approx. USD 230 million), **and**



the target has **substantial business operations** in India.

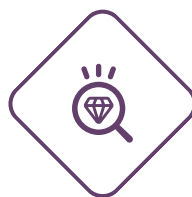
### SARVADA INSIGHT



It was widely speculated that DVT was introduced to capture transactions in the digital space which escaped CCI’s scrutiny for not meeting the prescribed asset and turnover thresholds (i.e., killer acquisitions and deals like *WhatsApp/Facebook*), it stands today as a sector-agnostic threshold. Thus, more transactions will require approval from the CCI.

## VALUE OF THE TRANSACTION

Includes every valuable consideration, whether direct or indirect, immediate or deferred, cash or otherwise.



The value of the transaction shall include consideration for any acquisition by one of the parties or its group entity in the enterprise being acquired or merged or amalgamated in the transaction, **anytime during the period of two years before the relevant date.**



Where no best estimation of the value of the transaction can be determined with certainty, it will be deemed that the value exceeds the specified threshold, and the transaction will still have to be notified. Thus, DVT is intended to be a catch-all provision.



## SARVADA INSIGHT



Interestingly, any acquisition by the parties (or their group entities) in a two year period prior to the relevant date will be aggregated for triggering the DVT and determining notifiability under the DVT. The irony here is that while such prior acquisitions are aggregated for determining notifiability, they would not be aggregated for approval. This is because each such prior acquisition would have to be notified separately, if they meet any of the other thresholds. This is especially relevant where optional/convertible rights are concerned because the CCI's decisional practice indicates that it expects parties to come back and re-assess notifiability at the time of conversion.

## SUBSTANTIAL BUSINESS OPERATIONS IN INDIA

If **any** of the following conditions are met, i.e., if at least:



(a) **10% or more** of its total global business users or end users for digital services are in India;



(b) Gross merchandise value in the **12 months preceding** the relevant date in India is:

- |  |                                     |
|--|-------------------------------------|
| (i) <b>10% or more</b> of its total global gross merchandise value | (ii) Exceeds <b>INR 500 crores.</b> |
|--|-------------------------------------|



*["**gross merchandise value**" means cash, receivables, or other consideration either for or facilitating, sale of goods and/ or provision of services, by an enterprise, on its own or as an agent or otherwise.]*



(c) Turnover during the **preceding financial year** in India is:

- |  |                                    |
|--|------------------------------------|
| (i) <b>10% or more</b> of its total global turnover derived from all the products & services | (ii) Exceeds <b>INR 500 crores</b> |
|--|------------------------------------|

## SARVADA INSIGHT



Practically the criteria of the **target having turnover > INR 500 crores** in India **casts a wide net** which is likely to catch even small transactions which are not concerned with digital services for combination assessment before the CCI.

## DE MINIMIS THRESHOLDS REVISED

The Amendment along with the Competition (Minimum Value of Assets or Turnover) Rules, 2024 operationalize the Small Target/De Minimis exemption. Under De Minimis, transactions involving targets falling below either of these criteria in India are exempt from the notification requirement:

(a) Value of assets up to **INR 450 crores**; or



(b) Value of turnover up to **INR 1250 crores**.

## SARVADA INSIGHT

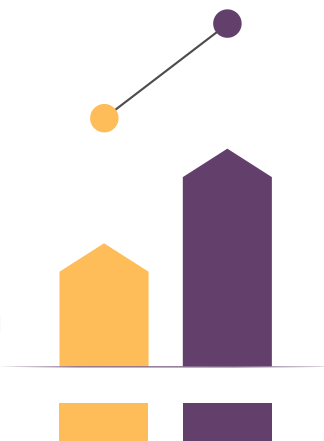


This will reduce the compliance burden of small enterprises. **However, any transactions which trigger DVT cannot avail of the de minimis exemption since there is no carve-out.** For instance, a deal where the value of transaction is **more than INR 2000 crores**, but the turnover of the target is **between INR 500-1250 crores**, would not be exempt as it would trigger the DVT. In the absence of DVT, such deals could have benefitted from the De Minimis exemption.

## 'CONTROL' AMENDED : MATERIAL INFLUENCE STANDARD

### What has changed?

Previously, the CCI's interpretation of the definition of control oscillated between the '**material influence**'<sup>[1]</sup> standard and the '**decisive influence**'<sup>[2]</sup> standard.



With the Amendment, **the material influence standard i.e., the lowest level of control** which implies the presence of factors that give an enterprise/person the ability to influence the affairs and management of the other enterprise - **has been adopted.**

### SARVADA INSIGHT

- Now, the **standard threshold for determining control under competition law is much lower than the standard of control under general corporate law, securities law, foreign direct investment et al.**
- Material influence standard is a lower threshold, wherein the ability of a firm to influence the affairs and management of the other enterprise through factors such as shareholding, special rights, status and expertise of an enterprise/person, board representation, and structural/financial arrangements is considered to determine control.
- Hence, notification requirements may be triggered much easily. Thus, more minority share acquisitions and private equity deals may require to be notified with the CCI for approval.

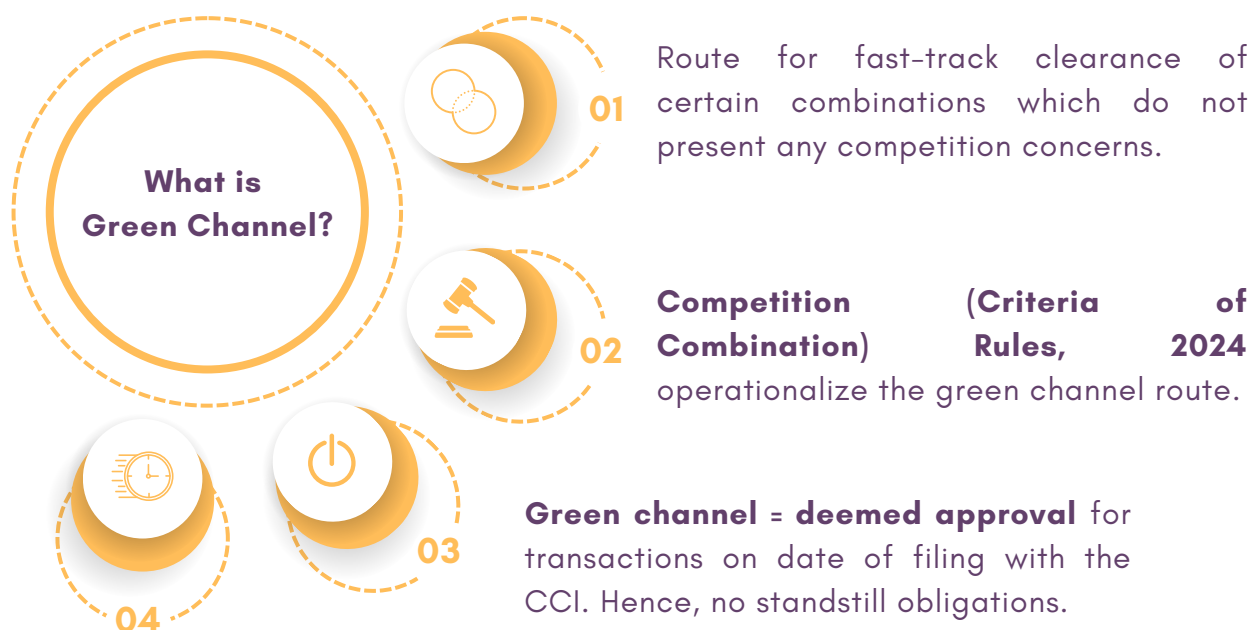


[1] UltraTech Cement Limited and Jaiprakash Associates Limited, Combination Registration No. C-2015/02/246, 12 Mar. 2018.

