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Analysing developments impacting business

INDIAN MERGER CONTROL THRESHOLDS INCREASED

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Introduction

The The Ministry of Corporate Affairs, Government of India (MCA) has released two important notifications which have increased the small target exemption thresholds and the thresholds under the parties and group tests under the Competition Act, 2002 (as amended) (Competition Act).

Small Target Exemption

The small target (also referred to as the *de minimis*) exemption has seen an upward revision from INR 350 crore (~USD 42 million) for asset value to INR 450 crore (~USD 54 million) and INR 1,000 crore (~USD 121 million) for turnover to INR 1,250 crore (~USD 151 million).

Going forward, if either the value of assets of a target in India is equal to or below INR 450 crore (~USD 54 million) or the turnover of the target in India is equal to or below INR 1,250 crore (~USD 151 million) in the immediately preceding financial year, such transactions would be exempt from notification requirements under the Act.

The revised exemption will be in place for a period of two years, i.e., until 6 March 2026.

Parties & Group Tests

The Competition Act sets out 8 distinct thresholds – based on assets or turnover of the parties (and group) to an acquisition, merger or amalgamation to determine whether a transaction requires an approval from the Competition Commission of India (CCI). While from the original thresholds provided in the Competition Act, the numbers have increased by 150%, by the latest notification, the parties and group tests see a 25% upward revision from the previous thresholds.

The table below provides a snapshot of the new thresholds as well as the previous thresholds for comparison.

Table: 1 | Direct Parties Test and Group Test in India

S. No.		Assets In India		Turnover in India
1.	Parties Test <i>For acquisitions, numbers for the acquirer and the target must be combined</i> <i>For asset acquisitions, numbers for the acquirer and the target asset must be combined</i>	INR 2,000 crore INR 2,500 crore	OR	INR 6,000 crore INR 7,500 crore

	<i>For mergers and amalgamations, the numbers pertaining to all the merging / amalgamating entities must be combined</i>	(~USD 302 million)		(~USD 906 million)
2.	Group Test <i>For acquisitions, mergers, and amalgamations – numbers for the target must be combined with the numbers of the entity to which the target will belong after the transaction</i> <i>For asset acquisitions, numbers for the target asset must be combined with the entity to which the target asset will belong after the transaction</i>	INR 8,000 crore INR 10,000 crore (~USD 1.2 billion)	OR	INR 24,000 crore INR 30,000 crore (~USD 3.6 billion)

Table 2 | Direct Parties Test and Group Test Worldwide and in India

S. No.		Assets In India (both must be met)			Turnover in India (both must be met)	
		Worldwide (inclusive of India)	Minimum in India		Worldwide (inclusive of India)	Minimum in India
1.	Parties Test <i>For acquisitions, numbers for the acquirer and the target must be combined</i> <i>For asset acquisitions, numbers for the acquirer and the target asset must be combined</i> <i>For mergers and amalgamations, the numbers pertaining to all the merging / amalgamating entities must be combined</i>	USD 1 billion USD 1.25 billion	INR 1,000 crore INR 1,250 crore (~USD 151 million)	OR	USD 3 billion USD 3.75 billion	INR 3,000 crore INR 3,750 crore (~USD 453 million)
2.	Group Test <i>For acquisitions, mergers, and amalgamations – numbers for the target must be combined with the numbers of the entity to which the target will belong to after the transaction</i> <i>For asset acquisitions, numbers for the target asset must be combined with the entity to which the target asset will belong after the transaction</i>	USD 4 billion USD 5 billion	INR 1,000 crore INR 1,250 crore (~USD 151 million)	OR	USD 12 billion USD 15 billion	INR 3,000 crore INR 3,750 crore (~USD 453 million)

Deal Value Threshold

As part of the amendments to the Competition Act in 2023, the Indian Parliament has also introduced a deal value threshold (DVT).

While DVT is awaiting enforcement through a notification by the MCA, once enforced, it will require transactions to seek an approval from the CCI if: (i) the deal is valued over INR 2,000

crore (-USD 241 million), and (ii) the target entity has "substantial business operations in India".

Critically, DVT will be in addition to the notification thresholds under Section 5 of the Act, and transactions covered under DVT cannot avail the *De Minimis* Exemption.

Conclusion

The decision by the MCA to increase the merger control thresholds is a positive step. This adjustment reflects the dynamic nature of the economic environment and accounts for increases in the wholesale price index and exchange rate of the Indian Rupee.

This change embodies the government's approach towards ease of doing business in India and underscores its commitment to foster a competitive yet business-friendly environment, promoting economic growth while ensuring fair competition in the marketplace.

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