
CCI'S GREEN CHANNEL: A CATALYST FOR EFFICIENT MARKET COMPETITION

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ABSTRACT

In a period of swift economic expansion and technical breakthroughs, merger and acquisition approvals must be processed quickly and effectively. The Competition Commission of India (CCI) responded to this worry by launching “the innovative 'Green Channel' method, which aims to expedite the approval procedures for specific transactions.” An overview of the CCI's Green Channel is given in this abstract, along with an emphasis on its main characteristics and relevance. The launch of the Green Channel is a groundbreaking project designed to promote a beneficial to businesses atmosphere in a fast-changing financial scenario. This article highlights the significance of streamlining the regulatory environment around consolidations in order to facilitate a faster and more economical approval process. It emphasizes the CCI's dedication to encouraging investment and advancing the country's competitiveness and ingenuity. The study explores the key components of the Green Channel, such as “the requirements for eligibility that financial transactions need to fulfil in order to use this accelerated path”. For companies looking to expand through mergers and acquisitions (M&A), especially startups and SMEs, this special mechanism has created new opportunities. In light of the fast clearance procedure, the article also critically assesses the Green Channel, raising concerns about the possibility of insufficient monitoring and noncompliance with antitrust regulations. It struggles with the continuous problem of striking a balance between the efficacy and effectiveness of competition law. This article concludes by highlighting the Green Channel's reformist with revolutionary qualities and identifying it as a potent instrument for a more expansive understanding of the mergers and acquisitions approval process. By lowering regulatory barriers, it helps India become a more desirable place to invest and creates an environment that is favourable to innovation and economic progress.

Keywords: CCI, Green Channel, Expedited Approvals, Mergers and Acquisitions

I. AN OVERVIEW:

During today's climate of swift economic growth and worldwide integration, it is imperative to guarantee a seamless and effective authorization procedure for diverse company dealings. The "Green Channel" method was established by the Competition Commission of India (CCI) in response to the recognition of the need for quicker approvals. This groundbreaking approach seeks to facilitate commercial ease of conducting business while preserving competition and consumer welfare by streamlining and expediting the approval procedure for combinations and acquisitions. The result is a negative effect on a competitive market that is equitable and impartial as well as a productive economy. Any marketplace needs pairings to be robust and to allow for legitimate rivalry. Sec. 5 of the Competition Act, 2002¹, defines an assortment as an encompassing term that covers various events such as a shift in supervision, purchase of shares, voting privileges, wealth, mergers, amalgamations, etc. However, "an in-depth investigation of market dynamics is necessary to determine if the deal qualifies for the Green Channel, there can be difficulties in making this determination."² Some who oppose streamlining authorization claim that doing so could unintentionally result in a lack of examination of operations that could be detrimental to competition, endangering the interests of consumers. The Green Channel framework is still developing, and revisions are required to properly handle new problems and shifts in the market. In an effort to further facilitate doing business in India while preserving consumer interests and competition, the CCI is constantly enhancing and growing the Green Channel.

According to the regular process, which might take months to complete, the Green Channel permits a far "*speedier clearance process, usually within 30 days of filing.*" This system is in line with India's larger goal of facilitating corporate transactions in the nation, which is essential for drawing in foreign capital and promoting economic expansion. Organizations are free to concentrate on their day-to-day operations instead of dealing with drawn-out regulatory procedures as a result of the reduced regulatory responsibility it places on them, particularly in situations where competition concerns are negligible.

II. BACKGROUND:

"Streamlining the Approval Process: CCI's Green Channel for Expedited Approvals" has its

¹ The Competition Act, 2002, No. 12, Acts of Parliament, 2002.

