Multijurisdictional Merger Filings

NEWS AND RECENT DEVELOPMENTS

Cross-border mergers frequently trigger pre-closing antitrust reviews. Such reviews are complex and can be fraught with risk. With more than 90 countries now having obligatory premerger filing requirements, different substantive and procedural regimes can make a multijurisdictional transaction an expensive and time-consuming process.

It is common these days in both developed and emerging market economies to have merger control laws. Additionally, national competition authorities around the world are moving closer to a "common competition culture." Now that doing business often means doing business globally, preparation for multijurisdictional filings should be a routine part of the overall business strategies developed by companies and their advisers. As a result, organizations involved in mergers and acquisitions need to be aware of the breaking developments taking place in the various merger regimes around the world.

In Brief

United States. Annual adjustments of the Hart-Scott-Rodino thresholds, which govern what mergers or acquisitions must be reported to the US Federal Trade Commission and the Department of Justice have been released. According to the revised thresholds, notification of mergers or acquisitions will be required if the acquiring party will hold another person's assets or voting securities valued in excess of **$66.0 million** (previously $63.4 million), and

- The transaction involves one party with annual net sales or total assets of **$13.2 million** or more (previously $12.7 million) and another party with annual net sales or total assets of **$131.9 million** or more (previously $126.9 million), or
- The acquiring party will hold assets or voting securities of another person valued in excess of **$263.8 million** (previously $253.7 million).

For more information, see "Federal Trade Commission Announces New, Higher Hart-Scott-Rodino Thresholds."

China. China's Ministry of Commerce has issued new guidelines on its approach to those foreign acquisitions that raise questions of national security. For more information, see "New Review Procedures for Foreign Investment in China."

Netherlands. The country's Competition Authority will merge with consumer authority *Consumenten-autoriteit* and telecoms watchdog OPTA to create a single regulator before the end of 2012. ◆

Trends

European Union: On 10 March, at the International Bar Association meeting in Brussels, the EU Competition Commissioner Joaquín Almunia reflected on the possibility to include minority shareholdings in the scope of EU merger control. According to Commissioner Almunia, "The Merger Regulation does not apply to minority shareholders,

whereas some national systems—both in the EU and outside—make room for the review of such acquisitions. I have instructed my services to look into this issue and see whether it is significant enough for us to try and close this gap in EU merger control."

United Kingdom: On 16 March 2011, the Department for Business, Innovation and Skills (BIS) issued a consultation about reforms of the UK's competition regime. The consultation includes consideration of whether the UK filing regime should become mandatory, as well as a proposal to merge the Office of Fair Trading and the Competition Commission into a single Competition and Markets Authority. Comments can be sent until 13 June 2011 to the BIS department. ◆

Indian Merger Control

Under the draft regulation released on 4 March 2011, contemplated transactions that are likely to meet the following thresholds related to either (i) the acquirer and the target (the "Parties") or (ii) the group to which the target/merged entity will belong post-acquisition (the "Group") should consider a filing in India:

- The Parties have combined assets in India of rupees 1500 crores (approx. US$333 million) or combined turnover in India of rupees 4500 crores (approx. US$1 billion); or
- The Parties have combined worldwide assets of US$750 million or combined worldwide turnover of US$2.25 billion and combined assets in India of rupees 750 crores (approx. US$166 million) or combined turnover in India of rupees 2250 crores (approx. US$500 million); or
- The Group has assets in India of rupees 6000 crores (approx. US$1.3 billion) or turnover in India of rupees 18000 crores (approx. US$4 billion); or
- The Group has worldwide assets of US$3 billion or worldwide turnover of US$9 billion and assets in India of rupees 750 crores (approx. US$166 million) or turnover in India of rupees 2250 crores (approx. US$500 million).

The requirement to notify the Competition Commission of India is mandatory and the draft regulation imposes this duty on the acquirer. It is yet unclear whether a notification would also be mandatory where only the acquirer is active in India, as such a situation is not directly excluded by the thresholds.

This new regime is expected to come into effect on 1 June 2011 and all transactions that are not closed before 1 June 2011 are likely to be caught by the new rules. For more informations, see "No more 'cry wolf' — India's merger control provisions come into effect on 1 June 2011." ◆

Spanish Merger Control

Spain's Sustainable Economy Act of 15 February 2011 has introduced a *de minimis* exemption under the broad market-share threshold. As of 8 March 2011, concentrations that meet either of the following thresholds will have to be notified to the *Comisión Nacional de Competencia*:

- A market share of 30 percent or more of the relevant product market or geographic market within Spain is acquired or increased—however, concentrations are now exempted from merger control even when meeting the 30 percent threshold if (i) the aggregated turnover in Spain of the acquired company or assets does not exceed **EUR 10 million** in the last accounting year and (ii) the parties to the concentration do not have an **individual or aggregate market share of 50 percent or more** of a relevant product market or geographic market within Spain.
- The aggregated turnover in Spain of the parties to the concentration exceeds EUR 240 million in the last accounting year provided that at least two of the parties to the concentration each have an individual turnover exceeding EUR 60 million.

It is expected that the new *de minimis* exemption will very likely reduce the number of merger filings before the *Comisión Nacional de Competencia*. ◆

Of Related Interest

The Importance of Global Merger Filing Coordination—Global Strategies Webinar.
Please join us on April 27, 2011, as Mayer Brown attorneys Gerry O'Brien, Jens Peter Schmidt and Adrian Steel, discuss the benefits related to global merger filing coordination. ◆

For more information about any of the topics raised in this Legal Update, please contact any of the following lawyers.

EUROPE

Kiran Desai
kdesai@mayerbrown.com

Nathalie Jalabert-Doury
njalabertdoury@mayerbrown.com

Jens Peter Schmidt
jpschmidt@mayerbrown.com

Gillian Sproul
gsproul@mayerbrown.com

US

Scott Perlman
sperlman@mayerbrown.com

John Roberti
jroberti@mayerbrown.com

Adrian Steel
asteel@mayerbrown.com

ASIA

Hannah Ha
hannah.ha@mayerbrownjsm.com

John Hickin
john.hickin@mayerbrownjsm.com

BRAZIL

Bruno Werneck
Tauil & Chequer Advogados
bwerneck@mayerbrown.com