

September 16, 2024

GOVERNMENT OF INDIA NOTIFIED SEVERAL PROVISIONS OF THE COMPETITION (AMENDMENT) ACT, 2023 along with the COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) AMENDMENT RULES, 2024 .

The Government of India, in exercise of its powers conferred by clause (a) of sub-section (2) of Section 63 of the Competition Act, 2002 (the "**Act**") and sub-section (1) and (2) of Section 469 read with section 233 and 234 of Companies Act, 2013 on September 9, 2024, issued notifications regarding merger control along with related rules and regulations. The Competition Commission of India (Combinations) Regulations, 2024 ("**Combination Regulations**"), The Competition (Minimum Value of Asset of Turnover) Rules, 2024 ("**De minimis Rules**"), Competition (Criteria for Combination) Rules, 2024 ("**Combinations Rules**") and Competition (Criteria for Exemption of Combination) Rules, 2024 which have come into effect from September 10, 2024, and Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024 ("**Amalgamation Rules**") which will come into effect on September 17, 2024.

The key changes brought by these merger control changes are as follows:

I. Introduction of Deal Value Threshold:

Value of transactions exceeding INR 2,000 crores are required to be notified to the Competition Commission of India ("**CCI**") for its prior approval provided, the target enterprise has 'substantial business operations' in India. It is to be noted that the scope of 'substantial business operations' as mentioned in the Regulation 4(2) of the Combination Regulations, which provides that for an enterprise to have substantial business operations in India if:

- for digital services provided, the number of its business users or end users in India is 10% or more of its total global number of such users; or
- its gross merchandise value for the period of 12 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; or
- 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.

However, in case of any digital services, the thresholds mentioned in (b)(ii) and (c)(ii).

II. Expedited merger review timelines:

Reduction in maximum timeframe from 210 days to 150 days for approval of combinations. In other words, the CCI would have a maximum of 150 days commencing from the day of notice of the proposed combination to either approve the combination or issue an order. However, there are several time exclusions built into the review timeline, which may effectively elongate this timeframe.

ABOUT THE FIRM

AKS Partners (formerly known as A.K. Singh & Co) is a law firm based in New Delhi (India) that provides a comprehensive range of legal services and solutions to domestic and international clients. The Firm offers a unique blend of the local knowledge to apply the regulatory, economic, political and cultural context to legal issues and develop case strategies.

We regularly handle technically challenging and complex multi-jurisdictional matters. Our team is spearheaded by one of the highly recognised lawyers with extensive experience in international dispute resolution and strong government and diplomatic backgrounds. This experience gives us the deepest understanding of the key decision points that are critical in navigating complex & complicated matters and managing government regulations.

COLLABORATIVE EFFORT BY:

- Ms. Payal Dayal – Corporate Partner (Practice Head – General Corporate, M&A, PE/VC)
- Ms. Shivani Wadhwa – Senior Associate
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III. Revised definition of "affiliate":

Under the new rules, the definition of "affiliate" has been revised, particularly for the purpose of assessing overlaps and determining eligibility for the Green Channel route. The revised definition now includes entities that:

- (a) hold 10% or more of the shareholding or voting rights of the enterprise, or
- (b) has the right or ability to access Commercially Sensitive Information ("CSI") of another enterprise, or
- (c) has the right or ability to have a representation on the Board of another enterprise, either as a board member or as an observer.

This change marks a significant departure from the previous criteria, which focused on the right or ability to exercise special rights not available to ordinary shareholders. The inclusion of CSI as a criterion represents a key shift in the assessment of affiliates under the new rules.

IV. Exemption for categories of combination:

As per the new rules, certain combinations are exempt from pre-notification to the CCI, which includes minority share acquisitions, intra-group transactions, bonus issues, stock splits, and creeping acquisitions, provided they do not result in a change in control. Acquisitions by stockbrokers, mutual funds, or underwriters are exempt if they do not exceed 25% voting rights of such target enterprise. Further incremental acquisitions up to 5% are exempt if control is not acquired. These rules aim to focus CCI's review on significant transactions impacting market competition while simplifying compliance for others.

The said rules also propose a uniform test of "change in control", which refer to a change along the spectrum of control.

VI. Green channels rules:

Under Section 6(4) read with Rule 3 of the Combinations Rules provide for Green Channel filings as a fast-track route for automatic approval of mergers and acquisitions if no overlaps exist between the parties. Under the said rules, the criteria for Green Channel eligibility provides that the parties to a combination may file under the green channel route if:

- (a) they do not produce or provide similar or identical or substitutable product or service; or
- (b) they are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in product or provision of service,-
 - (i) which are at different stage or level of production; or
 - (ii) which are complementary to each other.

VII Derogation from standstill for on-market transaction

Under the new rules, businesses can now request an exemption from the requirement to pause certain actions (standstill obligations under Section 6(2A) and Section 43A of the Act) during on-market transactions, such as stock market purchases or open offers if:

- (a) the notice of the acquisition is filed with the Commission within 30 days of the first purchase and in such manner as may be specified by regulations; and
- (b) the acquirer does not exercise any ownership or beneficial rights or interest in such shares or convertible securities including voting rights or any other distributions, except as may be specified by regulations, till the Commission approves such acquisition.

This allows such enterprises to take advantage of market opportunities while their deal is still being reviewed by the CCI. The acquirer can still receive financial benefits, like dividends, but must avoid influencing the target company in any way during this time.

VIII. Revision in the De-minimis thresholds:

The Section 5(e) of the Act read with the De minimis Rules codify the existing de minimis thresholds wherein a transaction need not be notified to the CCI for its prior approval, if the target has either assets of not more than INR 450 crore in India or turnover of not more than INR 1,250 Crore in India.

IX. RBI Approval for Mergers Between Foreign Holding Companies and Indian Subsidiaries

The Amalgamation Rules state that when a foreign holding company and its wholly-owned Indian subsidiary engage in a merger or amalgamation, they must both obtain prior approval from the Reserve Bank of India. Additionally, the Indian subsidiary must comply with Section 233 of the Companies Act, 2013. The Indian subsidiary is also required to apply to the Central Government under Section 233, and the provisions of Rule 25 will apply to the application.

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AWARDS & RECOGNITIONS



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