

Reply to the Attention of Casey W. Halladay
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Our File No. 69459
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VIA EMAIL to tapanray@nic.in AND combinations@cci.gov.in

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Mr. Sh. Tapan Ray
Secretary
Ministry of Corporate Affairs
A-Wing, Shastri Bhawan
New Delhi, India 110001

Mr. Sudhir Mital
Member, Combinations Division
Competition Commission of India
B-Wing, HUDCO Vishala, 14, Bhikaji, Cama Place
New Delhi, India 110066

Dear Mr. Tapan Ray and Mr. Mital:

Re: Expiration of May 2011 “De Minimis” or “Small Target” Exemption

We write on behalf of the Merger Streamlining Group (the “Group”), whose membership consists of multinational firms with a common interest in promoting the efficient and effective review of international merger transactions.¹ The cornerstone of the Group’s activity has been to work with competition agencies and governments to help implement international best practices in merger control. In particular, the Group focuses on the *Recommended Practices for Merger Notification Procedures* (“Recommended Practices”) of the International Competition Network (“ICN”),² of which the Competition Commission of India (“CCI”) is an active member and currently a Co-Chair of the Merger Working Group.

¹ The current members of the MSG include BHP Billiton, Chevron, Cisco Systems, Danaher, GE, Novartis, Oracle, Procter & Gamble, SAB Miller, Siemens, and United Technologies.

² International Competition Network, *Recommended Practices for Merger Notification Procedures*, available online at <<http://www.internationalcompetitionnetwork.org/uploads/library/doc588.pdf>> [*Recommended Practices*].

The Group's work projects to date have included two major surveys on compliance with the *Recommended Practices*, as well as submissions to the European Commission, the U.S. Antitrust Modernization Commission, and to competition agencies and governments in over twenty other jurisdictions (e.g., Russia, China, Japan, Brazil, Chile, Peru, the European Union, the United Kingdom, Germany and Spain) including several submissions to Indian government agencies to promote reforms consistent with the *Recommended Practices*. Most recently, in April 2015, the Group provided a submission to the CCI regarding proposed amendments to India's Combination Regulations.³ The Group's last submission to the Ministry of Corporate Affairs was provided in February 2012.⁴

The Group applauds the Ministry of Corporate Affairs, the CCI and the Government of India's collective ongoing efforts to improve India's merger control regime. As described in greater detail below, we have identified two areas in which the Group believes that meaningful and positive changes can be made to further improve the regime. The Group is providing this letter in the spirit of constructive engagement, based on our members' very substantial experience with multinational merger transactions. We appreciate your consideration of our submissions.

1. **Extension of the “De Minimis” or “Small Target” Exemption**

As you know, in 2011, in an effort to bring a greater focus on local nexus to India's merger notification thresholds, the Ministry of Corporate Affairs introduced a “*de minimis*” or “small target” filing exemption whereby only transactions involving assets with substantial value or turnover in India would require merger filings to, and approvals from, the CCI.

We understand that this exemption is scheduled to expire on March 4, 2016. The Group would like to emphasize the importance of this exemption to both the CCI and the business community (both domestic and international). In the absence of structural changes to India's merger control thresholds, the exemption plays a key role in bringing India's thresholds towards greater conformity with international standards on local nexus such as those set out in the *Recommended Practices*.

In the absence of the exemption, the CCI is likely to receive — and devote substantial time and resources to reviewing — a substantial volume of merger notifications involving transactions with little local nexus to India and that are therefore unlikely to raise serious competitive concerns in India. As noted in the *Recommended Practices*, the use of thresholds that require the notification of transactions that are “*unlikely to result in appreciable competitive effects within [a country's] territory [...] imposes unnecessary transaction costs and*

³ See

<http://www.mcmillan.ca/files/MSG%20Submission%20to%20the%20Competition%20Commission%20of%20India.PDF>.

⁴ See http://mcmillan.ca/Files/140961_MSG%20Letter%20to%20Indian%20Government%20-%207%20February%202012.PDF.

*commitment of competition agency resources without any corresponding enforcement benefit.*⁵ Thus, both the CCI and the business community will benefit from the extension of the exemption.

The Group therefore urges Ministry of Corporate Affairs and the CCI to extend the current “*de minimis*” or “small target” filing exemption indefinitely beyond March 4, 2016.

2. Issues for Consideration in Future Public Consultations

We note that the CCI issued a notification dated January 7, 2016 which set out amendments to the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. We also understand that the CCI may be considering additional competition law reforms, and possibly further public consultation processes in connection with any such reforms. The Group commends the CCI’s ongoing efforts to improve India’s merger control regime, and its valuable historic commitment to consultation with stakeholders.

Consistent with our past submissions, the Group respectfully encourages the CCI to consider the ICN *Recommended Practices* generally, and the following issues in particular, in any future review of India’s merger control laws:

- (i) the need for greater local nexus requirements in India’s merger notification thresholds (in particular, the avoidance of thresholds based solely on the assets or revenues of the acquiror alone, or the combined activity of the acquiror’s “group” and target entity following the transaction);⁶
- (ii) the abolition of the current filing deadlines (which are very disruptive to complex global transactions and which are not necessary);⁷ and
- (iii) the unavailability of the “*de minimis*” or “small target” filing exemption for transactions other than asset-only acquisitions.

* * *

Thank you very much for considering the Group’s comments. We would be pleased to discuss this submission with you or your colleagues further, at your convenience.

⁵ See Recommended Practice I.B, Comment 1 (emphasis added).

⁶ See the Group’s 2015 submission, *supra* note 3, at 6-7.

⁷ *Ibid* at 7-8.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Casey W. Halladay'. The signature is stylized with several overlapping lines and a prominent horizontal stroke.

Casey W. Halladay

Copy to: Members of the Merger Streamlining Group