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INDIA'S NEW MERGER CONTROL REGIME: ALIGNING WITH GLOBAL STANDARDS

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A. Introduction

The Government of India has notified several provisions of the Competition Amendment Act 2023 (the “**Amendment Act**”) concerning merger control, along with the related rules. Additionally, they have published the Competition Commission of India (Combinations) Regulations, 2024 (“[Revised Combination Regulations](#)”). The Amendment Act, rules, and Revised Combination Regulations came into effect on 10th September 2024 (“**Merger Control Amendments**”), marking a significant overhaul of India’s merger control regime. The aim is to streamline the process and align it with global standards.

The Ministry of Corporate Affairs (“**MCA**”) plays a crucial role in the implementation and oversight of these Revised Combination regulations. The MCA is responsible for drafting and notifying the regulations, ensuring they align with the broader objectives of promoting fair competition and protecting consumer interests. The MCA also oversees compliance and enforcement, working closely with the Competition Commission of India (“**CCI**”) to monitor and address any issues that arise during the implementation phase.

The Revised Combination Regulations have an overriding effect on all other regulations filed under the Competition Act in matters relating to combinations. Initially, the amendment proposed that both the acquiring and target companies must have substantial business operations in India. However, based on recommendations from a parliamentary panel, this requirement was refined to apply only to the target entity¹.

¹ Trilegal, New Era for Indian Merger Control Begins on 10 September 2024, 10 September 2024, [Trilegal Update | New Era for Indian Merger Control Begins on 10 September 2024](#)

B. Key Amendments and Changes

1. Deal Value Threshold

One of the most significant changes in the Revised Combination Regulations, is the introduction of a Deal Value Threshold (“DVT”). Transactions where the global deal value exceeds ₹2,000 crore (approximately \$240 million) and the target company has substantial business operations in India will now need to be notified and require prior approval from the CCI². If a transaction meets both these criteria, it will not be eligible for the target-based exemption.

Transactions signed before September 10, 2024, but not fully consummated by this date, will need to be reassessed for the applicability of the DVT. If a transaction requires notification, it must immediately observe standstill obligations (including at a global level) until CCI approval is obtained, or it will attract penalties for gun jumping. This amendment aligns India’s regulations with those of other major economies, such as the United States and Germany, and aims to address potential gaps left by traditional asset or turnover-based thresholds, particularly in the context of digital markets³.

In addition to the DVT provision, the MCA has introduced new rules under the Competition (Minimum Value of Assets or Turnover) Rules, 2024 (“**Asset and Turnover Rules**”). These rules provide a safe harbour for certain combinations, exempting transactions from CCI approval if the involved enterprise has assets less than ₹450 crore and a turnover of less than ₹1,250 crore. This threshold aims to reduce the regulatory burden on smaller transactions that are unlikely to raise anti-competitive concerns.

2. Computing the Value of the Transaction for DVT

The Revised Combination Regulations state that the value of a transaction must include every valuable consideration, whether direct or indirect, current or future, including but not limited to any separately agreed consideration on account of any undertaking or restriction imposed on any party (including, for example, non-compete fees).

² Business Line, Centre expands CCI’s deal scrutiny window via new ‘deal value threshold’ provision, 9 September 2024, [Centre expands CCI’s deal scrutiny window via new ‘deal value threshold’ provision - The Hindu BusinessLine](#)

³ Business Today, Deal value threshold for high-value acquisitions comes into force: major overhaul of CCI’s regime, 10 September 2024, [Deal value threshold for high-value acquisitions comes into force: major overhaul of CCI’s regime - BusinessToday](#)

3. Determination of “Substantial Business Operations in India”

Under the Revised Combination Regulations, a target entity is considered to have “substantial business operations in India” if it meets any of the following criteria:

- **Gross Merchandise Value (“GMV”):** The target’s GMV in India, in the twelve months preceding the trigger event, is 10% or more of its global GMV and exceeds INR 5 billion (approximately USD 60 million).
- **Turnover:** The target’s turnover in India, in the preceding financial year, is 10% or more of its global turnover and exceeds INR 5 billion (approximately USD 60 million).
- **Digital Services:** Specifically for digital services, the target meets any of the following conditions:
 - 10% or more of the target’s business users or end users are in India.
 - The target’s GMV in India, in the twelve months preceding the trigger event, is 10% or more of its global GMV.
 - The target’s turnover in India, in the preceding financial year, is 10% or more of its global turnover.

