



Bangalore Chamber of Industry and Commerce

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T S Sampath Kumar
Secretary General

April 29, 2011

Dr. Geeta Gauri
Member
Competition Commission of India
The Hindustan Times House
18-20, Kasturba Gandhi Marg
New Delhi-110001

Dear Madam,

**Sub: Memorandum on the proposals of “Combination Regulations”
relating to Competition Act**

This is in continuation of the Interactive Session we had with your goodself on Tuesday, April 26, 2011 in Bangalore wherein the participants brought out several issues of concern to the Industry relating to enforcing Section 5, 6, 20, 29, 30 and 31 of the Competition Act with effect from June 1, 2011.

Madam, during the discussions, you had responded to most of the queries and you had requested the Chamber to submit a comprehensive note on some of the issues which could not be taken up in the form of a Memorandum. Accordingly, we are pleased to enclose herewith a copy of our **Memorandum** for your kind consideration and doing the needful. We are sure you will take into consideration all the issues while finalizing the Rules on “Combination Regulations”.

We are extremely thankful to you and to your colleague Mr. Purwar once again.

With kind regards,

T S Sampath Kumar

Encl: As above

**Memorandum on the proposals of “Combination Regulations”
relating to Competition Act w.e.f. June 1, 2011**

1. The definition of combination includes assets, voting rights, share acquisitions and merger. Assets could also mean stock in trade, a manufacturing plant etc, the acquisition of which may not impact competition. Hence these need to be excluded from the purview of the act.
 2. Similarly, the acquisition of shares or voting rights which do not result in transfer of control should be excluded.
 3. Control needs to be rightly defined to mean management control and not necessarily majority shares.
 4. Group restructuring / merger should be exempt if they come under common control.
 5. There could be a benchmark for the combined market share below which the transaction can be exempted from the Competition Act.
 6. Overseas acquisitions by Indian companies can be excluded if the target does not have a large presence in India.
 7. All transactions which have been approved by the company boards before the cutoff date can be exempt from the purview of the Competition Act, irrespective of whether they are closed or not (for example pending regulatory approvals etc)
 8. Would like to get the exemption notification w.r.t:
 - Amalgamation of wholly owned subsidiary with the holding company - when the objective for which the Subsidiary Company was incorporated is achieved and only the asset needs to be transferred from subsidiary company to the holding Company. Here in this case, there will not be any swapping of shares, as the investment of holding company gets set-off with the equity of the subsidiary company and also here there is no question of Market dominance and absolutely no impact on the Competition.
 - Acquisition of a foreign company: where there is only transfer of intellectual property rights, held outside India.
 9. In case of takeover or merger with any company which is in another business (e.g.: Steel company buying a footwear company) where there will be no impact on competition why there is a need to seek the CCI approval for the same. Have market share also as one of the criteria for taking approval? If the combined market share is less then there should be no need for approval.
 10. Confidential information should not come under RTI.
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