



**Luthra and Luthra**  
LAW OFFICES INDIA

**COMPETITION LAW ALERT**

SPECIAL EDITION

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In the Special Edition of the Luthra and Luthra Law Offices India – ‘Competition Law Newsletter’, we have covered the latest set of developments in relation to the merger control regime of the Competition Commission of India (“**CCI**”). These developments are likely to have a far-reaching impact on M&A activity in India.

The developments relate to the enactment of various rules and enforcement of various provisions of the Competition (Amendment) Act, 2024 (“**Amendment Act**”) by the Ministry of Corporate Affairs (“**MCA**”) <sup>1</sup>. In addition to the above, the CCI has also notified the Competition Commission of India (Regulations), 2024 (“**Combination Regulations 2024**”).

The key aspects are provided below:

**(i) Enforcement of the Deal Value Threshold:**

The most significant development is the enforcement of the ‘Deal Value’ threshold (“**DVT**”). As per the DVT, any transaction wherein the ‘value of the transaction’ exceeds INR. 2000 crores (approx. USD 240 Million)<sup>2</sup> and the Target entity has ‘substantial business operations in India’<sup>3</sup> is required to be notified to the CCI for its prior approval.

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<sup>1</sup> The rules and enforcement of the provisions of the Amendment Act are in effect from 10 September 2024.

<sup>2</sup>As per Regulation 4 of the Combination Regulations 2024, broadly, the ‘value of transaction’ shall include every valuable consideration, whether direct or indirect or current or future, including but not limited to:

- a. Consideration for any covenant, undertaking, obligations or restrictions imposed on the seller or any other person.
- b. Consideration for all inter-connected steps and incidental transactions.
- c. Consideration payable during two from the date on which the transaction would come into effect for arrangements entered into as a part of the transaction or incidental thereto, for instance, technology assistance, licensing of IPRs etc.
- d. Consideration for call options and shares to be acquired assuming full exercise of such options;
- e. consideration payable (as per best estimates) based on the occurrence of a future event / outcome captured in the transaction documents.

<sup>3</sup> As per Regulation 4 of the Combination Regulations 2024, the target entity will be deemed to have substantial business operations in India, if:

- a. *for digital services*: the number of business users or end users in India is 10% or more of its total global number of such users; or



It is important to note that if a transaction fulfils the DVT threshold, the *de-minimis* exemption (as explained below) will not be available.

**(ii) Codification of the *de-minimis* thresholds:**

The *de-minimis* thresholds provide that a transaction does not need to be notified to the CCI, if the target entity in India has assets of less than INR. 450 crores (approx. USD 54 million ) or turnover of less than INR. 1250 crores (approx. USD 151 million )<sup>4</sup>. This exemption has now been codified in the Act. Interestingly, the revised definition of ‘turnover’ has also been enforced. Now, while calculating turnover for the purposes the *de-minimis* threshold, intra group sales, indirect taxes and all amounts generated through assets or business from customers outside India (export sales) have to be excluded.

**(iii) Exemption of certain categories of combinations**

The Competition (Criteria for Exemption of Combinations) Rules, 2024 (“**Exempted Combination Rules**”) exempt certain categories of combinations from notification requirements before the CCI. The Exempted Combination Rules replace the erstwhile Schedule I exemptions under the earlier Combination Regulations. Though this is a welcome step, the onus to satisfy the criteria laid thereunder will be challenging by the parties and may require guidance from the CCI. A few exemptions are provided below-

- a) **Solely as an investment:** Acquisitions of up to 25% shareholding of a target, not leading to an acquisition of control, provided that:
- i. The acquirer does not gain a right or ability to appoint a director or an observer on the board of the target.
  - ii. The acquirer does not gain the right or ability to access Commercially Sensitive Information (“**CSI**”) of the target;
  - iii. The transaction does not lead to any horizontal / vertical / complimentary activities between the activities of the acquirer or its group entities with that of the target and its downstream

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- b. its gross merchandise value for the period of twelve months preceding the relevant date in India is:
- i. 10% or more of its total global gross merchandise value, *and*
  - ii. more than INR. 500 crores (approx. USD 60 million ) (*this criteria shall not apply to digital services*); or
- c. its turnover during the preceding financial year in India is:
- i. 10% or more of its total global turnover derived from all the products and services, *and*
  - ii. more than INR. 500 crores (approx. USD 60 million ) (*this criteria shall not apply to digital services*).