[2] Aditya Birla Chemicals Limited and Grasim Industries Limited, Combination Registration No. C-2015/03/256, 31 Aug. 2015.



## GREEN CHANNEL



**Eligibility criteria:** Parties (including their respective group entities and affiliates) should not exhibit any horizontal, vertical or complementary overlaps in their activities.

### KEY INSIGHTS AND UPDATES FROM RECENT DECISIONAL PRACTICE

Qualification for a green channel filing requires a fact-based assessment. The eligibility criteria for green channel are objective and specific i.e., no overlap between the parties to the combination, their respective group entities and/or any entity in which they, directly or indirectly, hold shares and/or control.<sup>[3]</sup>

Marking the second ever invalidation of a green channel filing, the CCI imposed a penalty on **India Business Excellence Fund - IV** in relation to its acquisition in VVDN Technologies Private Limited for gun-jumping.<sup>[4]</sup>

### BACKGROUND

Acquirer filed a notification to the CCI under the green channel route on the premise that there were no horizontal, vertical, or complementary overlaps between the activities undertaken by the acquirer group and the target.

[3] Order under Section 43A of the Competition Act against India Business Excellence Fund - IV, dated 16.08.2024.

[4] Order under Section 43A of the Competition Act against India Business Excellence Fund - IV, dated 16.08.2024.

It was also submitted that there was an insignificant existing supply arrangement between the target and a portfolio company of the acquirer i.e., to provide Printed Circuit Boards (“PCB”) on an ad-hoc need basis in 2020 due to supply chain constraints on account of the Covid-19 pandemic, without any agreement governing the supply commitments/relationship. The target also did not offer PCB assembly as a business offering to its customers.

## WHAT CCI HELD

Merely because the target earlier availed or could avail a similar service from other commercial suppliers does not imply that a vertical/ complementary relationship did not exist between the parties.

Argument based on ad-hoc nature of sales or that there was no commercial market facing activity was discarded because the target generated revenue from providing the PCB assembly services in question. Even otherwise, **when the target has the capability to provide a service, merely because such service was being provided commercially only to one entity and not to others or was not a primary activity, does not imply that a vertical/ complementary relationship did not or could not exist.**

Thus, the acquisition did not qualify for the green channel route as there existed a vertical/complementary relationship between the parties.

**Penalty of INR 10,00,000** was imposed on the acquirer for gun-jumping.

### SARVADA INSIGHT

- The nature of the arrangements between the parties - whether formal or informal, short-term or long-term, permanent or ad-hoc is irrelevant. If any such arrangement exists, whether erstwhile or continuing, it would have to be disclosed, and overlaps have to be mapped accordingly.
- Parties must approach green channel filings with clean hands as the CCI is likely to direct re-filing of a fresh notice in case of discrepancies, even if deemed approval has already been granted.
- In such a situation, parties are also likely to face gun-jumping penalties if the transaction has already been consummated.
- The CCI has only invalidated a green channel filing once prior to this order for not meeting the objective and specific eligibility criteria.
- Overlap assessment has to be done at the parties’ group and affiliate level [i.e., 10% or more voting rights/shareholding or board representation or ability to access commercially sensitive information (“CSI”)], which may significantly reduce the number of eligible parties.
- Thus, parties need to adopt a strict interpretation of the eligibility criteria going forward.



## EXEMPTIONS

### CHANGE

**The Competition (Criteria for Exemption of Combinations) Rules, 2024** have revamped the existing exemptions and clarify their scope in light of CCI's decisional practice. Rules have also introduced new definitions for '**group**' and '**affiliate**'. Notably, CSI has been codified as a factor in determining 'control', in line with CCI's decisional practice.

#### WHAT IS A 'GROUP' ?

The acquirer and its group entities mean the ultimate controlling person of the acquirer and other entities forming part of the same group.

#### WHAT IS AN 'AFFILIATE' ?

If an entity has:

- (i) **10% or more** of the shareholding or voting rights of another enterprise; or
- (ii) **right or ability to have a representation on the board of directors** of another enterprise either as a director or as an observer; or
- (iii) **right or ability to access commercially sensitive information** of another enterprise.

#### SARVADA INSIGHT



Significantly broadens the scope of '**affiliate**'.

### EFFECT

Enhanced clarity for businesses during the merger review process and more streamlined competition law enforcement in India.

## WHAT ARE THE EXEMPTIONS AVAILABLE?

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### MINORITY SHARE ACQUISITIONS & ACQUISITIONS IN THE ORDINARY COURSE OF BUSINESS

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The minority share acquisition exemption has been split into two separate exemptions i.e., an acquisition of shares in the '**ordinary course of business**' or '**solely as an investment**':

- (i) Acquisitions in the ordinary course of business:
  - (a) Of unsubscribed shares upon devolvement, by registered underwriters or stockbrokers, provided the acquirer is not entitled to **more than 25% shares/voting rights** in the target.
  - (b) By registered mutual funds, provided the acquirer is not entitled to **more than 10% shares/voting rights** in the target.
- (ii) Acquisitions of **less than 10% shares/voting rights** in a target exempt from notification where there is:
  - (a) No acquisition of control in the target; and
  - (b) No representation on the board of directors either as a director or as an observer; and
  - (c) No access to CSI.
- (ii) Acquisitions of **10% or more but up to 25% shares/voting rights** in a target exempt from notification where there is:
  - (a) No acquisition of control; and
  - (b) No representation on the board of directors either as a director or as an observer; and
  - (c) No access to CSI; and
  - (d) No horizontal, vertical, or complementary overlap between the acquirer and the target (along with their group entities and affiliates).

## SARVADA INSIGHT



The scope of these exemptions is very limited. There are hardly any transactions where the acquirer/investor would not have any of these rights. Further, the notifiability analysis must be done keeping in mind CCI's relatively aggressive outlook while deciding gun-jumping cases. Also, one should keep in mind that notifiability analysis and overlap analysis (i.e., analysis of whether the combination causes an adverse effect in the market) is different and two should not be confused.

## INCREMENTAL ACQUISITIONS

- (i) Incremental acquisitions by an existing shareholder **up to 25% shares/voting rights** in the target are exempt where there is:
  - (a) No acquisition of control; and
  - (b) No gain of a right or ability to director or observer first time; and
  - (c) No access to the CSI (except where the acquirer already has director/observer right); and
  - (d) In case of overlapping businesses, acquisitions of **up to 5% are exempt** where the acquirer and its group entities do not move from holding **less than 10% to more than 10% of shares/voting rights** in the target.
- (ii) Incremental share acquisitions where the acquirer (and its group entities) already has **above 25% shareholding or voting rights in the target are exempt** if there is **"no change in control"**.

## SARVADA INSIGHT



The exemption discussed under point (i) above is a newly introduced provision. However, the CSI limb may reduce the practical scope of availing this exemption.

## INTRA-GROUP TRANSACTIONS

- (i) Intra-group asset acquisitions are exempt, if there is no change in control over assets being acquired.
- (ii) Intra-group mergers and amalgamations are exempt, if there is no **“change in control”**.

### SARVADA INSIGHT

Earlier the exemption was restricted to situations where one entity already held more than 50% shares/voting rights so long as there was no change from joint to sole control. Now, a blanket exemption has been provided for intra-group mergers and amalgamations provided that there is no change in control. This is especially relevant for intra-group transactions like internal restructurings, and one needs to look at the entire corporate structure along with shareholding and control pattern to determine notifiability.