² Maurice E. Stucke, 'Is Competition Always Good?' (2013) 1(1) Journal of Antitrust Enforcement 162.

roots in the necessity of an effective legal structure to oversee the integration of companies in India. The Competition Commission of India (CCI) has historically been essential in examining and approving these kinds of deals to make sure they don't negatively impact market competition. But there were frequently significant delays in this procedure, which presented difficulties for both investors and businesses. In 2018, the CCI responded to the pressing need to address these issues by implementing the novel Green Channel mechanism, which sped up the authorization procedure for certain types of mergers and acquisitions that were thought to be unable to cause problems with competition.³ The establishment of the Green Channel marked a major step towards harmonizing India's regulatory environment with international standards, with a particular focus on facilitating simplicity in conducting business.

III. ROLE OF CCI:

CCI's Green Channel plays a major and diverse role in enhancing the ease of doing business in India:

- **Lower Regulation Burden:** Mergers and acquisitions that are unlikely to hurt competition can get permission more quickly thanks to the Green Channel. By doing this, it lessens the regulatory load on companies, allowing them to execute transactions faster and more effectively.
- **Expedited permissions:** Unlike the traditional process, which can take several months, permissions under the Green Channel are usually obtained within 30 days. Thanks to this expedited approval process, businesses may move forward with their strategies without needless delays.
- **Cost Savings:** The expedited approval process translates into cost savings for businesses. Legal and administrative expenses associated with prolonged regulatory reviews are minimized, making investments and transactions more cost-effective.

The CCI's Green Channel is a vital component of India's strategy to improve the ease of doing business. By streamlining the approval process for mergers and acquisitions, it enhances the

³ Press Information Bureau, Press release, 3-7-2015, available at <https://pib.gov.in/newsite/PrintRelease>.

business environment, attracts investment, and contributes to economic growth, all while maintaining competition and safeguarding consumer welfare.

IV. THE GREEN CHANNEL APPROVAL MECHANISM:

The Competition Commission of India (CCI) established the Green Channel mechanism as an administrative structure to speed up the method of approval for specific kinds of mergers and acquisitions (M&A) that are thought to be improbable to cause major rivalry issues. The main goals of the system are to expedite the regulatory process, shorten the time needed for approvals, and make doing business in India easier⁴:

- 1. Determining Qualifications:** The first step for merging parties is to determine if their transaction qualifies for the Green Channel. The merged market shares of the merging parties in the relevant market must not exceed certain levels, and there must be no either horizontal or vertical overlaps.
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- 3. Preparing Set and Sending in the Alert:** The merging parties are required to draft and submit a notification to the CCI in the format specified, along with any required papers and information. The intention to use the Green Channel for accelerated review should be made explicit in the notification.
- 4. CCI Analysis:** To find out if the transaction is eligible for the Green Channel, the CCI reviews the notification that was submitted. Transactions that do not meet eligibility requirements or raise possible competition concerns, as determined by the CCI, may be removed from the Green Channel process and re-examined using the usual review procedure.
- 5. Expedited Approval:** The deal moves on with the accelerated procedure for authorization if the CCI finds that it meets the requirements for the Green Channel. When using the Green

⁴ The Competition Commission of India, Press release, 27-3-2020.

Channel, permits are usually granted 30 days after the date of filing, which is far faster than the regular process, which might take several months.

6. **Persistent Adherence:** During the expedited approval procedure, merging parties are expected to adhere to any requirements or commitments specified by the CCI. They have to follow the rules and any guidelines set forth by the CCI to guarantee continued observance of competition laws.
7. **Withdrawing from the Green Channel:** The CCI has the right to remove the case from the Green Channel if it finds during the investigation that there are concerns about competition or if the agreement does not meet its eligibility criteria. The transaction is then subject to the regular review procedure in such circumstances.
8. **Final Acceptance or Redress:** The CCI may finally approve the deal when the Green Channel examination is completed satisfactorily. Before giving its final authorization, the CCI may impose limitations or measures to remedy any competitive issues that are found.⁵

V. BARRIERS AND CONCERNS:

There have been difficulties and objections to the Green Channel system, which was created to speed up approvals for mergers and acquisitions with the fewest possible effects on market. Although it simplifies the procedure, questions have been raised about how it can affect consumer welfare and competitiveness.⁶

