

## USHERING A NEW ERA OF INDIAN MERGER CONTROL REGIME

### Background

The Competition (Amendment) Act, 2023 (**Amendment Act**), introduced on April 11 2023 paved the way for a new era of competition law regime by introducing several changes to the Competition Act, 2002 (**Act**). The provisions were enforced in a phased manner between May 2023 and March 2024. On September 09 2024, the Ministry of Corporate Affairs (**MCA**) enforced the key change in merger control: the introduction of deal value thresholds. The DVT along with the following key changes (by way of rules) have been enforced: (i) shorter merger review timelines (ii) an updated set of transactions that are exempt from notification (iii) changes to the scope of what qualifies as a filing under Green Channel.

### 1. Deal Value Thresholds Introduced

The most significant change to the Indian merger control regime is the introduction of deal value thresholds (**DVT**). The provisions of the Amendment Act introducing DVT have now been enforced. A transaction with:

- a (global) deal value of INR 2,000 crores (~USD 267 million); and
- where the target has “substantial business operations” (**SBO**) in India,

will require notification to the Competition Commission of India (**CCI**), regardless of the revenue earned by the target in India or assets in India. While the CCI has issued draft regulations (read our update [here](#)), the final regulations are yet to be published. Stay tuned to this space for more updates on this!

### 2. Exempt Transactions

The MCA notified Competition (Criteria for Exemption of Combinations) Rules, 2024 (**Exemption Rules**) on 09 September 2024, to be enforced on 10 September 2024. The Rules provide categories of combinations that will be exempt from notification to the CCI - effectively replacing Schedule I of the existing Combination Regulations:

Pre-amendment	New Changes
<p><b>Share acquisitions by securities underwriters and stock brokers</b> were exempt in the ordinary course of their business.</p>	<p>Share acquisitions in the ordinary course of business by registered security underwriters and stock brokers are exempt, provided it does not entitle the acquirer to <b>more than 25%</b> shares / voting rights in the target.</p> <p>Share acquisitions in the ordinary course of business by registered mutual funds are exempt, provided it does not entitle the acquirer to <b>more than 10%</b> shares in the target.</p>
<p><b>Minority acquisitions</b></p> <ul style="list-style-type: none"> <li>■ Acquisitions of <b>less than 25%</b>; and</li> <li>■ Solely as an investment (<b>SAI</b>) or in the ordinary course of business (<b>OCB</b>); and</li> <li>■ Does not lead to an acquisition of control.</li> </ul> <p><b>Acquisitions deemed SAI if</b></p> <ul style="list-style-type: none"> <li>■ Shares/voting rights <b>less than 10%</b>; and</li> <li>■ No right greater than that of an ordinary shareholder under the Companies Act, 2013; and</li> <li>■ No right/ability to appoint a director; and</li> <li>■ No right to participate in management or intention to participate in the management of the target.</li> </ul>	<p>New acquisitions of <b>less than 10%</b> shares in a target exempt from notification where:</p> <ul style="list-style-type: none"> <li>■ No acquisition of control; and</li> <li>■ No director or observer right; and</li> <li>■ No access to the target’s commercially sensitive information (<b>CSI</b>). CSI is not defined.</li> </ul> <p>New acquisitions of <b>more than 10% and less than 25%</b> shares in a target exempt from notification where:</p> <ul style="list-style-type: none"> <li>■ No acquisition of control; and</li> <li>■ No director or observer right; and</li> <li>■ No access to the target’s CSI; and</li> <li>■ No horizontal, vertical, or complementary overlap between the acquirer group and the target.</li> </ul>
<p><b>Creeping acquisitions, up to 25%: not present in the old regime.</b></p>	<p>Incremental acquisitions in the target are exempt, where an existing shareholder maintains <b>less than 25%</b> of shares, provided, an acquirer does not:</p> <ul style="list-style-type: none"> <li>■ acquire control; or</li> <li>■ Acquire a director / observer right; or; gain CSI (except where the acquirer already has director / observer right); or</li> </ul> <p>In case of overlapping businesses, acquisitions of <b>upto 5%</b> are exempt where:</p> <ul style="list-style-type: none"> <li>■ an acquirer does not acquire control; and</li> <li>■ does not acquire CSI (except where the acquirer already has director / observer right); and</li> <li>■ the acquirer does not move from holding &lt;10% to more than 10% of shares in the target.</li> </ul>
<p><b>Incremental share acquisitions:</b></p> <ul style="list-style-type: none"> <li>• More than 25% but less than 50%; and</li> </ul>	<p>Incremental share acquisitions in this range are exempt as long as there is “no change in control.” This is consistent with CCI’s</p>

