

March 2016

REVISED THRESHOLDS FOR COMBINATION REGULATIONS

The Ministry of Corporate Affairs, Government of India (“**MCA**”) has recently brought in significant changes to the merger control thresholds through three notifications. A gist of the notifications is given below:

1. EXEMPTION OF ‘GROUP’

(Notification number S.O. 673(E) dated 04 March 2016)

Background

The Competition Act, 2002 (“**Act**”) provides that any person or enterprise, which proposes to enter into a Combination (as defined under section 5 of the Act) is required to give a notice under Section 6 of the Act to the Competition Commission of India (“**CCI**”) disclosing the details of the proposed Combination in accordance with the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011.

The MCA had vide its notification S. O. 481 (E) dated March 4, 2011 exempted a ‘Group’ exercising less than 50% (fifty percent) of the voting rights in other enterprises from the provisions of section 5 of the Act for a period of 5 (five) years (till March 03, 2016) .

Update

The MCA has vide its notification number S.O. 673(E) dated 04 March 2016 extended the exemption of such ‘Group’ for a further period of 5 (five) years from the date of the notification (till 3 March 2021).

2. REVISION OF TARGET BASED THRESHOLDS

(Notification number S.O. 674(E) dated 04 March 2016)

Background

The MCA had vide its notification number S.O. 482 (E) dated March 04, 2011, exempted transactions where enterprises whose control, shares and voting rights or assets were being acquired had an asset value of not more than INR 2500 million (Indian Rupees two thousand five hundred million) or a turnover of not more than INR 7500 million (Rupees seven thousand five hundred million) from the provisions of section 5 of the Act for a period of 5 years (till March 03, 2016).

Update

The MCA has vide its notification number S.O. 674(E) dated 04 March 2016, revised the target based thresholds and extended the validity of the said exemption for notification of transactions to CCI seeking its approval under section 5 of the Act.

Now an enterprise whose control, shares, voting rights or assets are being acquired, is exempt from filing a notification with CCI if it has assets of value not more than INR 3500 million (Indian Rupees three thousand five hundred million) or turnover of not more than INR 10,000 million (Indian Rupees ten thousand million). This exemption is also valid for a period of 5 years from the date of notification (till March 03, 2021).

3. REVISED THRESHOLDS FOR NOTIFICATION UNDER SECTION 5

(Notification number S.O. 675(E) dated 04 March 2016)

Background

Section 5 of the Act sets out specific assets and turnover thresholds limits so as to determine whether or not any:

- a) acquisition of control, shares, voting rights or assets by an acquirer; or
- b) acquisition of control of an enterprise by a person who directly or indirectly controls another enterprise engaged in production, distribution or trading of similar, identical or substitutable goods or services; or
- c) any merger or amalgamation,

qualifies as a “combination” within meaning of Section 5 of the Act itself.

The minimum thresholds as set out under Section 5 of the Act in respect of all the three aforementioned categories are tabulated below:

In India				
	Assets (INR)		Turnover (INR)	
Individual	10,000 million		30,000 million	
Group	40,000 million		120,000 million	
In India and Outside India				
	Assets		Turnover	
	Total (USD)	Min. aggregate in India (INR)	Total (USD)	Min. aggregate in India (INR)
Individual	500 million	5,000 million	1,500 million	15,000 million
Group	2,000 million	5,000 million	6,000 million	15,000 million

Subsequently, the MCA had vide its notification number S.O. 480 (E) dated March 04, 2011 enhanced the value of assets and turnover as laid down under section 5 of the Act by 50% (fifty percent) (“**2011 Notification**”).

Update

The MCA has now, vide its notification number S.O. 675(E) dated 04 March 2016, enhanced the value of assets and turnover as laid down under section 5 of the Act by 100% (one hundred percent).

Pursuant to the abovementioned notification, the revised thresholds under section 5 of the Act stand as:

In India				
	Assets (INR)		Turnover (INR)	
Individual	20,000 million		60,000 million	
Group	80,000 million		240,000 million	
In India and Outside India				
	Assets		Turnover	
	Total (USD)	Min. aggregate in India (INR)	Total (USD)	Min. aggregate in India (INR)
Individual	1,000 million	10,000 million	3,000 million	30,000 million
Group	4,000 million	10,000 million	12,000 million	30,000 million

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The extension of the exemptions in respect of the target level thresholds and 'Groups', and the increase in the statutory thresholds for the purpose of determining a 'combination', are a welcome move given the present business environment, inflation and other factors.

There remains some confusion as to whether the 100% increase in the statutory thresholds is based on the figures as specified in the Act, or as specified under the earlier 2011 Notification. The industry view, based on informal discussion and reasonable assumption, is that the 100% increase should be applied to the original section 5 thresholds as (a) the wording of the 2016 Notification makes a reference only to section 5 of the Act and not the 2011 Notification and (b) the 2011 Notification was not an amendment to the Act and therefore a reference to section 5 of the Act cannot be construed to include the increase in the thresholds prescribed by the 2011 Notification. A formal clarification would be helpful in imparting greater clarity to this notification.

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