Further, the definition of ‘digital service’ is broad and encompasses the provision of a service, one or more pieces of digital content, or any other activity conducted via the internet, with or without consideration, to end users or business users. This is calculated based on the average number of such users over the past year preceding the trigger event.

4. Acquisitions in the Ordinary Course of Business

This pertains to the acquisition of shares within the ‘Ordinary Course of Business’ (“OCB”). Historically, the Competition Commission of India (CCI) has interpreted OCB to mean “revenue transactions conducted solely with the intent to benefit from short-term price movements of securities.” However, the explanation to Rule 1 now restricts the application of OCB to the acquisition of shares or voting rights exclusively by underwriters, stockbrokers, and mutual funds.

This exemption is applicable provided that the acquirer does not exceed the specified thresholds of shares or voting rights, as outlined below:

- Acquisition of unsubscribed shares as an underwriter: Less than 25%
- Acquisition of shares as a stockbroker: Less than 25%
- Acquisition of shares as a mutual fund: Less than 10%

This refined definition ensures that only specific entities can benefit from the OCB exemption, maintaining a clear regulatory framework.

5. De Minimis Rules

The De Minimis Rules formalize the existing de minimis thresholds as outlined in the MCA's notification dated 7 March, 2024 (De Minimis Notification). These rules stipulate that a transaction does not require prior approval from CCI if the target entity has either:

- Assets not exceeding INR 4.5 billion (approximately USD 54 million) in India, or
- Turnover not exceeding INR 12.5 billion (approximately USD 150 million) in India.

Unlike the De Minimis Notification, the De Minimis Rules do not have an expiration date. Therefore, unless these rules are amended or revoked, they will remain in force indefinitely.

6. Exemption for Categories of Combinations

The Exemption Rules exempt certain categories of combinations from mandatory pre-notification requirements, replacing the previous exemptions provided in the former CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. The Exemption Rules are not significantly different from the draft exemption rules released by the CCI earlier in March 2024. They also propose a uniform test of 'change in control,' which refers to a change along the spectrum of control. Similar to the DVT, transactions signed before September 10, 2024, but not fully consummated by this date, will need to be reassessed for the applicability of exemptions under the Exemption Rules. These comprehensive changes are designed to modernize and streamline India's merger control regime, ensuring it remains robust and effective in a rapidly evolving global market.

7. Reduced Review Timeline

The CCI has reduced the timeline for merger reviews from 210 days to 150 days. This change aims to expedite the approval process, reducing delays and making it more efficient for businesses to complete their transactions⁴.

8. Exemption from Standstill Obligations

The Revised Combination Regulations provide exemptions from standstill obligations for open offers triggered by the acquisition of a controlling stake through stock exchange transactions.

⁴ Lexology, India's Merger Control Regime Gets A Major Overhaul, 10 September 2024, [India's Merger Control Regime Gets A Major Overhaul - Lexology](#)

This amendment aims to make acquisition transactions more viable by allowing parts of the deal to proceed before receiving CCI approval.

C. Impact on Businesses

These amendments are expected to enhance the efficiency and effectiveness of the merger control process in India. By reducing the review timeline and introducing a DVT, the CCI aims to create a more business-friendly regulatory environment aligned with international practices. The exemption from standstill obligations is particularly beneficial for companies involved in stock exchange transactions, as it allows them to proceed with certain aspects of the deal without waiting for full regulatory approval.

D. Conclusion

The Revised Combination Regulations, represent a significant step forward in modernizing India's merger control regime. These changes are expected to foster a more competitive and efficient market environment, benefiting both businesses and consumers. The introduction of the DVT of Rs. 2000 crores for companies with substantial business operations in India brings the CCI on par with global regulators like those in the US, Germany, and Austria. However, the details will be crucial in relation to enabling the regulations and the need for the CCI to enhance its capacity to maintain its efficient track record of clearing M&A deals will be key to ensuring that ease of doing business remains unaffected.

This may further impact deals that are yet to be signed on or after 10th September, requiring them to re-examine their reportability status to the CCI. However, deals that have already been closed will not be impacted under the gun-jumping provision, including those of the tranching deals. That said, in the case of multi-step or tranching deals, you may still have to file with the CCI if the pending steps, including the closed steps, attract the DVT. Along with this, the MCA has also notified several other provisions around the Assets and Turnover Rules, as well as the criteria for combinations.