

Inter-connection in Merger Control – Why should deal makers care?

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If you are a deal maker and your deal requires prior approval of the Competition Commission of India (CCI), it is important that the aspect of inter-connection is well examined. What does inter-connection mean and why does it matter – are the twin focal points of this article.

First, let us look at what is inter-connection. Under Indian merger control law (as well as many overseas jurisdictions such as EU, UK, and Germany), two transactions are deemed to be inter-connected if: (i) they involve common parties / corporate groups / economic objectives / transaction documents / conditions / negotiation process; and / or (ii) they take place within a short span of time (typically, the CCI considers a 2 year timeframe). The foregoing factors are only indicative in nature, since the CCI engages in a case-by-case analysis and follows the principle of ‘*substance over form*’ to assess inter-connection. Illustratively, in 2019, the CCI held that an investment by Canada Pension Plan Investment Board in ReNew Power Limited (*ReNew*) was inter-connected with ReNew’s onward investment of the invested funds in another unrelated entity. Similarly, in another case, the CCI held that certain on market purchases in a listed company were inter-connected with subsequent acquisitions by the same acquirer group in the same target group.

Now, let us look at why inter-connection matters for a deal. To answer this, we need to look at the three stages of a deal viz., assessing whether a deal is notifiable to the CCI, how a CCI filing is made, and how closing takes place. The way inter-connection plays out at each of these stages is discussed below.

For starters, to assess whether a deal is notifiable to the CCI, inter-connection analysis is key. To conclusively determine the notifiability of a transaction, parties involved in each inter-connected step need to be considered. Under the newly introduced deal value threshold (that mandates that a deal exceeding INR 2,000 crore in value, and where the target has significant business operations in India need prior notification to the CCI), the value attributable to each inter-connected step needs to be aggregated for deal value assessment. Even for the asset and turnover based tests of notifiability, all targets need to be considered.

Now, assume that the deal is notifiable to the CCI. In such a case, all inter-connected steps of the deal need to be appropriately disclosed to the CCI upfront. This will include *inter alia* steps that may take place within 2 years of signing, any conditional acquisitions / steps or any pay outs, etc. Notably, Amazon was fined with ~ INR 200 crore when it failed to properly disclose certain steps related to its acquisition of Future Retail, and the deal was held void. Therefore, the importance of proper inter-connection analysis and disclosures cannot be overstated.

Once a CCI filing is made, and all the inter-connected steps are notified to the CCI, no step can close until the CCI approves the entire gamut of the deal. In other words, *sail together and fail together* rule applies to all steps of the deal, and even seemingly simple steps (such as extending bridge financing / placing finance controller) cannot complete until the CCI approves the composite transaction. Case in point being a recent CCI order (*In Re Matrix Pharma, Mudhra Labs et al* - March 2025), where certain inter-connected steps (such as capital infusion by an

external investor in a target group entity, and changes to the holding structure of the acquiring entity) were closed prior to the CCI's approval, and the CCI imposed penalties. Further, deal makers must ensure that a comprehensive analysis of overlapping activities of the transacting parties is undertaken. Missing even a single entity in overlaps analysis can render the whole filing exercise fruitless. Pertinently, any non-filing or closing of a notifiable deal / step without the CCI's prior approval can attract higher of 1% of the total turnover / assets / deal value, as fines. Further, fines ranging from INR 5 million to INR 50 million are contemplated if any misrepresentation is made to the CCI. To sum up, high penalty exposure, commercial setbacks, possibility of the CCI unwinding the deal, and a besmirched regulatory record, that can arise from a patchy inter-connection analysis, should be a cause of concern for any deal maker.

Clearly, there is no gainsaying the criticality of inter-connection analysis in the merger control process. That said, what should the deal makers do? For starters, to avoid any mis-steps, it is critical that the transaction documents and the scope of the transaction are extensively discussed, preferably in the early stages itself, to assess notifiability of a deal. If a deal is notifiable, then all steps need to be properly disclosed to the CCI. Additionally, care should be exercised to ensure that the target continues to operate independently till the CCI approval is received; and that no step is closed (fully / partially) before the CCI approves the entire deal. Dealmakers should also exercise caution regarding internal documents, disclosures, reports, and communication with the press and counterparties – to not set off gun jumping alarm bells. The CCI is proficient at finding inconsistencies in statements, internal documentation, and the stated objectives of a deal. Not only this, the CCI actively scans news reports and media to connect the dots. To conclude, dealmakers must tread carefully, for they tread a strict merger control regime.