mcmillan

Reply to the Attention of	William Wu
Direct Line	+1.416.865.7187
Email Address	william.wu@mcmillan.ca
Our File No.	69459
Date	March 15, 2022

VIA Email to secy.mca@nic.in and cci-chairman@nic.in

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

Mr. Ashok Kumar Gupta
Chairperson
Competition Commission of India
10th Floor, Office Block - 1
Kidwai Nagar (East)
New Delhi, India 110023

Re: **Expiration and Renewal of the "Small Target" Exemption for Notifications under the *Competition Act***

We write on behalf of the Merger Streamlining Group ("MSG" or 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 Group was founded in 2001. 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, with particular focus on the *Recommended Practices for Merger Notification Procedures* ("*Recommended Practices*") of the International Competition Network ("ICN").[2] As you know, the Competition Commission of India ("CCI") is a longstanding and active ICN member.

The Group's work to date has included submissions to competition agencies and governments in more than twenty jurisdictions (*e.g.*, Australia, Brazil, Canada, Chile, China, European Union, France, Germany, India, Italy, Japan, Russia, Spain, the United Kingdom, the United States, and many others). For many years, the Group has closely followed the evolution of merger control rules in India, and its efforts have included numerous prior submissions to the

---

[1] Accenture, BHP, Chevron, Cisco Systems, Danaher, Oracle, Procter & Gamble, Siemens, and United Technologies Corporation.

[2] International Competition Network, *Recommended Practices for Merger Notification Procedures*, available online at <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/MWG_NPRecPractices2018.pdf >.

Ministry of Corporate Affairs (the "Ministry") and the CCI, including in 2012, 2015, 2016, 2018, 2019 and most recently in March 2020 in response to the invitation for public comments on the *Competition (Amendment) Bill, 2020*.

The "small target" exemption from the mandatory notification requirements under the *Competition Act* was last renewed in March 2017 and is scheduled to expire on March 28, 2022.

The Group previously made submissions to the Ministry and the CCI in 2016 and 2018, highlighting the key role that the "small target" exemption plays in bringing India's merger control regime into alignment with the *Recommended Practices* and the importance of having a permanent exemption to ensure legal certainty, predictability and efficiency in merger control. These prior submissions continue to represent the views of the Group, which draw upon its members' very substantial experience with multinational merger transactions. In particular:

- Without the exemption, CCI is likely to receive a significantly higher volume of merger filings involving transactions that have little local nexus to India and therefore are unlikely to raise competition concerns in India.

- CCI would be required to devote significant resources to review the notifications for such non-problematic transactions, which would not be an efficient use of CCI's limited enforcement resources.

- Requiring merger notifications for transactions with little local nexus to India would impose significant and unnecessary transaction costs for merging parties.

- The use of a time-limited exemption which requires periodic renewal lacks the level of legal certainty and predictability that is desirable in a well-designed merger control regime.

The Group's 2016 submission and its 2018 submission (see section I.(d) on page 5) are also enclosed as Schedule "A" and "B" for your reference.

Accordingly, the Group respectfully urges the Ministry and the CCI to make the "small target" exemption permanent. If this cannot be achieved in the short term, the Group recommends a long-term renewal for an additional period of at least five years.

*   *   *

Thank you very much for considering the Group's comments. We would be pleased to respond to any questions or discuss this submission with Ministry or CCI officials at your convenience.

Yours very truly,

William S. Wu

Copy to: Members of the Merger Streamlining Group

Schedule "A"

MSG Submission Letter dated February 11, 2016

See attached.

Schedule "B"

MSG Submission Letter dated December 21, 2018

See attached.