The Stride Legal Competition Law updates

Competition Law FAQs summarised

Introduction:

The Competition Commission of India (CCI) has published a comprehensive set of FAQs on combinations on its official website, offering practical guidance on how various provisions under the Competition Act 2003 are expected to operate in real-world transactions. These FAQs cover key topics such as the deal value threshold, assessment of control, group definitions, exemptions, and procedural aspects like acquisitions via stock exchanges and interconnected transactions.

For transaction teams, legal advisors, and in-house compliance functions, the guidance can serve as a useful reference point when evaluating notification requirements and structuring deals in line with regulatory expectations. This update highlights the most relevant portions of the CCI's FAQs, which are summarised as follows:

Control: What are the rights conferring control?

List of rights which raise presumption of control is as follows: Appointment/removal of senior management personnel, Approval of the budget, Approval of business plans, Alteration of charter documents viz., the memorandum of association and articles of association which directly/indirectly affects the day-to-day operational dynamics; and any right relating to operational parameters viz., Research & Development, manufacturing, marketing, general day to day administration etc.

Control: What are the rights not conferring control?

An indicative list of rights not conferring control is as follows: Information rights, Tag along rights, right to ensure that the amount of investment made by the acquirer is utilised in accordance with the agreed contractual terms or agreed business plan, exit rights (including the timelines and price etc.) both in the event of default or in ordinary course as per the terms of agreement, rights aimed at providing anti-dilution price protection for subsequent issue of shares, rights which restrict transfer of shares to a particular person/enterprise identified in the agreement, and Alteration of charter documents viz., the memorandum of association and articles of association as regards adverse changes in other rights of the investor which are agreed between the parties.

The definition of "Group" extends to entities under material influence regardless of shareholding thresholds.

Deal Value Threshold (DVT)/ Substantial Business Operations (SBO): Deal Value Threshold and what is included in value of transactions?

DVT is a new criterion introduced under Section 5(d) of the Competition (Amendment) Act, 2023, as per which a transaction is a combination if its value exceeds INR 2000 crore, and the enterprise being acquired, taken control of, merged, or amalgamated has substantial business operations in India.

The value of the transaction includes every form of valuable consideration, whether direct or indirect, deferred or immediate, and cash or otherwise, including separately agreed consideration for covenants, undertakings, obligations, or restrictions, all inter-connected steps and transactions, payments due within two years for arrangements such as IP licensing, technology assistance, marketing, supply, etc., call options assuming full exercise; and best estimates of contingent future payments under transaction documents.

Exemptions to Combination: What are the categories of the combinations contained in

Schedule to the Competition (Criteria for Exemption of Combinations) Rules, 2024 which are exempted?

Categories of the exemption specified are: i) Acquisitions of shares in the ordinary course of business by underwriters, stockbrokers (up to 25% holding), and mutual funds (up to 10% holding), provided they don't gain control beyond specific thresholds. ii) Acquisitions of shares or voting rights up to 25% that are solely for investment, meaning the acquirer doesn't gain board representation, access to sensitive information, or have existing significant business overlaps (or if overlaps exist, the holding remains below 10%).

Acquisition through Stock Exchanges (Section 6A of the Act): Can the acquirer avail any economic benefits from the acquired shares before Commission approval?

Yes, as per Regulation 6 of Combination Regulations 2024, the acquirer can: avail economic benefits such as dividends, other distributions, subscriptions to rights issues, bonus shares, stock splits, and buyback of securities, exercise voting rights, but only in matters related to liquidation or insolvency proceedings.

However, the acquirer, its group entities, and other entities forming part of the same group, including their affiliates, shall not, directly or indirectly, influence the enterprise whose shares or securities are being acquired or any of its affiliate(s), in any manner whatsoever.

Commercially Sensitive Information: What is the information that is considered commercially sensitive for the purpose of Sections 5 and 6 of the Act?

Commercially sensitive information often relates to information that is important for an undertaking to protect, maintain or improve its competitive position in the market, these include pricing, costs, profit margins; production and capacity data; sales, market shares, and customer details; product quality, innovation, R&D, trade secrets, patents; strategic, marketing, and investment plans; and internal documents like budgets, business plans, and board meeting minutes. This list is not exhaustive; other information may also be deemed sensitive depending on the case.

It does not include audited or unaudited financial statements prepared under standard accounting practices, publicly available information, details accessible to ordinary shareholders, outdated data no longer used in decision-making, readily ascertainable information, data not linked to a specific company, or ownership structure.

Inter-connected Transactions: Should all acquirers be notified of parties in interconnected Transactions?

Under Regulation 9(4) of the Combination Regulations 2024, interconnected transactions forming a single business objective require a single notice.