- **Competition Concerns:** There is a chance that certain mergers and acquisitions with possibly anti-competitive impacts might get through with insufficient examination if permits are granted more quickly. A primary critique is that transactions might not be sufficiently thoroughly evaluated by the Green Channel. The probability that bigger businesses with considerable market power may use the Green Channel to buy out smaller rivals and therefore solidify their dominance has drawn concerns. Potential tactics such as predatory pricing, in which a dominating corporation lowers prices to force competitors out of the market before increasing prices again, could not be sufficiently

⁵ Danish Khan and Anand Sree, India: Are You An "Enterprise" (Accessed Nov. 15, 2023) <https://www.mondaq.com/india/antitrust-eu-competition-/494670/are-you-an-enterprise>.

⁶ Supra No. 2

evaluated by the accelerated procedure.

- **Does the GCA's concept conflict with the Act's M&A regulation's statutory intent?**

“One of the foremost significant initiatives that CCI has done to accelerate, simplify, and consolidate the clearance process for mergers and acquisitions in India is the Amendment Regulations.”⁷ However, the GCA is vulnerable to criticism on the grounds that it does not align with the Act's legislative aim. For the Act's purpose and legislative intent, the CCI is tasked with creating rules⁸ and regulations⁹. According to Section 6(2A) of the Act, a combination cannot take effect until 210 days have elapsed from the date of the notification or, if that happens sooner, the commission has issued an order under Section 31. These Act requirements seem to be at odds with the adoption of an automatic approval procedure, irrespective of the time restriction stipulated in the Act. Furthermore, after a notice is received under Section 6(2) of the Act, Sec. 30 requires CCI to examine a combination in accordance with Sec. 29 and develop a prima facie opinion of the same. Thus, it would seem that the automated approval process also violates this Act clause.

- **Does the GCA in its whole improve the parties to the combination's effectiveness in light of the approval process's length and uncertainty?**

Prior to the implementation of GCA, “the CCI would typically take 15 to 20 days¹⁰ to approve any combination”. It is challenging to determine whether GCA is effective in the first place if we take the average of the CCI's approval time frame by evaluating its recent trend and the time needed to file for the same and compare it with the average time needed by the parties to the combination to self-assess their eligibility for GCA. A greater doubt about the effectiveness of GCA is raised by the significant paperwork and self-evaluation required to receive its benefits, as well as the possibility of having the whole thing ruled void ab initio. Now, the issue of uncertainty is even more pressing for companies undertaking the Corporate Insolvency Resolution Process ("CIRP"),

⁷ SHRI INJETI SRINIVAS, Report of the Competition Law Review Committee (July, 2019).

⁸ Section 63, Competition Act, 2002.

⁹ Section 64, Competition Act, 2002.

¹⁰ Regulation regarding merger control laws in India by CCI, 2019.

which requires CCI clearance under the Insolvency and Bankruptcy Code, 2016. The practicality of the GCA for CIRP-based combinations is examined in length in the May 2020 IBBI Research Initiative report. *“It asserts that the “theoretical basis for green-channelling IRPs is the failing firm defence”.* The failing company defence deviates from the basic rule of merger control. ‘The defence is predicated on the premise that the business would fail in the absence of the proposed merger, and hence any anti-competitive tendency in the deal should be disregarded.’¹¹

VI. A COMPARISON OF COMPETITIVE LAW AND POLICY REGIME IN INDIA, CHINA, AND JAPAN

▪ Regulatory Body:

In India, “the CCI, an officially recognized the organization created by an Act of Parliament, is considered similarly to other regulatory bodies such as SEBI, IRDA, and TRAI.”¹² It is divided into two groups in terms of structure: administrative structure and functional structure. The administrative structure consists of a chairman and a minimum of two and a maximum of six members. There is also a secretary office and a DG office. The functional structure is organized into seven sections¹³.

