

Competition Law Hotline

May 31, 2011

MERGER CONTROL PROVISIONS FURTHER SIMPLIFIED!

The Ministry of Corporate Affairs ("MCA"), vide its notification dated May 27, 2011¹ has clarified the exemption from the filing requirement under the Competition Act, 2002 ("Act") available to combinations² involving acquisition of enterprises whose turnover / asset size is less than a certain prescribed threshold. In another related move, the Competition Commission of India ("CCI") introduced the provision for consultation with the staff of CCI prior to making a filing regarding the combination under the Act.³ These are welcome developments in the area of competition law in India.

We had earlier analysed the newly notified provisions of the Act relating to 'combinations' and the new regulations relating thereto in our hotlines "Indian Merger Control Regulations Finally Notified!!!" dated May 13, 2011 and "Acquirers Beware: Indian Merger Control Regulations Notified!" dated March 8, 2011.

SMALL ENTERPRISES EXEMPTION

Pursuant to its notification dated March 4, 2011, the MCA had exempted the acquisition of enterprises whose turnover is less than INR 7.5 billion (approx. USD 167 million) or whose assets value is less than INR 2.5 billion (approx. USD 56 million) from the definition of combination as defined under Section 5 of the Act. However, there was no clarity on whether the asset value / turnover threshold should be calculated on a consolidated world-wide basis, or on a standalone basis for the target, or be limited to asset value / turnover in India.

The MCA has now clarified that for the purpose of availing of the aforesaid exemption, the asset value / turnover of the target in India should be considered. Therefore, in the event the turnover or the value of the assets of the target in India is less than the above prescribed threshold, the transactions involving the acquisition of such target would not fall under the definition of 'combination' and therefore, no filing would have to be made with the CCI in that regard.

PRE-FILING CONSULTATION

The CCI under the draft regulations dated March 2, 2011 had first introduced the provision for pre-filing consultation. However, this found no mention in the recently issued final Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, dated May 11, 2011.

The CCI has now, in accordance with international best practices, re-introduced the facility of informal and verbal consultation with the staff of CCI prior to the filing of notice under the Act in connection with the proposed combination. In this regard it is important to note that any advice given by the staff of CCI pursuant to such informal and verbal consultation shall not be binding on the CCI. Be that as it may, given the novelty of the merger control regulations in India, the introduction of pre-filing consultation is a positive move as it gives an opportunity to the parties to the combination to consult the CCI on whether or not the filing requirements would be triggered by the proposed combination.

CONCLUSION

The clarification regarding the small enterprise exemption and the introduction of pre-filing consultation are both steps in the right direction especially in light of the provisions of the Act relating to combination coming into effect from tomorrow (June 1, 2011). It is hoped that in coming days there will be further clarifications made by the CCI to iron out the lacunae in the current provisions of the Act and the regulations.

Priyadarshani Sherchan & Simone Reis

1 http://www.mca.gov.in/Ministry/notification/pdf/SO_Corrigendum_27may2011.pdf

2 A 'combination' under the Act has been defined to include- (a) the acquisition of control, shares or voting rights or assets by a person; (b) the acquisition of control of an enterprise where the acquirer already has direct or indirect control of another engaged in identical business; and (c) a merger or amalgamation between or among enterprises; that cross the financial thresholds as set out in Section 5 of the Act.

3 <http://www.cci.gov.in/May2011/Home/ConsultationPrior250511.pdf>

* For reference USD 1 = INR 45

Research Papers

Handbook on New Labour Codes

April 29, 2024

Compendium of Research Papers

April 11, 2024

Third-Party Funding for Dispute Resolution in India

April 02, 2024

Research Articles

Private Client Insights - Sustainable Success: How Family Constitutions can Shape Corporate Governance, Business Succession and Familial Legacy

January 25, 2024

Private Equity and M&A in India: What to Expect in 2024?

January 23, 2024

Emerging Legal Issues with use of Generative AI

October 27, 2023

Audio

Third-Party Funding: India & the World

April 27, 2024

IBC allows automatic release of ED attachments: Bombay HC reaffirms

April 15, 2024

The Midnight Clause

February 29, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Q&A 2024 Protocol to the Mauritius India Tax Treaty

April 22, 2024

Boost to India's Space Potential: India Liberalizes Foreign Direct

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Investment

April 03, 2024

Cyber Incident Response
Management

February 28, 2024