## DEMERGERS AND BONUS ISSUES STOCK SPLITS/ CONSOLIDATION/ BUY-BACK/ RIGHTS ISSUES

- (i) Bonus Issues/Stock Splits/Consolidation/ Buy-Back/Rights issues are exempt, if there is **“no change in control”**.
- (ii) Exemption to demergers and consequent issuance of shares by a resultant company to the demerged company or its shareholders, where issuance of shares is in the same proportion of shares held in the demerged company, prior to the demerger, except for the discharge consideration for fractional shares.

### SARVADA INSIGHT

The specific carveout for discharge of consideration for fractional shares may be problematic in practice since almost all demergers will result in fractional shares and transaction documents will provide for a mechanism for discharge of consideration for fractional shares.



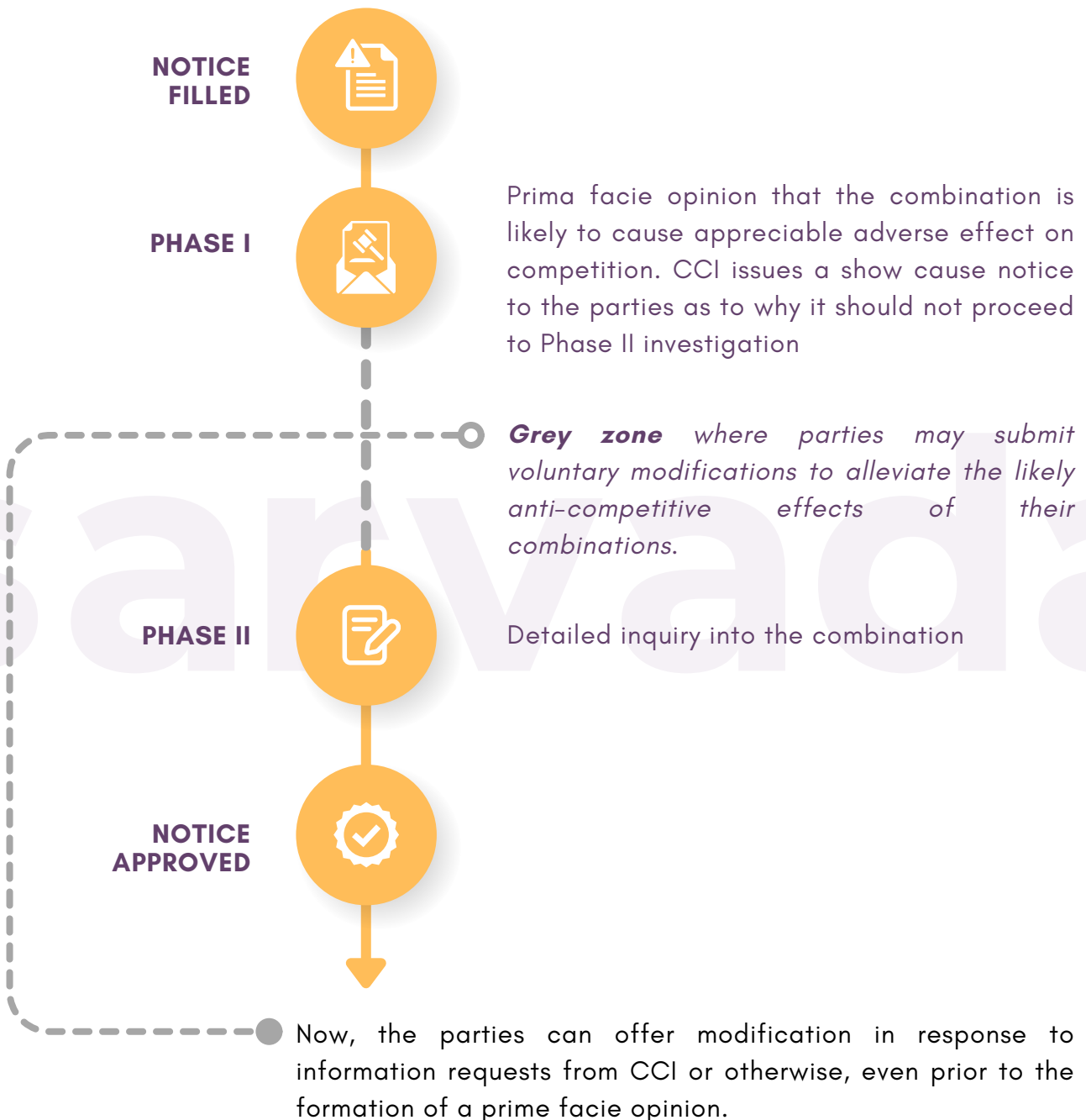
## MISCELLANEOUS EXEMPTIONS

- (i) Acquisition of shares, control, voting rights, or assets by a purchaser approved by the CCI pursuant to its order under Section 31 of the Competition Act.
- (ii) An acquisition in the ordinary course of business of stock-in-trade, raw materials, stores and spares, trade receivables, or other similar current assets that do not constitute business.

## VOLUNTARY MODIFICATIONS

### WHAT ?

Parties may submit voluntary modifications to alleviate the likely anti-competitive effects of their combinations.



### SARVADA INSIGHT



Parties proposing voluntary modifications may reduce time taken by CCI for approval and give greater autonomy and flexibility to parties on the nature of modifications adopted.

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## OPEN OFFERS ALLOWED

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### SITUATION BEFORE

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Earlier, any open market purchases by parties i.e., in cases of implementation of an open offer or purchase of securities on a stock exchange, were prohibited pending CCI's approval.

Consummation of such transactions without CCI approval would invite penalty for gun-jumping.

### WHAT'S NEW?

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Relaxation given in mandatory pre-transaction notification and approval in such cases provided the acquirer does not exercise any ownership or beneficial rights or interest in such shares or convertible securities.

### WHAT THIS MEANS?

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Certain rights can be exercised for such transactions prior to notification to capitalize on them without undue delays.

Permissible actions include:

- availing economic benefits (dividend, any other distribution, subscription to rights issue, bonus shares, stock-splits and buyback of securities);
- exercising voting rights only in matters relating to liquidation and/or insolvency proceedings. These rights are subject to the acquirer and its group entities and affiliates not influencing the target or its affiliates in any manner whatsoever.

Thus, **parties can derogate from the standstill obligations for open market purchases and part consummate the transaction and then notify within up to 30 days from the first acquisition on the implementation of such open offer.**

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## REVIEW TIMELINES SHORTENED

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### WHAT'S NEW?

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Timeline for CCI to review and approve the transactions reduced from **210 to 150 calendar days**.

Correspondingly, timelines for each of the interim steps in the merger review process also reduced. For instance: the time for prima facie approval of a combination has been reduced from '30 working days' to '**30 calendar days**'.



CCI now has **10 working days** (i.e., **14 calendar days**) from receipt of the notice to issue the first request for information/defects list.

### SARVADA INSIGHT

- The Supreme Court in *Independent Sugar Corporation Ltd. v. Girish Sriram Juneja and Ors.* has also recognized the speedy disposal of combination applications by the CCI, noting that there has been no recorded instance till date where, more than 120 days were taken by the CCI to approve a combination proposal.
- CCI took an average of 16 days to dispose of a combination notice, as disclosed in its Annual Report.
- **Caution:** While the transaction review timelines have been shortened on paper, the merger review clock potentially starts only after a minimum of 14 calendar days after filing a notice when the parties have cleared preliminary defects and responded to the first request for information. Further, this does not rule the possibility of subsequent requests for information during which time the clock will again be stopped till the parties furnish the requisite information.