In China, the administrative Compliance Structure of the Competition Commission is a two-tiered anti-monopoly institutional structure: (1) the Anti-Monopoly Commission (AMC), established by the AML in 2007, formulates and coordinates enforcement among the antimonopoly enforcement agencies (AMEAs), which are anti-trust offices within the Ministry of Commerce. The NDRC section is in charge of enforcing the AML. “The Department of Price Supervision (NDRC-DPS) is divided into nine divisions. “There are five sections within the SAIC's Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau (SAIC-AMAUCB).”¹⁴

¹¹ European Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings, 2004 O.J. (C 31) 3, 12.

¹² The CCI’s elementary functions are a dual one: “(a) Management and implementation of Competition Law and Competition Policy to promote the finances performance and customers welfare; (b) Involvement in advance in governmental policy formulation to guarantee that markets remain fair, free, open, flexible and adaptable.”

¹³ The seven divisions are: Antitrust division I, Antitrust division II, Combination division, Legal division I, Legal division II, Economic division, and Advocacy division. See <http://www.cci.gov.in/organogram>.

¹⁴ “China: The Competition Law System and the Country’s Norms”, Eleanor M. Fox and Michael J. Trebilcock, eds., *The Design of Competition Law and Institutions*, (2013), p. 194.

In Japan, the structure of competition commission is similar to that of India's CCI. The JFTC is a six-division administration commission¹⁵ that operates independently. It is led by a chairman, four commissioners, and a Secretary General. The JFTC functions as an autonomous administrative commission, undirected or monitored by other agencies. Its organizational element, known as the General Secretariat, oversees the JFTC's clerical matters in terms of investigation and oversight.

▪ **Legislation And Objectives**

CLP has an extensive background in India, dating back to the MRTP Act of 1969. The Raghavan Committee's recommendations were implemented in the form of the Competition Act of 2002. "An Act to provide, keeping in view the economic development of the country, for the establishment of a Commission to prevent practices having an adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers, and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected with or incidental thereto," says the preamble of the Competition Act, 2002.

The AML 2008 has a long track record in China, dating back to the passage of the Law Against Unfair Competition in 1993, the Pricing Law (1998), the Law on Bid Invitation and Bidding (1999), the Tentative Provision on Prohibition of Price Monopolisation Acts (2003), and the Provision on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (2006). The AML was enacted in 2007, and went into effect on August 1, 2008, with the main goal of "preventing and restraint exclusive conduct, protecting fair competition in the market, enhancing economic efficiency, safeguarding consumer and social public interest, promoting the healthy development of the socialist market economy, and so on."¹⁶

CLP has existed in Japan since AMA 1947. The primary goal of the AMA 1947 was to "promote the democratic and sound development of the national economy, as well as to protect the interests of general consumers by promoting fair and free competition through

¹⁵ Organization and Powers of the FairTrade Commission of Japan, http://www.jftc.go.jp/eacpf/05/jicatext/sep13_1.

¹⁶ Art. 1 of the Anti-monopoly Law, 2008.

the prohibition of private monopolization, unreasonable trade restraint (such as cartels and bid riggings), and unfair trade practices."¹⁷

▪ **Cartels**

Section 3 of India's Competition Act, 2002 addresses cartels or bid-rigging, which includes "(a) tie-in arrangement; (b) exclusive supply agreement; (c) exclusive distribution agreement; (d) refusal to deal; and (e) resale price maintenance." Section 13 of the AML in China addresses cartels and bid-rigging. Article 3 of the AMA in Japan addresses cartels or bid rigging, which includes price fixing, output limiting, and market and client allotment.

Cartel Conduct Outside the Jurisdiction;

In India, cartel behaviour outside the jurisdiction is governed by Section 32 of the Competition Act, 2002, which specifies that "(a) a contract referred to in section 3 has been entered into outside India; or (b) any party to such agreement is outside India."¹⁸ Such a cartel arrangement should have or is expected to cause a significant negative impact on competition inside India.

