

DRAFT MERGER RULES

Mega global deals may come within CCI ambit

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The Competition Commission of India (CCI) has introduced draft regulations for combinations or mergers, under the new competition Act, to bring global deals in the digital space, including those involving Big Tech companies, under its scanner.

The draft regulations would provide guidance on the valuation of merger transactions and the criteria for assessing sustainable operations in India for companies. The proposed rules mention that if the number of users and subscribers, or the turnover or gross merchandise value in India is over 10 per cent of the global figure, the company would be considered to have substantial business operation in India and would need CCI approval for the merger. The Competition (Amendment) Act, 2023, introduced the concept of deal value threshold for mergers and acquisitions where the value of transaction exceeded ₹2,000 crore. Earlier, for example, Facebook's acquisition of WhatsApp in 2014 for \$19 billion did not require CCI clearance, even as the messaging platform counted India as a major market. "The draft

merger regulations bring much-awaited pro-business relief — be it the introduction of standstill obligations for takeovers or shortened merger review timelines or the introduction of hearings at any stage of merger proceedings," Nisha Kaur Uberoi, Partner & National Head Competition, Trilegal said.

Experts also said that the introduction of the deal value thresholds and clarification on the applicability of substantial business operations -- which will be applied based on India and global metrics for digital economy and traditional players — will enhance the caseload at the CCI.

For this, the CCI would need immediate resourcing to be able to ensure the continuing efficiency and efficacy of M&A (merger and acquisition) timelines.

"The number of merger filing is likely to increase considerably given that the criteria laid down to determine 'transaction value' and 'substantial business operations' appear to be broad," said Bharat Budholia, partner, AZB & Partners. The watchdog has invited stakeholders to submit written comments on the draft Combinations Regulations by September 25.

