Competition Law Hotline

March 09, 2024

REVISED THRESHOLDS FOR TURNOVER AND ASSETS NOTIFIED UNDER INDIAN COMPETITION ACT

- Through a series of two circulars released on March 7, 2024, the Ministry of Corporate Affairs has enhanced the asset and turnover thresholds applicable to avail the De Minimis Target Exemption, and the thresholds required to be breached for notification of “combinations” under Section 5 of the Competition Act, 2002.
- The asset and turnover thresholds required to be breached for notification under Section 5 have been enhanced by approximately 25% from the thresholds previously notified in 2016.
- Parties to transactions will now need to assess these enhanced thresholds with the awaited enactment of the Deal Value Threshold under the Competition (Amendment) Act 2023, in order to determine the trigger of notifiability.

INTRODUCTION

In a significant development, the Ministry of Corporate Affairs vide two separate notifications released on March 7, 2024[1] (“**Revision Circulars**”), has increased the following key thresholds under the Competition Act, 2002 (“**Act**”): (i) the thresholds allowing exemption from notification based on the assets and turnover of the target company (“**De Minimis Target Exemption**”); and (ii) the thresholds required to be breached for notification of “combinations” under Section 5 of the Act (“**Section 5 Thresholds**”).

Section 5 of the Act mandates that all transactions amounting to “combinations” exceeding a specified threshold of assets or turnover are supposed to seek prior approval of the Competition Commission of India (“**CCI**”) before they are consummated.

In this hotline, we set out briefly the revisions proposed by the Revision Circulars, along with our thoughts on these amendments.

AMENDMENTS WITHIN THE REVISION CIRCULARS

(i) Revised thresholds for De Minimis Target Exemption

According to the previous notification issued by the Central Government on March 27, 2017,[2] the De Minimis Target Exemption provided that in the event that the assets or turnover of the target enterprise forming part of a “combination” are less than either of: (i) assets of less than INR 350 crore (i.e. approximately USD 42 million); or (ii) turnover of less than INR 1,000 crore (i.e. approximately USD 121 million), the transaction would not be subject to prior approval of the CCI. This notification was extended for a period of 5 years on March 16, 2022.[3]

The Revision Circulars provide that the De Minimis Target Exemption will now be available in case the assets or turnover of the target enterprise are less than either of the following revised thresholds: (i) assets of less than INR 450 crore (i.e. approximately USD 54 million); or (ii) turnover of less than 1,250 crore (i.e. approximately USD 151 million).

A tabular representation of the changes in the thresholds is as follows:

OLD		
	INR (Crores)	USD (approx. Million)
Assets	350	42
Turnover	1000	121
NEW		
	INR (Crores)	USD (approx. Million)
Assets	450	54
Turnover	1250	151

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It is to be noted that the revised thresholds are applicable for a period of two years from the date of its publication in the Official Gazette (i.e. until March 7, 2026).

(ii) Revised Section 5 Thresholds

Section 20(3) of the Act empowers the Central Government to assess and amend the value of assets and turnover set out within Section 5 of the Act, once every two years, based on "*the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies*".[4]

In furtherance of the powers granted by this provision, the Revision Circulars propose to enhance the Section 5 Thresholds by *"one hundred and fifty percent for the purposes of Section 5 of the said Act"* owing to *"wholesale price index and exchange rate of rupee".* It is imperative to note that the latest update to the Section 5 Thresholds was undertaken vide a circular released on March 4, 2016 ("**2016 Revision**").[5] The Revision Circulars envisage a 150% enhancement from the original language of the Act, as opposed to the 2016 Revision.

A tabular representation of this enhancement in the thresholds has been provided within a press release by the Ministry of Corporate Affairs,[6] and is as follows:

OLD[7]		
ENTERPRISE LEVEL		
	India	Worldwide with India Leg
Asset	INR 2,000 Crores	USD 1 Billion with at least INR 1,000 Crores in India
Turnover	INR 6,000 Crores	USD 3 Billion with at least INR 3,000 Crores in India
GROUP LEVEL		
	India	Worldwide with India Leg
Asset	INR 8,000 Crores	USD 4 Billion with at least INR 1,000 Crore in India
Turnover	INR 24,000 Crores	USD 12 Billion with at least INR 3,000 Crores in India
NEW		
ENTERPRISE LEVEL		
	India	Worldwide with India Leg
Asset	INR 2,500 Crores	USD 1.25 Billion with at least INR 1,250 Crores in India
Turnover	INR 7,500 Crores	USD 3.75 Billion with at least INR 3,750 Crores in India
GROUP LEVEL		
	India	Worldwide with India Leg
Asset	INR 10,000 Crores	USD 5 Billion with at least INR 1,250 Crores in India
Turnover	INR 30,000 Crores	USD 15 Billion with at least INR 3,750 Crores in India

CONCLUSION

The enhancements to the thresholds come in the backdrop of consistent efforts of the CCI and Central Government to revisit the existing antitrust regulations and framework in India. Certain key points warranting note from the Revision Circulars are as follows:

- Proportion of enhancements: While a *prima facie* reading of the language within the Revision Circulars would initially indicate that there has been a 150% enhancement of the Section 5 Thresholds, given that this enhancement has been done from the original language of the Act, it does not amount to an effective increase of 150% from the 2016 Revision.
- Impact of Revision Circulars in light of the Deal Value Threshold: The Competition (Amendment) Act, 2023 proposes to introduce a "deal value threshold", that would lead to mandatory notification of any transaction having

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a deal value greater than INR 2,000 crores (i.e. approximately USD 267 million) ("**Deal Value Threshold**").[8] In the current form of the Competition (Amendment) Act, 2023, the Deal Value Threshold is not subject to the De Minimis Target Exemption or any other exemptions under the Act. In light of the above, while there could be few cases which could get the benefit of revised Section 5 Thresholds, such cases may not be able to avail any exemption / proceed with the transaction without CCI approval in the event that they breach the Deal Value Threshold.

– Parina Muchhala, Anurag Shah and Nishchal Joshipura

You can direct your queries or comments to the authors.

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[1]Notification S.O. 1131 (E) No. 1074 dated March 7, 2024 ("**De Minimis Revision Circular**") and Notification S.O. 1130 (E) No. 1073 dated March 7, 2024 ("**Section 5 Revision Circular**").

[2]Notification S.O. 988 (E) No. 881 dated March 27, 2017.

[3]Notification S.O. 1193 (E) No. 1153 dated March 16, 2022.

[4]Section 20(3), Competition Act, 2002.

[5]Notification S. O. No. 675 (E) dated March 4, 2016.

[6]https://pib.gov.in/PressReleaseIframePage.aspx?PRID=2012821.

[7]These thresholds are as per the 2016 Revision.

[8]Section 6, Competition (Amendment) Act, 2023.