TRENDS IN  
**DECISIONAL PRACTICE :**

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CASE ROUNDUP

LANDMARK DECISION : *Independent Sugar Corporation Ltd. v. Girish Sriram Juneja and Ors.*

ASSESSMENT OF OVERLAPS

ACQUISITION OF OPTIONALLY CONVERTIBLE SECURITIES: NOTIFIABILITY DETERMINED BEFORE CONVERSION AND NOT PRIOR

MODIFICATIONS AND COMMITMENTS OFFERED

GUN-JUMPING – WHAT HAPPENED IN 2024

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**LANDMARK DECISION :*****INDEPENDENT SUGAR CORPORATION LTD. v.  
GIRISH SRIRAM JUNEJA AND ORS.***<sup>[6]</sup>

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**RELEVANT  
FACTS**

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Hindustan National Glass and Industries Ltd. ("**HNGIL**"), the target company with 60% market share in the glass packaging industry in India, was the corporate debtor undergoing a corporate insolvency resolution process ("**CIRP**") under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"). AGI Greenpac Ltd., which is the second largest company in the field of glass packaging and manufacturing in India, was the successful resolution applicant.

AGI Greenpac submitted a Form I before the CCI for assessment of its proposed combination with HNGIL but the CCI found the information submitted to be insufficient and directed them to file a detailed Form II. In the meanwhile, AGI Greenpac's resolution plan (containing the proposed combination) was approved by the Committee of Creditors ("**CoC**"). AGI Greenpac subsequently submitted a detailed application under Form II seeking CCI's approval.

As per the proviso to Section 31(4) of **IBC**, the approval to the Resolution Plan from CCI shall be obtained 'prior' to its approval by the CoC.

Approval was granted after a voluntary modification from AGI Greenpac involving divestiture of one of HNGIL's manufacturing plants. AGI's Greenpac's Resolution Plan was subsequently approved by both National Company Law Tribunal and the Appellate Tribunal ("**NCLAT**").

The approval of the combination as well as the resolution plan was challenged by the unsuccessful resolution applicant.

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[6] Judgement dated 29.01.2025, Civil Appeal No. 6071 of 2023 (SC).

## KEY OBSERVATIONS AND THEIR IMPLICATIONS

### ***CCI'S APPROVAL OF A PROPOSED COMBINATION MUST MANDATORILY PRECEDE THE APPROVAL OF THE RESOLUTION PLAN BY THE COC***

#### **WHAT THE SUPREME COURT HELD**

The introduction of a proviso, specifically addressing those Resolution Plans with provisions for combination, and the use of the term 'prior' therein, makes it starkly clear that the intent of the legislature was to create an exception. This ensures that in cases containing combination proposals, the approval of the CCI should first be obtained before the same is approved by the CoC.

Any combination that leads to an AAEC in the relevant market, is void. Hence, any Resolution Plan containing a combination that results in AAEC would also be void. This is why Competition Act mandates a notice to the CCI for Resolution Plans. If prior approval of the CCI is not obtained, it may lead to an incongruous situation where the CoC approves a Resolution Plan which causes an AAEC in the relevant market in violation of the Competition Act or that subsequent to such approval by CoC, the CCI rejects the said combination, thereby rendering the entire exercise futile. After the CoC's approval, the Resolution Plan cannot be modified in any manner and is adopted as has been approved by the CoC.

#### **WHAT HAPPENED IN THIS CASE**

CCI approved the proposed combination only after AGI Greenpac proposed a divestment, which was after the CoC approval. Thus, the Resolution Plan as approved by the CoC was without the requisite approval of the CCI on that date.

Hence, the Resolution Plan being was set aside for lacking the requisite CCI approval.

#### **SARVADA INSIGHT**

- All resolution applicants to necessarily seek CCI approval if their resolution plan involves a combination meeting the thresholds of the Competition Act. It may so happen that there are competing bidders which may have different AAEC assessment by CCI and hence different remedies for each transactions. Thus, it may be a legislative effort to get approval before CoC sits on it.
- Accordingly, such transactions must factor in the relevant timelines for seeking approval and file notices well in advance to meet the deadlines of the Competition Act and the IBC. This means greater competition assessment of resolution plans is now crucial.



**PROCEDURAL ISSUES: ISSUANCE OF SCN TO ALL THE PARTIES TO THE COMBINATION & PUBLIC CONSULTATION AND INPUTS FROM AFFECTED STAKEHOLDERS**

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**WHAT THE SUPREME COURT HELD**

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While the IBC focused on expeditious revival of distressed assets, the Competition Act ensures that the resolution process does not distort market dynamics. The critical regulatory risk that emerges at this intersection is the issue of gun-jumping i.e., premature consummation of a transaction, prior to obtaining mandatory approvals from the CCI. Such mandate ensures that competitive equilibrium in the market is not disrupted during the CIRP.

Section 29(1) of the Competition Act mandates the issuance of a Show Cause Notice (“SCN”) to the ‘**parties to the combination**’ if and when the CCI forms a prima facie opinion that a combination is likely to cause AAEC. This includes all parties to the combination, especially the target company. The issuance of SCN to both the acquirer and the target is a non-negotiable procedural imperative.

Further, upon the formation of a prima facie opinion that the combination in question warrants investigation, the statutory obligations in the form of Sections 29(2) to 29(6) outline the consequential steps, aimed at gathering comprehensive data from not just the acquirer and the target company, but also from other stakeholders, potentially impacted by the combination. This is to recognise the ripple effects of the existence of an AAEC in a market, which would transcend the immediate parties to the transaction, thereby necessitating a broader consultation and data collection process. The exclusion of the target company from the scope of parties especially in cases of insolvency where the target retains critical relevance, would undermine the procedural safeguards, designed to achieve transparency and fairness. **Lack of target’s participation in the voluntary modification process, especially where the modification entails the divestment of their assets, vitiates the approval granted by the CCI.**

Failure to adhere to the procedural requirements of the Competition Act, undermines the robustness of the investigative process, rendering the CCI’s approval of the combination susceptible to a bona fide challenge.

## WHAT HAPPENED IN THIS CASE

CCI only issued the SCN to the acquirer i.e., AGI Greenpac and not the target HNGIL.

CCI failed to solicit inputs from public, affected stakeholders and those likely to be affected by such combination (including the target)

### SARVADA INSIGHT

- Consummating a resolution plan which involves a combination that was approved by the CCI after the approval of the CCI may attract a penalty for gun-jumping under Section 43A of the Competition Act.
- All other parties to the combination apart from the acquirer can expect to be more thoroughly involved in the combination approval process both procedurally and substantively.
- It will be interesting to see how this pans out in situations like hostile takeovers since the target and its promoters may try to block certain proposals, should the CCI find that the proposed combination is likely to cause AAEC in the relevant market.



### NO CONFLICT IN TIMELINES BETWEEN IBC AND COMPETITION ACT

## WHAT THE SUPREME COURT HELD

The NCLAT had held the proviso of Section 31(4) of **IBC** to be directory in nature since mandatory prior approval of the CoC, would lead to disruption in the CIRP timeline, as under the IBC. However, the Supreme Court noted that the two timelines stipulated under the IBC (180 days for completion of CIRP) and the Competition Act (210 days from date of filing the combination application - which has now been reduced to 150 days) **do not usually cause any disharmony or conflict.**

The reduction in CCI's combination approval timelines is indicative of the more realistic and shorter timelines that the CCI ordinarily requires for its analysis and decision-making.

The trigger event for notification to the CCI can be the execution of 'any agreement' or 'other document', disclosing details of the proposed combination.

If notice for the proposed combination has been given within the stipulated time and no dilatory tactics have been employed, the parties should not be held responsible for any delay on the part of the CCI

### SARVADA INSIGHT



Early and timely notice is necessary to meet the deadlines of the CIRP and combination assessment process. Parties need not wait until submission of the resolution plan to the CoC for filing a notice with the CCI.

