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Indian Merger Control threshold: revised

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The merger control regime in India has been in existence since 2011. The provisions of the Competition Act are to be read together with the notifications issued by the Ministry of Corporate Affairs, Government of India and the Combination Regulations.

In line with the vision of India on promoting investments into India, the Ministry of Corporate Affairs, on 5 March 2016, enhanced the existing jurisdictional thresholds under the Competition Act and also amended and extended the existing de minimis exemption. I am limiting this post only to the relevant changes brought about by the notifications issued by the Ministry.

De minimis exemption

On 4 March 2011, the Ministry had issued the de minimis exemption which sought to exempt transactions where the target enterprise either has Indian assets of less than INR 250 crores or Indian turnover of less than INR 750 crores from a merger control notification requirement to the CCI, for a period of five years.

The Ministry on 5 March 2016, has now extended the validity of the said de minimis exemption for another period of 5 years (till 2021) and also increased the financial thresholds, due to which the transactions where the target enterprise (whose shares, assets, voting rights or control are being acquired) either has Indian assets of less than INR 350 crores or Indian turnover of less than INR 1000 crores will be exempt from the notification requirement, until 3 March 2021. However, similar to the previous target exemption, this new notification also does not provide for any target exemption in case of mergers and amalgamation. This move of enhancing the thresholds will greatly reduce technical filings before the CCI.

Increase in financial thresholds

Section 5 of the Act provides the asset and turnover based thresholds for a transaction to qualify as a “combination” for the purposes of the Act. A combination, which is not exempt either under the (a) provisions of the Act or (b) de minimis exemption (explained above) or (c) any exemptions provided under the Combination Regulations, is required to be mandatorily notified to the CCI for prior approval. By way of the latest notification issued by the Ministry, the asset and turnover based jurisdictional thresholds under the Competition Act has been increased by 100%. Please note that this 100% enhancement is applicable to the original thresholds set out in Section 5 of the Act and not to the thresholds as enhanced in March 2011. The revised thresholds are as under:

Parties test

1. the parties have combined assets in India of INR 2,000 crores (INR 20 billion) or a combined turnover in India of INR 6,000 crores (INR 60 billion); or
2. the parties have combined worldwide assets of USD 1 billion, including combined assets in India of INR 1000 crores (INR 10 billion) or a combined worldwide turnover in excess of USD 3 billion, including a combined turnover in India of INR 3,000 crores (INR 30 billion).

Group test

1. the group has assets in India of more than INR 8,000 crores (INR 80 billion) or a turnover in India of INR 24,000 crores (INR 240 billion); or
2. the group has worldwide assets of USD 4 billion, including assets in India of INR 1,000 crores (INR 10 billion), or a worldwide turnover of USD 12 billion, including turnover in India of INR 3,000 crores (INR 30 billion).

Note:

1. In case of an acquisition, the relevant entities for the Parties Test are the acquirer and the target enterprise (including its subsidiaries, units and divisions). For the Group Test, it refers to the group to which the target enterprise would belong after the acquisition
2. In case of a merger or amalgamation, the relevant entities for the Parties Test is the enterprise remaining after the merger or the enterprise created as a result of the amalgamation. In case of group, it would be the group to which the enterprise remaining after the merger or created as a result of the amalgamation, would belong, post-transaction.

It must be noted that the merger control provisions under the Act and the Combination Regulations are always a work in progress and there have been multiple rounds of amendments which have been made in the Combination Regulations to ensure an administrative ease into the filing process. The recent amendments by the Ministry are a welcome change since the number of notification made to the CCI will reduce. This is a welcome step taken by the Government in furtherance of its vision to bring in more investments in India without incurring cost and additional time taken by the CCI to approve transactions.

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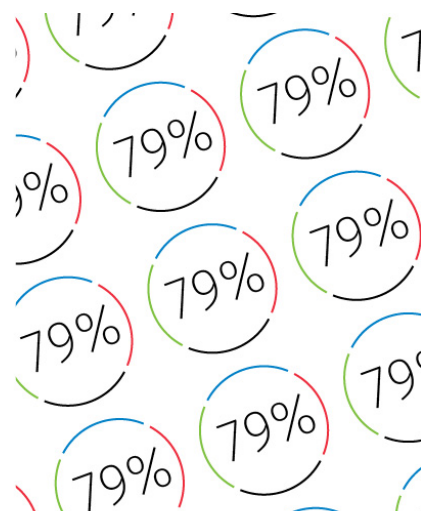
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