

Indian Venture and Alternate Capital Association (IVCA) Meet  
25<sup>th</sup> February 2022, 3 PM, Organised by Deloitte Touche Tohmatsu India  
Opening Remarks of Shri Ashok Kumar Gupta  
Chairperson, Competition Commission of India

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**Good afternoon friends,**

1. At the outset, let me thank Shri Amit Basal, Partner, Financial Advisory, Deloitte Touche Tohmatsu India LLP for organizing this session with IVCA. I am very glad that we are meeting today. At CCI, we always strive to work closely with the industry to ensure that we adopt a balanced regulatory approach. Stakeholder consultations such as these inform and complement the Commission's enforcement actions as well as its advocacy efforts. They also help bridge knowledge gaps and develop a better understanding of market conditions and business practices. To this end, we proactively reach out to **stakeholders** representing a diverse range of viewpoints, including the industry, experts, and other regulators.

2. Over the years, the government and CCI have undertaken several measures to ensure that the regulatory process under the Act does not become a roadblock for investments. Regulatory practices have to be aligned with the policy milieu, the lack of which may cause an uncertain business environment. Today, I would like to discuss some of the measures undertaken by CCI to provide regulatory certainty to businesses in order to reduce and simplify compliances and align combination regulation with international best practices.

**3. High financial threshold for notification:** The extant scheme of the Act does not mandate that every merger and acquisition as a combination is to be notified to CCI. The notification requirement is mandated only if the parties

exceed the already high financial threshold prescribed. The Act further provides for a periodic revision of this threshold based on the wholesale price index or fluctuations in exchange rates.

**4. Time-bound inquiry:** We are aware of the need to approve the combination cases in a time bound manner. Therefore, we give priority to combination notices filed with the Commission. I am happy to share that on an average, we take only 16 working days to clear a case, which is among the best as per international standards.

**5. Green Channel:** CCI introduced a **Green Channel** for automatic approval of combinations, with effect from 15 August 2019. This is a first-of-its-kind system in the world, available when the businesses of the parties, on self-assessment, do not exhibit an overlap, be it horizontal, vertical, or complementary. The combination of these parties is deemed approved upon giving a notice in the prescribed format. The Green Channel system was introduced to strike a balance between facilitation and enforcement and create a culture of voluntary compliance.

6. This system has received positive feedback from the industry. Since its inception in August 2019, we have received 50 cases through this route. Till date in the current financial year, almost 28% of the cases have come through the Green Channel. We have seen a handful of PE investments passing through the Green Channel.

**7. VCF investments:** The Act provides a special dispensation for investments by venture capital funds. Unlike other combinations, investments by venture capital funds are not subject to prior approval of CCI.

**8. Exemptions by government:** The Act empowers the government to provide exemptions from the provisions of the Act based on public interest. In furtherance of it, the government has exempted the notification requirement for the acquisition of relatively small entities, with assets less than 350 crore or turnover less than 1000 crore, with a view to avoid compliance burden on them. Exemptions have also been provided to combinations involving public sector banks and oil & gas companies.

**9. Exemptions under combination regulations:** CCI has issued combination regulations that govern the procedural aspects of the combination regime. These provide for forms for notification, curing defects, furnishing additional information, and engagement of monitoring agencies in case of remedies. The combination regulations have been revised from time to time. The certainty of compliance requirements, transparency of process, and predictability of outcomes have been the guiding principles in framing and revising the regulations. Notably, the combination regulations dispense notifications for combinations listed in **Schedule I**, as they are not likely to result in appreciable adverse effect on competition.

10. However, admittedly, there is a challenge in administering these exemptions with certainty. These are the known grey areas of global competition community, and our regime is no exception. While we have issued a handful of decisions and FAQs clarifying what constitutes control and ordinary course of business, these are not exhaustive. Having said that, substantial jurisprudence is developing on the issue of control that can provide guidance to investors. The rapidly changing nature of markets and innovative ways of structuring mergers give rise to new circumstances that we had never considered. This necessitates that CCI and the industry work together to understand these instances and devise more certain rules for effective regulation.

**11. Remedies:** Even in combinations with competition concerns, CCI has endeavoured for expeditious clearances. Since our inception, we have cleared 22 combinations with modifications. However, only 8 of these cases were subject to a Phase II investigation. In the remaining instances, the dialogue between the Commission and the parties helped in early determination of competition concerns and appropriate voluntary remedies to alleviate them.

12. We believe in a high degree of transparency. We explain our thinking to the parties from the beginning, which helps them understand the issues and suggest appropriate ways to address them. In cases of competition concerns, CCI would immediately approve the combination if the parties offer suitable modifications. Towards this end, we amended our regulations in 2019 to allow parties to propose modifications at any stage of the proceedings.

**13. Pre-filing consultation:** In this context, pre-filing consultation, offered by CCI, becomes very important which aims to bridge the information gap between the regulatory process and businesses. Parties could seek the guidance of CCI officials on their compliance requirements, be it procedural or substantive, and thus, minimise the extent of queries raised during the formal assessment of the combination. Experience shows that many instances of non-notification were not deliberate, and PFC could be an effective tool to avoid such failure.

**14. Fund investment requiring attention:** In recent years, private equity investments have surpassed, strategic investments in India due to the pandemic. When it comes to such acquisitions by funds, and pooled investment schemes, their common investments in competing entities, have **attracted the attention** of competition agencies across the world. CCI is not an exception to this. Many of the PE Funds make investments in multiple firms of the same industry. Thus, it is possible that these investments may exhibit product overlaps and consequently may impact competition dynamics. Against this background, the issue of common

ownership, by minority shareholders, across firms and its impact on competition, if any, needs to be understood. In order to understand the trends and patterns of common ownership by PE investors, across sectors in India, the Commission has initiated a market study.

15. However, even at this stage, through Notes to Form I, the Commission has provided safe harbors. The Commission has clarified that investment of less than 10% shareholding without rights that are not available to ordinary shareholders are not required to be considered for overlap mapping, even if investment happens to be in a competing entity. Thus, the issue of common ownership inviting attention of the Commission does not arise in case of such investments. The criteria adopted achieves dual purpose of increasing certainty in regulatory regime on one hand and on the other hand ensures that no transaction which has likelihood of causing AAEC escapes the due scrutiny.

16. Against this background, the study aims to gauge the institutional investor's underlying incentives and motivations behind such investments. It is important to differentiate the rights that institutional investors seek to protect their legitimate financial interests from their shareholdings and whether these rights can translate into their ability to influence the decision of a firm that may consequently impact competition. Under what circumstances will the investor and the company holding the minority shareholding classify as a 'passive' investor?

17. Therefore, having an understanding of the institutional investor's viewpoint would also help CCI hone its regulatory toolkit in order to make informed and sound decisions. I am sure that our engagement today would go a long way in appreciating the realities of the market and inculcating efficient policies and practices, both at our end and the business.

Thank you.