In China, Outside-of-jurisdiction cartel behaviour is regulated under Article 2 of the AML, which stipulates that "the AML applies to oppressive conduct beyond the PRC in so far as such action eliminates or restricts market competition in the PRC."¹⁹

In Japan, regardless of where it is of these kinds of business processes, the JFTC in Japan is taking consideration conduct that affects the Japanese market. It may employ the public service to carry out its investigations or issue directives to defendant firms that are not based in Japan. Therefore, the clauses suggest that the JFTC has jurisdiction over the behaviour of such companies that do not operate elsewhere than Japan (for example, a subsidiary, business, agency or office) in Japan.

¹⁷ Anti-Monopoly Act, 1947.

¹⁸ Sec. 19, Anti-Monopoly act.

¹⁹ Supra 14.

Steps In Cartel Investigation;

The only people with the ability to begin an investigation into a potential violation of the Competition Act of 2002 are the CCI and the DG. When conducting a cartel inquiry, the CCI takes the following actions:

- In the event that the CCI receives information from any individual, consumer, trade, or other association, or if the federal, state, or local governments make a recommendation, it may initiate an independent inquiry. Any information from a customer, business, trade organization, or other entity must be accompanied by the appropriate fees.
- The CCI shall convene its initial regular meeting within 15 days after the matter's placement, and it will have a maximum of 60 days to provide a decision regarding the existence of a prima facie case²⁰. In order to establish a prima facie opinion, the CCI may convene a preliminary meeting and may extend invitations to the complaint and any additional parties that may be required.
- The CCI has the authority to close cases and issue closure orders in cases where it determines that there is no prima facie case. If the CCI determines that there is a prima facie case, it may order the Director General (DG) to look into the situation and provide the CCI with a report by the deadline. To begin an inquiry, the CCI needs judicial permission.

In China, when reporting materials are received, as well as when they suspect a breach of Articles 13 and 14 of the AML has taken place, the SAIC & NDRC in China examine monopolies.²¹ Price-related cartels are looked into by the NDRC, whereas non-price-related cartels are looked into by the SAIC.

In Japan, upon receiving a complaint, the JFTC initiates a cartel inquiry. After conducting a preliminary inquiry, the JFTC decides whether to pursue an administrative investigation or require mandatory remedies for criminal offenses. When it comes to cases of cartels or bid-rigging, the JFTC also does morning raids. The management of a corporation must

²⁰ Pradeep S. Mehta, *Competition Law in India: Toolkit*, CUTS International, (2009).

²¹ Art. 13 & 14 Anti-Monopoly act.

consent to the morning raid and be there; only then may the JFTC be allowed admission into the building.

Civil And Administrative Sanctions;

When signatories infringe the conditions forbidding cartel activity, the CCI gives them instructions or guidelines, which might involve dismissing their cartel agreement, forbidding the parties from interacting into such arrangements in the future, or modifying the cartel agreement. Since only civil and administrative offenses are covered by the Competition Act of 2002, the CCI only enforces severe penalties—up to three times the earnings for the entire time that the contract is in effect or 10% of revenue for each year it is in effect—on any producer, seller, distributor, trader, or service provider involved in a cartel. The CCI is also able to penalize the cartel parties less severely under the leniency policy.

The NDRC and SAIC are authorized by Article 46 of the AML to prosecute business owners who enter into monopoly agreements in China. "They compel the involved business owners to cease the unlawful activity, seize the illicit profits, and impose a penalty equal to one to ten percentage of the previous year's sales price. Since there are no criminal penalties in China in cases where both sides already have established a cartel, the enforcement authorities issue a monetary penalty of less than RMB 500,000.²²