## PRACTICAL CHALLENGES WITH CONDITIONAL APPROVALS

### WHAT THE SUPREME COURT HELD

Conditional approvals, by their very nature, necessitate rigorous and ongoing enforcement to ensure compliance with the prescribed conditions in both letter and spirit. The absence of a robust and comprehensive monitoring mechanism poses considerable risk of non-compliance or deliberate circumvention, thereby defeating the entire purpose of imposing these conditions.

Conditional approvals are fundamentally illequipped to mitigate the risks that manifest during the interim period, preceding the full implementation of remedial measures. The temporal gap between the grant of approval and the implementation of effective remedies creates a regulatory vacuum, thereby exacerbating the likelihood of anti-competitive conduct, during this transitional phase.

The absence of mandatory oversight mechanisms, such as third-party audits or independent verifications, creates loopholes for the circumvention of regulatory conditions. For example: A divestiture mandate may fail to achieve its intended purpose if the acquiring party lacks the operational capacity or genuine strategic intent to effectively compete in the market. Structural remedies, such as the sale of plants or other assets, may lead to unanticipated or unintended market gaps, if compliance monitoring remains inadequate

## SARVADA INSIGHT

**CCI may reduce the number of conditional approvals going forward and instead, insist on the enforcement of the proposed compliance before granting final approval to the combination** (especially in the context of resolution plans). There may also be greater emphasis on interim steps in the modifications approved. This may prolong the approval process through increased number of RFIs and clock stop days (the approval timeline clock stops for the time taken by parties in providing information or a complete filing).



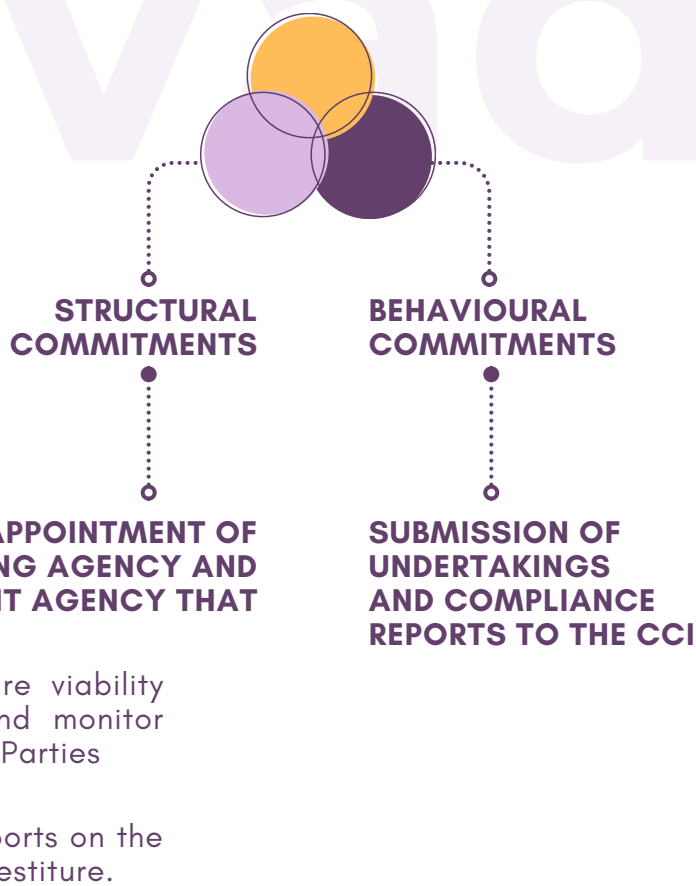
As a measure of caution, parties can consider introducing robust enforcement mechanisms as part of the voluntary modification package to exercise greater choice in the mode of enforcement and adopt something that aligns with their larger transaction.

### CONDITIONAL APPROVALS :

In a majority of the cases the CCI grants conditional approvals i.e., approval subject to carrying out of the modifications proposed.<sup>[7]</sup>

### INSIGHTS ON COMPLIANCE FROM DECISIONAL PRACTICE

#### TYPES OF MECHANISMS ADOPTED



[7] Abbott Laboratories, Combination Registration No. C-2016/08/418; Agrium Inc. and Potash Corporation of Saskatchewan, Inc., Combination Registration No. C-2016/10/443; Google International LLC, Combination Registration No.C-2022/03/913.



Till date, the CCI has not identified any cases of non-compliance with modifications and the effectiveness of these enforcement mechanisms has not been called into question.

This in effect means that contrary to the Supreme Court's observations on absence of mandatory oversight mechanisms are in practice already addressed through a variety of compliance mechanisms.

### SARVADA INSIGHT



Going forward, stricter compliance mechanisms with more in-depth scrutiny and preventative measures in the interim may have to be adopted to secure CCI's approval.

## ASSESSMENT OF OVERLAPS

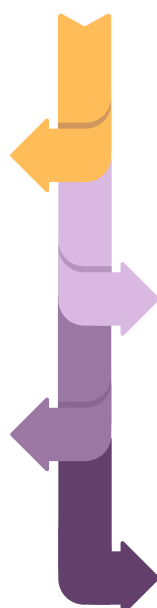
### OVERLAPS DETERMINED BY SCOPE OF ACTIVITIES ONLY

#### WHAT HAPPENED ?

In *TPG Growth V SF Markets PTE. Ltd./ Waverly PTE. Ltd./Asia Healthcare Holdings PTE. Ltd.*<sup>[8]</sup>, one of the acquirers in its identification of overlaps did not consider investee companies that were unlikely to have any impact on the proposed combination - which was concerned with the market for the provision of healthcare services through hospitals. This inter alia included investee companies that :

have revenue from India of less than a certain de-minimis amount (**INR 2 crores**); or

have small/incidental revenue from certain ancillary healthcare services pertaining to Urology, Nephrology, Andrology, Anaesthesiology, Pathology, and Radiology; being **less than 5% of the total revenue** of the company; or



are not engaged in healthcare services or operating healthcare facilities, or

are purely debt investments.

[8] TPG Growth V SF Markets PTE. Ltd., Waverly PTE. Ltd., Asia Healthcare Holdings PTE. Ltd., Combination Registration No. C-2024/01/1102.

## WHAT CCI HELD

Any such criteria is not specified and the presence of overlaps, whether horizontal or vertical or complementarity, is determined by the scope of activities undertaken by the concerned enterprises. This determination is not influenced by categorizing the enterprise into a specific sector or industry, its size, revenue contribution from a particular activity, etc. While such factors may be relevant for assessing the impact of the proposed combination on competition, they do not negate the need for identifying overlaps.

### SARVADA INSIGHT

Overlap assessment requires mapping the horizontal, vertical and complementary linkages between the business activities of the parties and their affiliates. Hence, practically certain investee companies may not be assessed in detail for combination assessment since they may not have any overlaps with the target, depending on the scope of services provided. However, parties cannot self-exclude certain companies from the assessment by defining their own criteria (such as revenue, nature of investment etc.) as identification of overlaps and assessment should must be done based on scope of activities alone. The other factors can be brought up as ancillary factors for assessment of market dynamics.



### OVERLAPS MAY BE MAPPED WITH LIMITED PARTNERS ALSO

## WHAT HAPPENED ?

In *Citrine Inclusion Limited/ NMI Frontier Fund KS/ British International Investment Plc*<sup>[9]</sup>, the CCI was assessing a proposed acquisition in UCL by Citrine, which was owned and controlled by a fund ultimately managed by LeapFrog Group GP, Ltd., a private equity investment firm. One of the limited partners (“**Relevant Investor**”) of LeapFrog had a right to nominate and appoint a person to serve as a member of its management board. However, it was submitted that overlap mapping between the activities of the Relevant Investor (including its group entities and affiliates) and the target was not warranted for competition assessment of the proposed acquisition since the Relevant Investor inter alia did not have any rights/influence over the investment recommendations/decisions taken by the acquirer or its general partner entities, commercially sensitive information of the sensitive entity etc.

