

New Era for Indian Merger Control Begins on 10 September 2024

10 September 2024

On 9 September 2024, the Ministry of Corporate Affairs notified certain provisions of the Competition (Amendment) Act, 2023 (**Amendment Act**) overhauling the merger control regime in India with effect from 10 September 2024. These provisions pertain to:

- a. Notification of the deal value thresholds (**Deal Value Thresholds**);
- b. Reduction in merger review timelines by the Competition Commission of India (CCI);
- c. Derogation for merger notification of acquisitions on the stock exchange;
- d. Competition (Minimum Value of Assets or Turnover) Rules, 2024 (**Minimum Value Rules**);
- e. Competition (Criteria of Combination) Rules, 2024 (**Green Channel Rules**); and
- f. Competition (Criteria for Exemption of Combination) Rules, 2024 (**Exemption Rules**).

There is no transitional leeway for the applicability of these provisions, and they would apply to all transactions which will come into effect from and after 10 September 2024 (**Effective Date**). The new Competition Commission of India (Combinations) Regulations, 2024 (**Combination Regulations, 2024**) clarify that as on Effective Date:

- a. Transactions closed prior to the Effective Date do not need to be notified.
- b. Transactions signed but NOT closed will need to be notified.
- c. In case of inter-connected transactions which are partly closed and partly pending, such partly pending transactions will need to be notified.

1 Deal value thresholds introduced

All transactions where the value of the transaction (including direct, indirect, immediate and deferred consideration) exceeds INR 2,000 crore/INR 20 billion (approx. USD 238 million), and the target has ‘*substantial business operations*’ in India, will require prior approval from the CCI, even if they can otherwise benefit from the *de-minimis* exemption (which has now been codified, please refer to point 4 below).

Certain provisions of the Competition (Amendment) Act, 2023, with effect from 10 September 2024, revamp the Indian merger control regime. Key amendments include a new deal value threshold, reduced review timelines for the CCI, a derogation for stock market transactions, codification of de-minimis exemption rule, codification of green channel rules, and new exemption criteria for minority acquisitions, incremental acquisitions, demergers, and acquisitions by financial intermediaries. These changes aim to streamline the merger review process and introduce new standards to assess notifiability of transactions.

According to the new Combination Regulations, 2024, a target is considered to have ‘*substantial business operations*’ in India if it meets any of the following thresholds:

- a. **Users:** for digital services, the number of business users or end users in India is 10% or more of its total global business users/end users;
- b. **Gross Merchandise Value:** the Gross Merchandise Value (**GMV**) in India exceeds 10% of the total global GMV for the 12-month period preceding the deal and is more than INR 500 crore/INR 5,000 million (approx. USD 60 million);
- c. **Turnover:** its turnover in India in the financial year preceding the transaction exceeds 10% of its global turnover derived from all products or services (digital or otherwise) and is more than INR 500 crore/ INR 5,000 million (approx. USD 60 million). This turnover calculation will not be applicable to digital services.

Introduction of deal value thresholds marks a significant shift in the merger control regime, which will result in regulatory scrutiny of high-value deals despite limited tangible assets or revenues in India. A slew of otherwise *de-minimis* transactions will face greater regulatory uncertainty and will have to undergo standstill obligation till an approval is received from the CCI.

2 Change in merger control review timelines

The CCI has reduced the timelines for merger control reviews to expedite the approval process. The CCI must now form a *prima facie* view or grant phase I approval within 30 calendar days (which previously was 30 working days), and the maximum deemed approval timeline has been shortened from 210 days to 150 days.

3 Derogation for open offers

Stock market transactions/open offers/public market acquisitions will no longer require prior notification to the CCI or attract gun jumping penalties, if:

- a. they are subsequently notified to the CCI within 30 days, and
- b. there is no exercise of any ownership and beneficial rights.

4 Minimum Value Rules

Minimum Value Rules codify the pre-existing *de-minimis* exemption where a transaction will not require notification to the CCI if the target has either turnover of less than INR 1,250 crore/INR 12.5 billion (approx. USD 150.60 million) or assets less than INR 450 crore/INR 4.5 billion (approx. USD 54.21 million) in India.

5 Green Channel Rules

The Green Channel Rules codify the existing law relating to deemed approval, with a key change that will impact overlaps assessment. Now, the definition of affiliates is widened to include in its scope the right/ability to access commercially sensitive information (**CSI**) of an entity. This change will impact downstream affiliates (including controlled portfolio entities) to which overlaps are mapped for the purpose of the merger notification.

6 New Exemption Rules

The Exemption Rules introduce rules for certain combinations that are exempt from the notification requirement, as follows:

- a. **Minority exemption:** Up to but not more than 25% acquisition is exempt if there is:
 - no acquisition of control; and
 - no right/ability to gain board representation (through directorship/observer right) (**Board Representation**)/access to CSI.
 - If there are any overlaps between parties, then the limit for such exemption falls to 10%.
- b. **Incremental acquisitions:**
 - Where the acquirer group continues to remain below 25% of shareholding/voting rights *prior to* and *post* combination, the exemption will apply if there is:
 - no acquisition of control; and
 - no right is accruable to the acquirer to now have a Board Representation/access to CSI.

However, if there are overlaps, then the acquirer group can acquire additional share/voting rights up to a creeping limit of 5%, provided the 10% limit in the target is not breached.
 - Where acquirer group remains between 25% - 50% limit/is above 50% prior to the transaction, exemption applies if there is no change in control.
- c. **Demergers:** Issuance of *pro rata* shares as consideration pursuant to a demerger is exempt.
- d. **Acquisitions by financial intermediaries:** Acquisition of up to 25% by registered stockbrokers and underwriters, and up to 10% by mutual funds, are exempt.

With the revamp of the Indian merger control regime and the introduction of additional metrics, it is essential to reassess the notifiability of ongoing transactions and revisit how future deals are to be evaluated.

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