

Stop work on closing transactions that breach the Deal Value Thresholds

Introduction

The Competition Commission of India (**CCI**), in line with the gazette notification notified by the Ministry of Corporate Affairs (**MCA**) yesterday¹ and discussed in our alert [here](#), published the CCI (Combinations) Regulations, 2024 (**Merger Regulations**) earlier today. These will replace the existing CCI (Procedure in regard to the transactions of business relating to combinations) Regulations, 2011 (Combinations Regulations, 2011) (as amended).

The Merger Regulations implement the merger control related provisions of the Competition (Amendment) Act, 2023 (**Amendment Act**) and provide detailed guidance on the applicability of the deal value threshold (**DVT**).

We discuss the practical aspects of the DVT to deal making in this update in Q and A form:

I. What is the DVT?

The DVT is an additional jurisdictional threshold under the Amendment Act. If the transaction value crosses INR 20 billion (USD 240 million approx.), parties are required to seek approval from the CCI before closing the transaction.

II. Does the DVT apply only to deals signed on or after 10 September 2024?

No. It applies to transactions that may have been signed before 10 September 2024 and therefore, even to transactions that have been 'partly closed' or pending closing as on 10 September 2024.

Parties do need to recalibrate on the matter of whether your transaction meets the DVT in India for approval from the CCI.

III. Will I have violated the law if I have already moved towards closing of transactions executed before 10 September 2024 but have not closed?

No. The transition provisions under the Merger Regulations clearly exempt parties from the 'gun jumping' provisions of the Amendment Act² even if your transactions have achieved partial closing. But you do have to notify such transactions now.

IV. Does the DVT apply to global acquisitions?

*Yes. However, the DVT has a substantial business operations test (**SBO**) for global acquisitions involving targets in India.*

V. What is the SBO and does it apply to all sectors uniformly?

No. There is a carve out and a separate test for 'Digital Services'³ versus all other sectors.

In the case of Digital Services, SBO is breached if any of the following criteria are met:

- 10%+ of the total global business/end users must be based in India, or*
- 10%+ of the target's total gross merchandise value (**GMV**) is from India**, or*

¹ MCA Notification, F. No. Comp-05/4/2023-Comp-MCA dated 09 September 2024.

² Section 43A of the Competition Act, 2002 (as amended).

³ Digital service means the provision of a service or one or more pieces of digital content, or any other activity by means of internet whether for consideration or otherwise to a business user or an end user.

- c. 10%+ of the target's global turnover for the preceding financial year is from India.

Note: Business/end users to be determined basis average number of total users for 365 days preceding the Relevant Date⁴.

For sectors other than Digital Services, the SBO is applicable as follows:

- a. 10%+ of the target's total GMV is from India**; and the GMV in India is more than INR 500 crore (USD 60 million approx.); OR
- b. 10%+ of the target's total global turnover for the preceding financial year is from India; and the turnover is more than INR 500 crore (USD 60 million approx.)

*Note**:* the reference period for the GMV is 12 months preceding the Relevant Date.⁴

Please note that in case of Digital Services there is an express exclusion for the criterion of target's turnover in India being more than INR 500 crore (USD 60 million approx.).

VI. The target in my case meets the small target exemption i.e., its assets are less than INR 450 cr (USD 54.9 million or the turnover of the target is less than INR 1250 cr (USD 149.7 million)⁵.

The DVT will apply to transactions that were previously exempt under the small target exemption.

VII. What else should one know about the DVT?

- ▮ Parties are required to consider previous investments / acquisitions in the 'target' by the

acquirer or its group entity **during a two-year period preceding the Relevant Date** and the DVT includes consideration payable over a period of 2 years from the date a transaction comes into effect and includes incidental arrangements (such as technology assistance, usage rights, etc.).

- ▮ The DVT will be assumed to have been exceeded where the precise value or consideration of a transaction cannot be established with reasonable certainty.
- ▮ The 'best estimate' for determining DVT's applicability shall be the estimate of the board of directors or other approving authority. In the absence of which, the maximum amount payable shall be considered as the 'best estimate'.

VIII. Are there any other exemptions that are applicable in the event I breach the DVT. For e.g., I am acquiring less than 5% in the target, and I have no control rights, no board or observer seats, but the transaction value crosses the DVT. I am also not involved in a business that is horizontally, or vertically connected with the target's business, nor am I involved with a complementary business.

Parties would not need to notify a transaction that meets the exemptions under the Competition (Criteria for Exemption of Combinations) Rules, 2024 (**Exemption Rules**). The Exemption Rules list transactions that would be exempt from notification requirements.

Please await our detailed update on the Exemption Rules.

⁴ **Relevant Date** is the date on which the approval of the proposal relating to merger or amalgamation is accorded by the board of directors or the date of execution of agreement or the date of such other document for acquisition.

⁵ MCA Notification, F. No. Comp-05/4/2023-Comp-MCA dated 09 September 2024.

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