[9] Citrine Inclusion Limited, Combination Registration No. C-2024/05/1154.

## WHAT CCI HELD

The Relevant Investor had representation on the management board of the acquirer which included governance of the firm, deciding changes to the members of the investment committee, review and approving overall allocation of KPIs and resources/budget etc. Further, since the scope of the mandate of the mandate board included matters of considerable significance qua the operations of LeapFrog thereby giving the Relevant Investor the ability to influence the decision operations of LeapFrog. Hence, the role/position of the Relevant Investor in LeapFrog went beyond the role of an ordinary limited partner. The proposed acquisition was ultimately approved since it was not likely to raise any competition concerns irrespective of whether the Relevant Investor and its portfolio entities were considered for competition assessment. However, the CCI in its assessment did end up considering the market shares of affiliates of LeapFrog and the Relevant Investor along with the target.

### SARVADA INSIGHT

Overlaps are mapped between the parties to the combination and/or their respective group entities which means the ultimate controlling person of the acquirer and other entities forming part of the same group. Hence, a limited partner of the acquirer does not strictly fall in the definition of group. Although the CCI ultimately left the question of considering overlaps at the level of portfolio entities of the Relevant Investor open, it appears to have taken a view that **limited partners exercising some form of control over the acquirer may also be considered for overlap assessment**. Parties are accordingly advised to exercise caution while doing overlap assessment and make necessary disclosures when there is involvement of control (any rights not available to an ordinary shareholder) by any entity/person related to the combination even if they are not group entities per se.



### EXISTING SUPPLY ARRANGEMENTS TO BE DISCLOSED AS VERTICAL LINKAGES

## WHAT HAPPENED ?

In *Mitsui & Co. (Asia Pacific) Pte. Ltd.'s acquisition in the MTC Group*, the acquirer submitted that it, along with its affiliates had made supplies of certain overlapping products with the target as part of their ordinary business transactions and claimed that these trading/ supply arrangements ought to be considered as existing supply arrangements.

## WHAT CCI HELD

Such existing sales by the acquirer to the target and then resale by the target to end customers places the target and the acquirer group at different stages/levels of the production chain for the overlapping products, resulting in vertical linkages. While the acquisition was ultimately approved since the vertical linkages were unlikely to have any material impact on the overlapping markets, this highlights that **existing supply arrangements ought to be disclosed as vertical linkages.**

## INCLUDES ASSESSMENT OF CONGLOMERATE EFFECTS

## WHAT HAPPENED ?

After a gap of nearly 7 years after **Bayer AG/ Monsanto Company**<sup>[11]</sup>, the CCI assessed the impact of conglomerate effects i.e., effects on competition when the products of the merging firms are not in the same product market, nor are they inputs or outputs of one another in **Hewlett Packard Enterprise Company's merger with Juniper Networks, Inc.**<sup>[12]</sup> The CCI assessed conglomerate effects that could arise from the expansion of HP's portfolio of products through addition of 3 new products i.e., routers, firewall solutions and cloud networking software (brought in by Juniper) as a result of the merger.

## WHAT CCI HELD

Parties' submission that the merger would only end up making it a more effective competitor of Cisco, there was no likelihood of any hypothetical tying or bundling given the customer preferences and purchasing practices and the insignificant incremental market share - was accepted and CCI approved the merger.

### SARVADA INSIGHT



Merging parties should keep conglomerate effects in mind while filing for approval. Disclosing the consequences and market dynamics up front may be helpful in securing seamless approval without much back-and-forth with the CCI.

[11] Bayer AG, Combination Registration No. C-2017/08/523.

[12] Hewlett Packard Enterprise Company, Combination Registration No. C-2024/05/1153.


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## ACQUISITION OF OPTIONALLY CONVERTIBLE SECURITIES : NOTIFIABILITY DETERMINED BEFORE CONVERSION AND NOT PRIOR

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Through two approval orders dated 02.04.2024, **CCI has taken a position to limit approval only to the initial acquisition and not include convertible instruments, which may require a subsequent notice at the time of conversion** if they meet the stipulated thresholds under the Competition Act.

In ***Piramal Alternatives Trust's share acquisition in and debenture subscription of Annapurna Finance Private Limited***<sup>[13]</sup>, the CCI noted that the debenture subscription was required to be notified (and accordingly in fact notified) along with the share acquisition for being an inter-connected transaction. However, the notifiability (and approval) of the debenture subscription was held to be determinable at the time of conversion.



**Regulation 9(4)** of the erstwhile and New Combination Regulations provides that where the ultimate intended effect of a business transaction is achieved through a series of steps or smaller individual transactions that are inter-connected, a single notice covering all these transactions has to be filed.

Under **Section 2(v)(i) of the Competition Act**, any “security”, which “entitles the holders to receive shares with voting rights”, is considered as “shares”. Thus, for a security to be considered as “shares”, all three elements have to be satisfied. In this case, the debentures were convertible into equity shares of Annapurna Finance only with the consent of the parties and hence, the entitlement to receive shares with voting rights would arise only after the consent of Annapurna Finance.

Consequently, the requirement of notice for the acquisition of shares pursuant to conversion of the debentures shall be determined as per extant law before such conversion.

Thus, debentures cannot be considered as shares and therefore, the debenture subscription would not amount to an “acquisition of shares” for the purpose of approval.

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[13] Piramal Alternatives Trust acting through its trustee Piramal Alternatives Private Limited, Combination Registration No. C-2024/01/1108.

In **Goldman Sachs** <sup>[14]</sup>, CCI imposed a penalty for gun-jumping for not notifying an OCD subscription. It clarified that the subscription of the OCDs in this case was equivalent to share acquisition for notifiability purposes and observed that convertible securities constitute shares and are treated and there is no separate framework for OCDs.

### SARVADA INSIGHT

- Clarity on a previously uncertain position - optionally convertible rights have to be mandatorily notified as inter-connected transactions but it is not necessary that they will be approved at the same time.
- Fresh assessment of notifiability has to be undertaken at the relevant time (before such option is exercised).
- Practically, paradoxical because the option has to be disclosed when filing a notice of the initial acquisition but the option will not be approved along with the initial acquisition.
- This means effectively competition assessment of a transaction involving multiple tranches has to be done each time before a convertible option is exercised if CCI approval is restricted to the initial acquisition.



[14] Proceedings against Goldman Sachs (India) Alternative Investment Management Private Limited under Section 43A of the Competition Act, 2002, order dated 14.01.2025.

## MODIFICATIONS AND COMMITMENTS OFFERED

### DIVESTMENT : RELIANCE INDUSTRIES LIMITED/WALT DISNEY COMPANY

#### WHAT HAPPENED :

#### CHAIN OF EVENTS

Merger of the entertainment businesses of Viacom18 whose ultimate parent entity is Reliance Industries Limited ("RIL") and the Walt Disney Company in India resulted in several overlaps in the various relevant markets.

CCI also sought information from various third parties present in the media and entertainment industry in India, the Telecom Regulatory Authority of India and Ministry of Information and Broadcasting.

Subsequently, the Parties submitted a voluntary proposal for modifications ("VPM I").

CCI formed a prima facie opinion that the merger was likely to cause AAEC in the broadcasting/streaming of sports events in India. Accordingly, a show cause notice was issued to the parties to explain why a Phase II investigation should not be conducted in respect of the parties.

