M&A deal value of over ₹2,000 cr comes under Competition Act

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The much-anticipated provision of the deal value threshold (DVT) under the Competition Amendment Act 2023, notified on Monday, seeks to capture mergers and acquisitions (M&As) where the deal value exceeds ₹2,000 crore or where the target company has substantial business operations in India.

The notification by the Ministry of Corporate Affairs will take effect from September 10. The accompanying regulations for this provision are expected to be issued soon by the Competition Commission of India (CCI).

By bringing deal value threshold in the ambit of the Competition Act, the government aims to capture mergers that might otherwise evade scrutiny under the traditional "asset" or turnover-based thresholds. This change has been done to keep pace with the evolving digital markets, where mergers often involve the sharing of big data and privacy concerns, among other things.

The government aims to scrutinise mergers that might escape under the traditional "asset" or turnover-based thresholds

"The decision to introduce DVT stems from CCI's inability to review several transactions in digital and other sectors that were not subject to reporting due to asset or turnover values falling below the jurisdictional thresholds/ target exemption. India will now follow developed countries like the US, Germany, Austria, and South Korea in implementing DVT," said Vaibhav Choukse, partner – Competition Law at JSA.

The MCA's regulation for M&As, including the DVT comes more than a year since the Competition Amendment Act 2023 became a law following the President's assent in April 2023.

Besides the DVT, the MCA has also notified that a company will be considered an affiliate of another enterprise if the latter has the right or ability to access commercially sensitive information, holds 10 per cent or more of the shareholding or voting rights, or has representation on the board as a director or observer.

"These provisions were part of the 2023 amendments but were pending notification. We expect the fine print to show up in the CCI's regulations, which have been the subject of stakeholder consultation over the past few months," said Avaantika Kakkar, partner (head of Competition Law) at Cyril Amarchand Mangaldas.

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New norms bring CCI on a par with global peers

Experts said the newly notified amendments herald the single-largest overhaul of the Indian merger control regime, which brings the CCI on par with global regulators like the US, Germany, Austria.

"However, the devil will lie in the details – the enabling regulations and the need for CCI to enhance capacity to keep up their efficient track record of clearing M&A deals will be key to ensure ease of doing business remains unimpacted," said Nisha Kaur Uberoi, partner and chair (Competition Law) at JSA.