



## Indian merger regulation: coming soon?



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It appears that the Government of India could be taking steps towards giving effect to the Indian merger regulation regime under the *Competition Act, 2002* (Competition Act).

The provisions of the Competition Act relating to anti-competitive agreements and the abuse of dominance came into force on 20 May 2009 and the Competition Commission of India (CCI) has since gained momentum in its functioning, issuing notices, hearing parties and even appearing in appeals against its decisions before the Competition Appellate Tribunal (COMPAT) and filing appeals before the Supreme Court of India.

Indian merger regulation, of course, faced very strong opposition from Indian industry and also parts of the international legal and industrial fraternity. It was argued that the thresholds bringing M&A activity under the purview of the Competition Act were too low, and that the time allowed for the CCI to arrive at its final decision stretched to a rather long, tedious and unacceptable 210 days.

The Hindustan Times has reported statements by the Honourable Minister for Corporate Affairs that there would be a rationalisation of the provisions of Sections 5 and 6 of the Competition Act, and that the outer limit of 210 days would be reduced to 180 days. It has also been reported that certain M&A activity would be cleared even if it qualifies under the currently prescribed thresholds of a combined turnover of INR 3000 crores (approximately US\$676.3 million) or where the combined network of the entities is INR 1000 crores (approximately US\$225.4 million). It is also proposed that when the turnover of the smaller company is less than INR 750 crores (approximately US\$169 million) or where its network is under INR 250 crores (approximately US\$56.3 million), there would be no need for the parties to apply for approval to the CCI.

Are these the beginnings for an 'easy mergers' regime that the Indian industry has been urging the Government of India to consider? Even if so, clarification may be required. It is, for instance, not yet clear as to whether or not the proposed revised waiting period would be based upon "business" or "calendar" days. If it is construed as being business days, then 180 days would still be quite a long waiting period. At present, certain provisions of the Competition Act and regulations of the CCI seem conflicted with respect to whether the time periods contemplated for the various steps in the merger regulation process imply working or calendar days.

Other questions remain. Will the proposed Ordinance (which is Presidential law awaiting approval by Parliament in its next session) also rationalise other aspects of the merger regulation regime under the Competition Act, including the likely confusion on the aspect of calculating the time period for the merger process? Will the proposed Ordinance also provide clarifications on whether 'creeping acquisitions' (limited to 5 percent per financial year when promoter holding is between 55 percent and 75 percent) by a promoter under the *Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997* fall under a simpler scheme for notification? Perhaps the Ordinance will provide clarification on whether 'joint ventures' would also fall within the purview of merger regulation? And what about assets buy-outs or acquisitions of distressed or sick companies? Will the Government of India also address these other concerns of the stakeholders who are in continuous discussions with the policymakers? All of this remains to be seen.

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