Third parties submitted that the merged entity would have both the ability and incentive to raise prices for advertisers, consumers, Distribution Platform Operators and all participants in the value chain.

This led the parties to propose a second voluntary proposal for modifications ("VPM II")

CCI accepted VPM II and CCI and Phase II investigation in respect of the merger was not conducted.

## WHY WAS THERE A PRIMA FACIE LIKELIHOOD OF AAEC?

Both the parties were close competitors in the market of bidding for sports rights and subsequently, broadcasting them through their respective sports TV channels and/or OTT streaming platforms.

They also held exclusive rights for broadcasting and streaming of all the major cricket events in India for a period of three to four years.

Post the merger, the negotiating power, financial capacity to acquire various sports rights and ability to monetize the sports rights via subscription and advertising of the combined entity will be higher and it may engage in anti-competitive practices such as self-preferencing, indiscriminate content pricing, outright denial of content, deny rivals access on fair and non-discriminatory terms thereby limiting customer choices and denying market access to competitors.

To allay these concerns, parties proposed voluntary commitments.

**MODIFICATIONS OFFERED** Parties proposed modifications in the relevant markets where the merger was likely to result in AAEC.

### RELEVANT MARKET IN WHICH THERE WERE OVERLAPS

Horizontal overlaps in the Operation and Wholesale Supply of TV Channels in India.

### MODIFICATION

- **Divestment of certain TV channels** so that the overlaps caused in specific language would cease to exist and the combined market share will decline.
- **Assignment of 24.5% of voting rights in Eenadu Television Private Limited** [in which TV18 i.e., a subsidiary of RIL collectively held



## RELEVANT MARKET IN WHICH THERE WERE OVERLAPS

Retail supply of audio-visual content through OTT

Interestingly, the CCI specifically excluded YouTube, which is an online video hosting platform from this market even though it noted that consumers may use it interchangeably with OTT platforms. And; Supply of advertising airtime in India

## MODIFICATION

close to 50% stake] so that it continues to compete with the merged entity post the proposed combination without any direct/indirect influence in its management or policy decisions by RIL.

To allay the prima facie concerns in relation to the streaming of sports content particularly for cricket, the parties proposed to undertake the following commitments:

- **No bundling of ad slot sales** : The Parties will not bundle together the TV ad slot sales and OTT ad slot sales for all three cricketing rights available with the Parties i.e., IPL, ICC and BCCI for the balance tenure of the existing rights.
- **Fair, transparent and non-discriminatory supply of advertisement space** on their streaming platforms till the current rights held by the Parties expire.
- **No increase in advertisement rates to an unreasonable level** on their TV and streaming platforms for the ICC events and IPL events till the current rights held by the Parties expire.
- **Major cricketing events to be broadcasted on their linear TV channels and streaming platforms on an either advertisement-based model or subscription mode! or hybrid model** : In case of subscription model or hybrid model the Parties undertake to charge subscription fees to its viewers, which will be commensurate with industry standards {for TV, Parties will adhere to subscription rates

## RELEVANT MARKET IN WHICH THERE WERE OVERLAPS

## MODIFICATION

Complementary Linkage in the **provision of internet access (both fixed BIS and wireless BIS) and online services**, which require internet facilities to function such as OTT platforms of the parties

charged by the Parties will not be the highest in the industry, based on comparison on a like to like basis) for the time period till the current rights held by the Parties expire.

Internet service providers ("**ISPs**") are barred from engaging in discriminatory practices like blocking, degrading, slowing down or granting preferential speeds or treatment to any content. This ensures that ISPs do not foreclose any OTT platform by reducing the quality of internet service received by consumers when such platform is in use, especially where ISPs have vertical or complementary links with such platform.

### SARVADA INSIGHT



Consistent with CCI's more than decade long approach of not rejecting even a single combination, CCI continues to demonstrate a willingness to grant approval provided appropriate remedies are accepted to prevent any likelihood of AAEC in the market.

### RING-FENCING TO PREVENT EXCHANGE OF COMMERCIALY SENSITIVE INFORMATION :

#### **RUBY ASIA HOLDINGS II PTE. LTD./SINGTEL INTERACTIVE PTE. LTD.**

### TRANSACTION

A consortium of Ruby Asia Holdings II Pte. Ltd. ("**Ruby**") and Singtel Interactive Pte. Ltd. ("**Singtel**") sought to acquire 36% shareholding in STT GDC ("**Target**") through an Initial Investment and an Upsize Investment.<sup>[15]</sup>

[15] Ruby Asia Holdings II Pte. Ltd. and Singtel Interactive Pte. Ltd., Combination Registration No. C-2024/07/1168.

## IMPACT ON THE RELEVANT MARKET

CCI deep dived into the relevant market of provision of data centre colocation services in India. Key observations -

- Activity of provision of data centre is characterised by limited switching.
- Once a customer has contracted colocation service and installed servers and other equipment in a given facility of a data centre operator, there is limited switching for that customer due to short-term impacts of changing their IT infrastructure and the relocation process, even if it would be more costly in the long term to stick with their current data centre services provider.
- Lack of switching is also attributable to factors such as latency, data loss, security concerns, etc.
- Consequently, CCI assessed the impact of the acquisition on the level of concentration on varied basis viz., existing installed capacity, future likely presence likely and spare capacity.
- CCI concluded that the acquisition had significant impact on the level of concentration in the markets of provision of data centre colocation services in Delhi NCR, Bengaluru, Chennai and Pune.
- Acquisition was approved subject to following safeguards being introduced in the Transaction Documents to deal with existing/potential:

### SARVADA INSIGHT



This is the first time CCI assessed the market for provision of data centre colocation services and the relevant factors to analyse competition therein. This may be significant for mapping transactions involving data and AI players in future.

## VOLUNTARY COMMITMENTS

Parties had agreed on certain safeguards aimed to prevent exchange of confidential information (“CI”) or commercially sensitive information (“CSI”) between the Target and the acquirers’ portfolio entities.

Existing ring-fencing safeguards under the Transaction Documents in relation to exchange of confidential information or CSI will not be diluted.

- **Special safeguards on how an investor may access, and use information received from the Target when it is invested in a competing platform** to ensure that there is no exchange of CI or CSI.
- **Where an investor or its affiliates is involved in either management / operations/ management of an investment in a competing platform** in the same country-market where a Target group entity operated, then the investor must ensure that **CI relating to partnering strategy, proposed specific acquisitions etc. of the relevant Target entity will not be shared with any person** involved in the management, operations or management of an investment in a competing platform.
- **No common directors/observers** between the Target and acquirer portfolio entities.
- **Flow of CSI is restricted** to certain members of Singtel and prohibition from sharing it with any person involved in the management / operations/ management of an investment in any competing platform in the same market.
- **Dual Representative to recuse from discussions involving management/operations of the Target’s business:** Any individual who is a dual representative, i.e., who is
  - on the board of directors of/involvement in the management, operations and/or management of an investment in a competing platform and
  - is also a member of or otherwise participates in discussions of any supervisory body (eg: board of directors) that is involved in the management of an investment in the Target will be required to recuse themselves from discussions of any such above mentioned supervisory body which relate to, or involve the management or operations of, the business of any Target group entity.
- **Use of CI** by Singtel **restricted to bona fide monitoring and managing of its investment** in the Target.

- **In case of conflict of interest, Singtel’s observer to recuse themselves from the deliberations by the board** of the Target and will not be entitled to receive any information in respect of the same. **During the period of conflict, Singtel will not be entitled to vote on any relevant reserved matters** where such votes would provide a specific veto to block the decision in respect of the relevant opportunity.

