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INDIAN MERGER CONTROL THRESHOLDS REVISED

Introduction

The Competition Act, 2002 (the "**Act**') read with the Competition Commission of India (Procedure in Regard to the Transaction of Business relating to Combinations) Regulations, 2011 deal with the merger control regime in India. Recently, the Indian government has issued notifications to revise the *de minimis* and merger control thresholds, and has extended certain exemptions which had expired.

This update discusses the notifications issued by the Indian government on the merger control regime in India and the implications thereof.

De minimis thresholds increased

In March 2011, the Indian government issued a notification which exempted an acquisition of control, shares, voting rights or assets of an enterprise whose value of assets did not exceed INR2.5 billion (US$37.31 million) in India or turnover did not exceed INR7.5 billion (US$111.94) in India from the requirement of obtaining a pre-merger clearance from the Competition Commission of India (the "**CCI**"). The foregoing exemption was valid for five (5) years and expired in March 2016.

Recently, the Indian government has issued a notification which exempts an acquisition of control, shares, voting rights or assets of an enterprise whose value of assets does not exceed INR3.5 billion (US$52.23 million) in India or turnover does not exceed INR10 billion (US$149.25 million) in India from the requirement of obtaining a pre-merger clearance from the CCI. This exemption will be valid for five (5) years, i.e., until March 4, 2021.

The CCI has jurisdiction to assess implications of a transaction on competition in the Indian market, regardless of whether the transaction occurs in India or overseas. Therefore, the foregoing exemption, commonly known as the *de minimis* test or the target test, aims to provide a relief to deals which may not adversely impact competition in the Indian market due to low value of assets and turnover in India of the target enterprise. The increase in the asset and turnover thresholds under the target test is welcome, as more deals will be eligible to take benefit of the target test exemption, which will reduce transaction timelines and costs. However, it must be noted that the target test exemption is applicable only to acquisition of control, shares, voting rights or assets, and is not applicable to mergers and amalgamations.

Merger control thresholds increased

Section 5 of the Act specifies the asset and turnover thresholds on the basis of which parties can assess whether a particular transaction requires prior clearance of the CCI.

In March 2011, the Indian government issued a notification which enhanced the asset and turnover thresholds specified under Section 5 of the Act by 50%. The Indian government has now issued a notification enhancing the asset and turnover thresholds under Section 5 of the Act by 100%. The revised asset and turnover thresholds under Section 5 of the Act are as follows:

Thresholds for the acquirer and target (jointly)

Assets	
In India	INR20 billion (US$298.50 million)
Worldwide	US$1 billion (including at least INR10 billion (US$149.25 million) in India)
Turnover	
In India	INR60 billion (US$895.52 million)
Worldwide	US$3 billion (including at least INR30 billion, i.e., US$447.76 million, in India)

Thresholds for the acquirer group post completion of transaction (which will include the target)

Assets	
In India	INR80 billion (US$1.19 billion)
Worldwide	US$4 billion (including at least INR10 billion, i.e., US$149.25 million, in India)
Turnover	
In India	INR240 billion (US$3.58 billion)
Worldwide	US$12 billion (including at least INR30 billion, US$447.76 million, in India)

At the time of implementation of the merger control regime in India in 2011, it was felt that the assets and turnover thresholds under Section 5 of the Act were very low and would require low-value transactions (which were not likely to affect competition in the Indian market) to be approved by the CCI. The Indian government has sought to address this concern by enhancing the thresholds under Section 5 of the Act, thereby reducing deal timelines and costs for low-value transactions.

Acquirer group

In assessing the "acquirer group" for the assets and turnover thresholds under Section 5 of the Act, enterprises having 50% or more voting rights in another enterprise have to be included and constitute as part of the "acquirer group." Even if an enterprise exercises "control" over the management or affairs of the other enterprise, then such enterprise will constitute as part of the "acquirer group."

This position remains unchanged, and the exemption available to an entity (i.e., not having to include with the group any entity in which it exercises less than 50% of the voting rights) has now been extended for another term of five (5) years, i.e., until March 4, 2021.

Conclusion

The Indian merger control regime was implemented in the year 2011, and as such, the CCI is a fairly young regulator. Although the CCI relies heavily on merger control jurisprudence in the more developed overseas jurisdictions, Indian case law in this area has been evolving with each passing year. The CCI has been doing a commendable job of assessing the implications on competition in the Indian market of complex transactions. As the competition law regime in India matures, the Indian government is focusing on easing the filing procedure and reducing timelines for obtaining CCI clearance. To name a few commendable efforts on part of the CCI, last year, the CCI introduced an electronic filing system to file forms, introduced notes to forms to assist parties in filling the relevant forms, relaxed form signing requirements, and restricted the "clock stop" period for *prima facie* scrutiny of transactions to fifteen (15) working days. The recent changes are a welcome move as they will help low-value transactions to be consummated without the requirement of obtaining prior CCI clearance, which will substantially reduce deal timelines and costs.