A prohibition injunction is a fundamental tactic deployed by the JFTC in regulatory punishment. "(a) cease and desist from engaging in the conduct in question; (b) delete the relevant clauses from the contract; and (c) take any other necessary measure to eliminate the conduct," is what the JFTC can require the party to do. The JFTC may order an undertaking to pay surcharges for engaging in any of the following unfair trading practices: predatory pricing, discriminatory pricing, resale price limitation, and misuse of superior negotiating position. The JFTC levies administrative fines (surcharges) for private monopolies, discriminatory commercial practices, and unjustified trade restrictions. "The total sales of the necessary product or service (in instances of exploitation of dominant negotiating situation) during the period of the conduct that is forbidden (up to three years)"

²² Pradeep S. Mehta, *Competition Law in India: Toolkit*, CUTS International, (2009).

is how the surcharge amount is calculated.²³ "In general, entrepreneurs who have constantly committed actions that infringes the Antimonopoly Law and who have been subject to an administrative surcharge payment order within the last ten years are subject to a managerial-costs at a rate of 150 percent of the specific rate set out above." However, in some situations (such early exit from the cartel), the administrative fee rate will be lowered by twenty percent.

Criminal Sanctions;

In India, the processes and penalties imposed under the Competition Act, 2002 are mostly civil in nature. Under the Competition Act of 2002, there are strict penalties for breaking the instructions of the CCI, such as submitting deceptive papers or an indication or failing to provide facts. There is no jail time allocated for cartel behaviour.

There are no legal repercussions for cartel activity in China. Nonetheless, in light of Article 12 of the AML, people who operate as business operators may be subject to the sanctions outlined in Article 46 of the AML. Employees of the firm are not subject to disciplinary or criminal sanctions unless they intentionally hinder the inquiry.²⁴

Criminal penalties are only used in extreme circumstances or for repeat offenders in Japan. However, public prosecutors handle the criminal prosecution, not the JFTC. If cartel laws are broken, the JFTC has the authority to levy penalties. A person may get a penalty that entails a fine of up to ¥5 million, five years in jail, or both. Prison sentences are often six to eighteen months long in reality.²⁵

VII. CONCLUSION:

Furthermore, "Streamlining the Approval Process: CCI's Green Channel for Expedited Approvals" is a crucial development for the nation's governing structures and competitiveness legislation. The Competition Commission of India (CCI) developed the Green Channel, which has shown to be a valuable device in striking a balance between the requirement for quick

²³ Ibid

²⁴ Supra No. 9

²⁵ Ernst and Young LLP (EY) and the Competition Commission of India (CCI), Discussion paper on blockchain technology and competition law, (Accessed, Nov. 15, 2023) <http://www.cci.gov.in/sites/default/files/whatsnew/document/Blockchain.pdf>.

corporate approvals and the significance to maintain strong rivalry in the market and customer satisfaction. A paradigm evolution happened as a result of this system, which gives companies a speedier and far more efficient route to regulatory approval—a crucial component of the modern global economy. Insufficient tolerance program, despite recently initiating indulgence in a few circumstances; not enough reliability when calculating fines, which might be primarily attributable to the absence of appropriate penalty standards and illicit restrictions; and lack of any particular technique or procedure implemented by CCI for the probe of cartels. The CCI's dedication to constantly staying forward of the curve, matching itself with developing economic patterns, and taking advantage of the possibilities and difficulties presented by a quickly shifting business climate is demonstrated by the Green Channel's constant development and adaptability. The Green Channel is an example of a proactive approach to improving and growing regulatory procedures, despite its share of difficulties and critiques. By performing so, it helps India to improve economic accessibility, draw in expenditures, and support economic expansion. The Green Channel simultaneously preserves the reliability of the authorization procedure, customer preferences, and competitiveness. India's commitment to maintaining equal competition while promoting a beneficial to businesses climate has been proven by the Green Channel, which is symptomatic of the country's continued positioning as a major participant in the global economic scene. In a period of fast economic expansion and globalization, this imaginative approach, with its continuous dedication to improvement, is a noteworthy step towards guaranteeing that enterprises survive, customers benefit, and the Indian economy thrives.