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Central Public Sector Enterprises Engaged in Oil and Gas Sector Exempted From Merger Control Scrutiny

In line with the slew of exemptions introduced this year, the Ministry of Corporate Affairs, Government of India (“MCA”) has exempted Central Public Sector Enterprises (“CPSEs”) operating in the Oil and Gas Sectors under the Petroleum Act, 1934 and the rules made thereunder or under the Oilfields (Regulation and Development) Act, 1948 and the rules made thereunder, along with their wholly or partly owned subsidiaries operating in the Oil and Gas Sectors, from the applicability of the merger control regime under the Competition Act, 2002 (“**Competition Act**”). The MCA on 22 November 2017 issued a notification (“**Notification**”) in this regard, which stipulates that Section 5 and Section 6 of the Competition Act, concerning the regulation of combinations, will not apply to combinations involving CPSEs operating in the Oil and Gas Sectors under the Petroleum Act, 1934 and the rules made thereunder or under the Oilfields (Regulation and Development) Act, 1948 and the rules made thereunder, along with their wholly or partly owned subsidiaries operating in the Oil and Gas Sectors. The exemption is applicable for a period of five years i.e. until 21 November 2022. The timing of the Notification is significant as the government, with the vision to strengthen CPSEs, is in process of consolidating Hindustan Petroleum Corporation (“**HPCL**”) with Oil and Natural Gas Corporation Limited (“**ONGC**”).

MCA has issued the present Notification, by virtue of its power under Section 54 of the Competition Act, which empowers the Central Government to exempt any class of enterprises from the application of the Competition Act, or any provision thereof, if such exemption is necessary in the interest of security of the State or public interest.

To cater to concerns emerging from the decisional practices of CCI in the past, MCA has previously exempted (i) Banking Company in respect of which Central Government has issued notification under Section 45 of the Banking Regulation Act, 1945 (Sick Banking Company); (ii) Regional Rural Banks in respect of which the Central Government has issued a notification under sub-section (1) of section 23A of the Regional Rural Banks Act, 1976; and (iii) all cases of reconstitution, transfer of the whole or any part thereof and amalgamation of nationalized banks, under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.

Given the peculiar circumstances, the Notification introduces a much needed exemption, as it takes away the requirement to seek the approval of CCI especially in the case of acquisition of HPCL by ONGC.

Issuance of exemption from competition laws is not a practice peculiar/exclusive to India. Jurisdictions which have a long history of competition laws, have also had provisions regarding exemptions that are brought into force from time to time.

Key Take Aways

The Notification is in sync with the vision of the government to strengthen the CPSEs through consolidations, mergers and acquisition. The Notification indicates an important step towards accomplishing vision articulated by the Government of India to create integrated public sector oil “major” with presence across the entire value chain in oil and gas sector which will be able to match the performance of international and domestic public sector oil and gas companies.

Disclaimer

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