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Indian Merger Control | 30 Day Filing Timeline Ceases to Exist!

Keeping with the slew of changes introduced this year, the Ministry of Corporate Affairs, Government of India (“MCA”) has yet again altered the Indian merger control regime, by doing away with the mandatory 30 day deadline for filings notifications, post the trigger event. This brings the Indian merger control regime in sync with most mature competition law regimes which do not have a fixed timeline within which a merger notice must be filed with the regulator.

By virtue of its powers under Section 54 of the Competition Act, 2002 (“Act”), which allows the Central Government to exempt the applicability of any of the provisions of the Act for a specified period, the MCA has introduced a notification on June 29, 2017 which exempts an enterprise, from filing a notice within 30 days, for a period of five years, i.e., until June 28, 2022 (“Notification”).

In sum, the Notification brings about the following changes:

- **No Deadline:** There is no longer an obligation to file the merger notification within 30 days of the trigger event. Transacting parties may choose to file at any time, after the trigger event – the only obligation being to receive the approval from the Competition Commission of India (“CCI”), prior to completion/consummation of the transaction.
- **No Trigger Document Debates:** To an extent, the debate over the relevant trigger document (particularly in case of an acquisition) now becomes a non-issue as parties will no longer have to fear the imposition of a penalty for incorrect determination of the triggering event. In the past, the CCI has penalized parties for not filing the notification within the 30 days from the trigger, such as signing of global agreements, communication to statutory authorities, etc. Therefore, from a penalty perspective, the identification of the correct trigger document is no longer significant, as the parties are free to file at any time after conclusively deciding to undertake the transaction. However, the risk of making a pre-mature filing, on the basis of a preliminary trigger document, continues to subsist.

In contrast, the Notification does not alter the following:

- **The Mandatory Regime:** All notifiable transactions must still be mandatorily notified to the CCI and any failure to do so will attract penalty under Section 43A of the Act. Section 43A empowers the CCI to impose a penalty of up to 1% of the combined assets or turnover, whichever is higher.
- **The Suspensory Regime:** The Notification clarifies that the standstill obligations under Section 6(2A) of the Act, which prohibit transacting parties from consummating a notifiable transaction until the CCI grants its approval or until 210 days have passed from the date of filing the notice, will continue to apply. Consequently, the parties continue to

be prohibited from consummating a transaction, in part or in entirety, until the transaction has been approved by the CCI.

The Notification introduces a much petitioned and needed exemption and is likely to come as a considerable relief for transacting parties, particularly in transactions requiring multi-jurisdictional filings. The Notification allows parties to sync the timing of their competition filings globally. Further, the Notification also reduces the risk of invalidation of merger notifications for not having provided the requisite information or for significant changes in the transaction structure, post the filing.

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