<ul style="list-style-type: none"> <li>More than 50% were exempt, so long as there was no acquisition of sole or joint control or transfer from joint to sole control, respectively.</li> </ul>	decisional practice.
<p><b>Asset acquisitions are exempt, if:</b></p> <ul style="list-style-type: none"> <li>Unrelated to the acquirer's business, solely as investment or OCB; and</li> <li>Not substantial business operations of the target; and</li> <li>≠ control of the target</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>Acquisition is of current assets (e.g, stock-in trade, raw materials, trade receivables)</li> </ul>	<p>Asset acquisitions are exempt:</p> <ol style="list-style-type: none"> <li>in ordinary course of business - only when current assets (e.g, stock-in trade, raw materials, trade receivables) are acquired.</li> <li>made SAI or unrelated to the acquirer's business - <i>if</i> it is not a substantial business operation of the target and does not lead to control of the target whose assets are being acquired.</li> </ol>
<p><b>Acquisition of shares for:</b></p> <ul style="list-style-type: none"> <li>Bonus Issue/ Stock Splits /Consolidation/Buy-Back /Rights issue AND</li> <li>≠ acquisition of control</li> </ul>	Bonus Issue/ Stock Splits/ Consolidation/ Buy-Back/ Rights issue are exempt, provided there is no "change" in control, i.e. does not result in acquisitions crossing 25%, 50% or 75% shares / voting rights threshold.
<p><b>Intra-group acquisition of shares / voting rights / assets</b></p> <ul style="list-style-type: none"> <li>Acquirer and target are in the same group <i>unless</i> the target is jointly controlled by an entity, not within the group</li> </ul>	<ul style="list-style-type: none"> <li>Only intra-group asset acquisitions are exempt provided there is no change in control.</li> </ul>
<p><b>Intra-group mergers and amalgamations</b></p> <ul style="list-style-type: none"> <li>Merger/ amalgamation where one entity has <b>more than 50%</b> shares of the other entity; or</li> <li><b>50% or more</b> shares of merging entities are held by entities in the same group; and</li> <li>it does not result in change from joint control to sole control</li> </ul>	<ul style="list-style-type: none"> <li>Intra-group mergers are exempt irrespective of the shares/voting rights held in the merging entities (group means where one enterprise has (i) <b>26% or more</b> shares, (ii) the right to appoint <b>more than 50%</b> of the board; or (iii) the right to control and manage the affairs of the enterprise, including the ability to exert material influence)</li> <li>Provided no "change" in control.</li> </ul>
<p><b>Acquisition by a CCI approved purchaser under a modification/ divestment/ remedies order.</b></p>	Remains unchanged.
<p><b>Mirrored Demerger:</b> Not present in the old regime.</p>	Exempts demergers and consequent issuance of shares by resultant company, where issuance of shares is in the same proportion of shares held in the demerged company, prior to the demerger, except for discharge of fractional shares.
<p>If CCI is intimated of a tender offer, an amendment/ renewal to the tender offer need not be notified.</p>	No longer exempted.

### 3. The Competition (Criteria of Combination) Rules, 2024 (Green Channel Rules)

#### Amends to the Green Channel criteria

The Green Channel allows parties to notify the CCI of a transaction, while dispensing with the waiting period for approval. Approval is deemed to be granted, on filing. The notable amendment in the criteria for qualifying under the Green Channel Route in the Rules, is in the scope for mapping overlaps. To qualify for a green channel, the business of the **parties** to the transaction, their respective groups or their **affiliate** should not overlap or have any vertical or complementary linkages with the target and its downstream group entities.

Old criteria for an 'affiliate'	New criteria for an 'affiliate'
Direct or indirect holding of <b>10%</b> shares or more in such entity;	<b>10% or more</b> of the shares or voting rights of such entity;
Right or ability to nominate a director or observer in such entity;	Right or ability to have a representation on the board of directors of such entity either as a director or observer;
Right or ability to exercise any right (including any advantage of commercial nature with any of the party or its affiliates) that is not available to an ordinary shareholder.	Right or ability to access CSI of the entity.

Scope of **parties** are clarified as:

#### For Acquirer

the ultimate controlling person of the acquirer and other entities forming part of its group;

#### For Target

the enterprise being acquired and its downstream entities forming part of its group

#### For Merging entity/ Amalgamating entity

enterprises being merged or amalgamated, their controlling persons, and entities forming a part of their group.

#### 4. The Competition (Minimum Value of Assets or Turnover) Rules, 2024 (*De Minimis Rules*)

The *De Minimis* Rules replicates the de minimis thresholds as set out in the notification passed by the MCA on 7 March 2024 (**DME Notification**). The [DME Notification](#) provided that a transaction would be exempt from notification to the CCI if the target asset / target entity / merging entity / amalgamating entity has assets of not more than INR 450 crores (~USD 53.6 million) in India **or** turnover of not more than INR 1250 crores (~USD 149 million) in India (**DME**).

The *De Minimis* Rules therefore codify the de minimis thresholds set out in the DME Notification, since the Amendment Act had incorporated the DME into the statute itself.