<sup>4</sup> The financial thresholds provided herein have now been made a part of the Competition (Minimum Value of Assets or Turnover) Rules, 2024.



entities, provided that in case there are overlaps, the shareholding of the acquirer should remain less than 10%.

- b) **Incremental Acquisitions:** Increase in shareholding by an existing shareholder holding less than 25% (pre and post the transaction). However, such incremental acquisitions should not result in acquisition of control or provide the acquirer the right or ability to appoint a director or an observer on the board of the target or provide the acquirer with the right or ability to access CSI of the target for the first time<sup>5</sup>. Provided that if there are overlaps between the activities of the parties, then such incremental acquisition can be up to 5%<sup>6</sup>.
- c) **Ordinary Course of Business:** Acquisition of stock-in-trade, raw materials, stores and spares, trade receivables or other similar current assets that do not constitute business.
- d) **Intra Group transactions:** A merger or amalgamation of enterprises within the same group, provided that the transaction does not result in change in control.
- e) **Demergers:** If the resultant entity offers shares as consideration to the demerged entity.
- f) **Financial market transactions:** Acquisition of shares by a stockbroker or an underwriter insofar as their shareholding in the target remains below 25%. However, an acquisition of shares by a mutual fund is exempt insofar as their shareholding in the target remains below 10%.

#### (iv) Green Channel Rules

The Competition (Criteria of Combination) Rules, 2024 codify the green channel route wherein parties can file a notification form which shall be deemed approved on filing, however, to avail the green channel facility, there should be no horizontal / vertical / complementary overlaps between the acquirer group and its *affiliates* on one hand and the target and its *affiliates* on the other hand. As per the new rules, an enterprise shall be considered an 'affiliate' of another enterprise if the other enterprise has:

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<sup>5</sup> Except where the acquirer already has the right or ability to have a representation on the board of directors.

<sup>6</sup> It may be noted that the exemption will not be available in case there are overlaps and if the existing shareholding of the acquirer is less than 10% and the after the transaction the shareholding is more than 10%.



- a. 10% or more of the shareholding or voting rights in the affiliate; or
- b. Right or ability to have a representation on the board of directors of the enterprise either as a director or as an observer; or
- c. Right or ability to access commercially sensitive information of the affiliate.

#### (v) **Changes introduced in the Combination Regulations, 2024**

##### Shortened timelines for merger review process:

The timelines have been shortened from 30 working days to 30 calendar days for the CCI to form *prima facie* opinion if the transaction causes or is likely to cause Appreciable Adverse Effect on Competition in India. Further, the maximum review period has also been shortened from 210 calendar days to 150 calendar days.

##### Dilution of standstill obligations in open market purchases:

The Act dilutes the standstill obligation in acquisitions involving (a) an open offer; or (b) an acquisition of shares or securities on a stock exchange. The dilution is subject to (i) the parties notifying the CCI within 30 days from the date of acquisition of shares; (ii) the acquirer not exercising ownership or beneficial rights or voting rights till such time, the CCI approves the transaction. However, the acquirer is prohibited to exercise any influence on the target in any manner.

##### Increase in amount of filing Notification forms:

The filing fees has increased from INR. 20 lakhs (approx. USD 24,000) to INR. 30 lakhs (approx. USD 36,000) for Form I (Short Form) and from INR. 65 Lakhs (approx. USD 78,000) to INR. 90 lakhs (approx. USD 107,000) for Form II (Long Form).

With the advent of merger control 2.0, parties are expected to tread with caution and seek expert advice for transactions which are in the pipeline. Non-compliance of merger control norms pose significant risks for parties and it is expected that the CCI's media scanning teams will be more alert to catch transactions which have missed scrutiny.



*This newsletter is only for general informational purposes, and nothing in this edition of the newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to anything contained in this newsletter (or competition law in general), please feel free to contact G.R. Bhatia/ Arjun Nihal Singh, at the below mentioned coordinates. © Luthra and Luthra Law Offices India 2024. All rights reserved.*

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