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## Policy | CCI's green channel is not so 'green' after all

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India's anti-trust watchdog, the Competition Commission of India (CCI), in August announced a "green channel" to expedite approval of mergers and acquisitions (M&As) that fall into certain categories.

Under this route, the mere receipt of acknowledgment of a notification filed is sufficient to deem the transaction as approved by the CCI. In a country where business leaders often lament the long-drawn process to obtain any approvals, this move was lauded as a game changer when it comes to improving the ease of doing business.

However, with time and a detailed analysis of the fine print, many industry representatives and experts turned vocal critics of this green channel, saying the conditions to be fulfilled are too restrictive for any help.

What many seem to have missed though is the similarity between these conditions for the green channel and another proposed amendment in 2018, which had to be shelved after a strong backlash from the business community.

### The Curious Connection

Last year, the watchdog proposed a set of amendments to the merger rules, called Combination Regulations, 2011. The regulations mentioned a threshold of 25 per cent and a narrower limit of 10 per cent in order to identify non-controlling minority acquisitions that could avail the benefit of an informal exemption from notifying the CCI.

However, the proposed amendments in 2018 intended to do away with the 10 per cent threshold when it came to any acquisition where there was an "overlap" — where the business activities of the acquirer group and the target company horizontally or vertically overlap with each other.

The proposed amendment effectively implied that in cases where there was an overlap, any share acquisition — no matter how minuscule (perhaps even 1 per cent shareholding) — would make the transaction ineligible for the exemption. Furthermore, pooled investment vehicles such as private equity funds would lose benefit of exemption if the investment led to the acquisition of 5 per cent or more in the target, where the acquirer's existing portfolio companies have a horizontal or a vertical overlap with the target.

In essence, even if the transaction did not confer any decisive influence or control on the acquirer, the benefit of the informal exemption could not be availed.

This spelt trouble for institutional investors and financial vehicles which led to the proposed amendments facing strong criticism from India Inc, who complained that the process would become even more time-consuming and onerous. Following the backlash, these proposed changes were dropped.

However, with the 7th set of amendments to the Combination Regulations this year, it seems like the ghost of the above-mentioned amendment has returned to haunt Indian business in a renewed avatar.

### Green channel, but too many speed bumps?

In order to qualify for the green channel route mentioned in the 2019 amendments, the acquirer, other companies the acquirer has invested in and the target firm must not conduct businesses that are: Identical or similar; at a different stage in the production chain of the target company's business, or; complementary.

The aforesaid criteria pose the same problem as the amendments proposed in 2018, especially to pooled investment vehicles and large conglomerates with a widely diversified portfolio of businesses.

Moreover, the term complementary remains mysteriously obscure in the absence of a clear definition, putting those who go ahead with an acquisition through the green channel at risk of "gun jumping" (going ahead with a reportable transaction without CCI's approval) should the regulator later find both businesses to be complementary in its view.

Hence, the industry finds itself asking the same questions it was asking with respect to the "overlap" point last year. To use a simple example, if a person who owns a coffee shop that has a shelf of books that customers can read while sipping coffee, wants to buy a small percentage of shares in a book company, will that be viewed as "complementary businesses"?

### Need of the hour: Clarity

Make no mistake, the 2019 amendments are a step in the right direction, embodying the spirit of reducing the burden of onerous filings and procedures for any business acquisitions. However, without specific clarifications, especially on the scope of complementary businesses and materiality thresholds for shareholding, the green channel may not see much traffic at all.

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