

Merger Scrutiny under the Competition Act, 2002

IN BRIEF: The Government of India has notified certain sections relating to the regulation of mergers and acquisitions under the Competition Act, 2002 (“**Competition Act**”). The notification will come into effect from June 1, 2011. Thereafter, all mergers, acquisitions and amalgamations that meet certain thresholds prescribed under the Competition Act would require mandatory pre-notification to the Competition Commission of India (“**CCI**”), and will not come into effect until 210 days from the date of filing or by order of the CCI, whichever is earlier.

Partners Rupin Pawha and Shashi Mehta provide details of the latest developments.

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Introduction

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India has now joined several jurisdictions across the globe that require all big-ticket mergers and acquisitions to be cleared by competition regulators who assess whether the proposed transaction is good for competitive conditions in the market. For instance, Kraft Foods' hostile takeover of UK confectioner Cadbury required approval from the European Commission, as did Tata's acquisition of Corus. Henceforth, similar transactions involving Indian entities would also be regulated.

Which Proposed Transactions are Notifiable

The Competition Act (under Section 5) sets out certain thresholds to determine whether any merger, amalgamation or acquisition is notifiable or not. The thresholds relate to the size of the combining parties. The thresholds are summarized in the table below:

Operations	Either Acquirer or Target or Both have	Group has
<i>In India</i>	Assets of more than INR 1,500 crore or turnover of more than INR 4,500 crore.	Assets of more than INR 6,000 crore or turnover of more than INR 18,000 crore.
<i>Aggregate in India and outside India</i>	Assets of more than USD 750 million (<i>including</i> at least assets of INR 750 crore in India) or turnover of USD 2,250 million (<i>including</i> turnover of at least INR 2,250 crore in India)	Assets more than USD 3000 million (<i>including</i> assets of at least INR 750 crore in India) or turnover of USD 9000 million (<i>including</i> turnover of at least INR 2,250 crore in India)

When the Notification is to be Made

The Competition Act provides that parties must notify the CCI of the proposed transaction within 30 days of either: (a) the date of execution of any agreement or other document for acquisition; or (b) approval of the proposed transaction by the board of directors.

Waiting Period

Once a merger filing has been made to the CCI, the Competition Act mandates a maximum period of 210 days during which the parties are prohibited from implementing the transaction unless the CCI endorses it by passing an order or the 210 day period expires, whichever occurs sooner.

The CCI must review the proposed transaction and determine whether it causes an “*appreciable adverse effect*” on competition in India.

Penalties

Failure to notify a combination to the CCI can result in substantial financial penalties.