## ADDITIONAL SAFEGUARDS

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No employee or officer of Singtel to receive or have access to market specific information about the Target in India.

Singtel Nominee Observer to recuse themselves on discussions pertaining to the certain India entity.

Singtel Nominee Observer to not be an employee of Singtel.

Acquirers undertook to provide the amended copy of the relevant Transaction Documents to the CCI.

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## GUN-JUMPING - WHAT HAPPENED IN 2024

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### GOLDMAN SACHS

#### WHAT

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CCI imposed a penalty for gun-jumping on Goldman Sachs (India) Alternative Investment Management Private Limited’s (“**GS**”) for failure to notify its subscription to optionally convertible debentures issued by Biocon Biologics Limited.<sup>[17]</sup>

Pursuant to its subscription, GS gained certain rights in relation to reserved matters some of which were to be exercised with the prior written consent of the majority of investors and some others with the prior written consent of all investors. GS also gained certain information rights (which gave it access to minutes of board/committee/shareholder meetings, information relating to any direct change in certain shareholdings etc.) and access rights (giving it access to the premises and personnel of Biocon through reasonable prior written notice).

GS did not notify the subscription claiming it benefitted from the minority acquisition exemption for being an acquisition solely as an investment in the ordinary course of business without any underlying strategic intent towards participating in the affairs and management of Biocon.

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[17] Proceedings against Goldman Sachs (India) Alternative Investment Management Private Limited under Section 43A of the Competition Act, 2002, order dated 14.01.2025.

## LAW

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The erstwhile minority acquisition exemption exempted acquisitions of which are “**solely as an investment**” or in the “**ordinary course of business of the acquirer**”.

An acquisition of **less than 10%** of total shares/voting rights shall be treated as being “**solely as an investment**” if the acquirer

- can exercise only such rights as available to ordinary shareholders
- is not a member/has the ability to nominate a member or observer on the board of directors and
- does not intend to participate in the management or affairs of the target.

**The Exemption Rules** have now added one more condition for availing this exemption: the acquirer should not have access to commercially sensitive information of the target.

## WHAT CCI HELD

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The acquisition could not be treated as being “**solely an investment**” since the information rights and access rights available to GS went beyond the rights of ordinary shareholders both in terms of form and substance.

- Nature of rights acquired is relevant for determining the notifiability of a transaction and assessing if a transaction is strategic or not.
- Access to minutes granted GS privileged access to all commercially sensitive information discussed in the board meetings of Biocon such as strategic plans, financial data, proprietary technology and other confidential matters crucial to the competitive advantage and market position.
- In form, such access is not allowed to the ‘**ordinary shareholders**’ and in substance, such access is indicative of GS considering the transaction as strategic.

Transaction was not in the “ordinary course of business”

- It is incorrect to assume that if any enterprise grants control conferring rights/strategic rights to a class or classes of investors, the same should be considered as ordinary rights not considering the nature of rights but only because these rights have been granted to all investors or a sub-set of investors.

- The minority acquisition exemption is premised on ensuring assessment of transactions where an investor acquires rights which can potentially have impact on competition or operational dynamics of the target and therefore the only relevant aspect is the nature or substance of the underlying 'right'.
- Any transaction which is made with the intent of remaining invested for a relatively longer period and involves the acquisition of any additional rights (compared to the rights of an ordinary shareholder) cannot be considered as in ordinary course of business.

### SARVADA INSIGHT

Access to information and minutes constitutes 'control'. To assess if there is a change in control, what needs to be tested is whether the investor has any right which is not available to an ordinary shareholder. This may mean a board seat, observer rights, access to confidential or commercially sensitive information etc. This also illustrates the material influence standard followed by CCI i.e., a lower threshold for triggering notifiability since access to information and minutes of meeting would be a standard and preliminary right sought by the acquirer in almost every transaction.



It is irrelevant if the rights being acquired are existing rights of certain investors as it is the 'nature of rights' which determines if they are ordinary shareholders' rights and not the 'availability' of such rights

The existence of safeguards to prevent the exchange of any confidential information obtained does not take away from the notifiability of a transaction. Notifiability criteria have to be objective and cannot be applied considering the specificities of the legal framework applicable to a set of firms or their inter se arrangements. Such specificities may be relevant to the assessment of a transaction but not the notifiability.

### SARVADA INSIGHT



Notifiability assessment and placing safeguards to prevent exchange of commercially sensitive information are not interchangeable and legal steps are necessary to avoid gun-jumping penalties.

## TORRENT POWER LIMITED

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### WHAT

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In a departure from its decisional practice, the CCI while recording a finding of substantive gun-jumping did not impose any penalty on Torrent Power Limited (“**TPL**”) for failure to notify its acquisition of 51% shareholding of Dadra and Nagar Haveli and Daman and Diu Power Distribution Corporation Limited by accepting mitigating factors.<sup>[18]</sup> The transaction was not notified inter alia because the parties assumed that it was in the domain of the electricity regulator.

### WHY

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#### **CCI has jurisdiction over combinations in the electricity sector**

- TPL claimed that the acquisition was not notifiable because pursuant to Section 60 of the Electricity Act, 2003 **any combination entered into by a licensee in the electricity sector would be regulated by a Joint Commission constituted under the Electricity Act** if the Combination is likely to cause or causes an adverse effect on competition within the electricity industry.
- The CCI inter alia relied on its decisional practice<sup>[19]</sup> and noted that while Electricity Act is a special statute for the purposes of dealing with electricity matters, the **Competition Act** is a special statute for regulating competition in the market having a holistic approach focusing on functioning of the markets by increasing efficiency through competition.
- To this extent, there is no conflict as both these statutes have their respective and mutually exclusive regulatory regimes and attempt should be made to adopt harmonious construction between the two special statutes. Hence, CCI has jurisdiction over the matter

#### **Mitigating factors accepted and no penalty imposed**

- Although the CCI specifically noted that TPL consummated the transaction without filing a notice, it considered TPL’s submissions regarding structural issues inherent to the bidding process like TPL’s obligation to comply with the strict bid timelines, failure to abide by the bid timeline resulting in TPL losing its security deposit and right to acquire the target etc., ambiguity due to overlapping provisions in the two special acts, i.e., **Competition Act** and **Electricity Act**, the transaction not

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[18] Proceedings against Torrent Power Limited under Section 43A, order dated 14.01.2025.

[19] Proceedings against Tata Power Company Limited under Section 43A, orders dated 17.03.2022.



resulting in AAEC in the relevant market, and TPL extending full cooperation in respect of the ongoing proceedings as mitigating factors.

- Accordingly, it decided not to impose any penalty on TPL.

### SARVADA INSIGHT



It is a **marked but welcome departure for the CCI to not impose a penalty for gun-jumping**. It highlights CCI's willingness to actually give weightage to mitigating factors when determining the extent of violation and penalty under Section 43A of the Competition Act and the importance of appropriate submissions when dealing with such cases.

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# MICROTRENDS

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WHAT CAN WE EXPECT IN  
2025?

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## MICROTRENDS

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### WHAT CAN WE EXPECT IN 2025?

With deal value thresholds, one can expect more filings before the CCI;

Stringent mapping of overlaps with no scope for improvisation or flexibility, including mapping overlaps with limited partners if control is involved

Comprehensive voluntary modifications may continue to decrease the possibility of a Phase II investigation in the merger review process

Stricter scrutiny of green channel filings particularly in assessment of overlaps between the parties and their affiliates.

Uncertainty in granting conditional approvals with greater emphasis on monitoring and enforcement mechanisms for checking compliance with remedies

# MEET OUR CONTRIBUTORS

Please feel free to reach out to us for additional information or queries.



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