

India – A snapshot of merger control status and statistics – November 2021

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Since the enforcement of merger control provisions in 2011, the Indian antitrust regulator, Competition Commission of India (“**Commission**”) has assessed over 800 merger notifications. Merger control in India falls under a mandatory and suspensory regime, i.e., transactions which meet the thresholds prescribed under the law must be notified to the Commission, and such transactions cannot be consummated (entirely or in part) before receiving the Commission’s approval.

In recent times, the Commission has become increasingly aware of the importance of inorganic growth for enterprises to attain size, scale and efficiency; and have laid emphasis on quickly approving the transactions that did not cause appreciable adverse effect on competition in markets in India.¹ While addressing the important concerns of merger control, the Commission also proactively took various steps to promote adherence to the competition laws during the unprecedented times of Covid-19 pandemic. The Commission replaced physical filings with e-filings, conducted virtual hearings and also issued advisory on relaxations for businesses coordinating certain activities to ensure continued supply and fair distribution of products.

Further, in line with its previous practices, this year the Commission has also conducted public consultations to discuss the proposed amendments to the regulations and held advocacy events at various forums.

In the M&A space, the Commission has undertaken a market study on transactions in the digital sector with the aim to identify such transactions that have the potential of inhibiting future competition and address the concerns arising from killer acquisitions.

Moreover, with the introduction of Draft Competition (Amendment) Bill 2020, the Ministry of Corporate Affairs in India (“**MCA**”) had invited public comments to the bill which also included amendments to the merger control regime. Some of the proposed changes relate to introduction of a deal value based threshold for merger notification, introduction of a delayed filing regime for certain on market purchases and open offers, adoption of the material-influence test formally to assess control, reduction in review timelines for a merger notification, inclusion of ‘income’ along with turnover for calculation of penalty, and exercising the right of appeal only upon depositing 25% or more of the penalty amount. The bill is yet to be finalized by the MCA subject to the suggestions and comments received from the public.

In statistical terms, from 2011, until 21 October 2021, the Commission has assessed the following merger control activities:

- Notified: 878
- Notified through green channel²: 43
- Prohibited: Nil
- Extended to Phase 2: 9

	2017	2018	2019	2020	2021
Total number of cases decided (Phase I and Phase II)	73	77	80	69	85
Filings under green channel	-	-	-	15	28
Total number of Phase I decisions	73	77	80	69	85
Phase I decisions approved without modifications	64	75	76	67	74 ³
Phase I decisions approved with modifications	7	0	3	1	0
Total Phase II decisions	2	2	1	1	0
Phase II decisions approved without modifications	0	0	0	0	0
Phase II decisions approved with modifications	2	2	1	1	0

1. Please see: <http://cci.gov.in/sites/default/files/annual%20reports/ARENG2019-20.pdf>

2. In 2019, the Commission introduced the 'Green Channel' route for filing a merger notification. This essentially granted relaxations to certain transactions in terms of timelines for approval, as these transactions would be deemed to be approved by the Commission on the filing of the notification and subject to fulfilling certain criteria.

3. This figure does not include the notices which are under review and / or withdrawn or held not valid.