MERGER CONTROL HAS BEEN IN TUMULT around the world in recent years. The European Commission has tested the boundaries of its jurisdiction, ordering Illumina to divest its recently acquired unit Grail. That case now rests with the European Court of Justice. The UK's Competition and Markets Authority has intervened to force Meta's sale of Giphy, and the US Federal Trade Commission is battling (somewhat forlornly) to undo Microsoft's recent acquisition of Activision. Behind these headlines, contests have emerged over market definitions, approaches to remedies, and procedures. For the regulatory landscape around international M&A, predictability is in short supply.

INDIA MAKES its OWN SEAT at the TABLE

Global dealmakers have grown accustomed to managing simultaneously the approaches of US, EU, Chinese and British anti-trust regulators. Now, a new global anti-trust policeman may emerge in Delhi.
By Brunswick's **DAVID BLACKBURN.**

Yet, amid the excitement of these celebrated cases, one potentially far-reaching reform in the world of mergers has gone largely unnoticed. Earlier this year, India passed the Competition (Amendment) Act, giving the Competition Commission of India sharper teeth in what is the world's fastest-growing large economy. The law is especially attuned to the rising value of assets in India's digital marketplace.

Specifically, the law introduced a new "deal value threshold" (DVT) that would, in theory, trigger a review and possible intervention by the Indian competition agency. The Amendment Act left open several questions in relation to the workings of the DVT, which have since been clarified, to some extent, by draft regulations published in September.

The DVT will be triggered where the value of a transaction exceeds 2,000 crore (roughly $300 million) on the proviso that the target has "substantial business operations in India." The draft regulations define "substantial operations in India" as 10% or more in any one of three metrics: the target's global user, subscriber and customer base; gross merchandise value; or turnover in the previous year.

Business media in India and some Indian competition practitioners have been quick to assert that the changes give the Indian competition authorities more leverage in large deals, especially in the strategically important and politically totemic digital technology sector. The use of new metrics, such as user base rather than assets or profit to measure deal size, seems aimed at the digital economy in particular. But in addition to protecting national interests,

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the law is a clear assertion of India's ambitions as a global political and economic power alongside its status as an acknowledged digital superpower.

Viewed from New York, London or Frankfurt, these reforms may have a defensive or even protectionist hue. Competition rules exist, first and foremost, to provide mechanisms to protect consumers from detriment. India's consumers are becoming wealthier and increasingly an important consideration for the world's leading consumer-facing and B2B companies. The government of Prime Minister Narendra Modi, a matchless diagnostician of his electoral base's economic interests, is going to give its competition regulator sufficient power to protect those consumers and promote a dynamic and competitive economic environment.

Yet it would be a mistake to view these reforms and the political dynamics behind them as solely defensive. Indian political observers see the reforms as a play by a government with a keen interests in India's increasingly global role.

"India's place in the world is changing. Its markets and innovative companies are growing and becoming more important globally along with its diplomatic heft," says Suhail Nathani, Managing Partner of ELP, a leading Mumbai law firm. "One of the decisive political factors shaping policy is that the nation's rising status demands a say in the formation of global standards. India is seeking its rightful seat at the global table, and the introduction of the DVT is a step in the direction which India's competition and merger control regime is taking."

India's approach is not limited to jurisdiction; it seeks to reach into oversight, monitoring and enforcement. The draft regulations published in September 2023 provide options for parties to seek settlement with the regulator, including through the agreement of "behavioral changes" that will be monitored and enforced by the CCI.

The regulator's continued openness to behavioral remedies will assure some dealmakers who are trying to avoid providing structural solutions to every merger-related problem. India has a body of behavioral precedents from which to draw, but it remains to be seen what form acceptable behavioral remedies take in future; in particular, whether sui generis arrangements designed to support social and political goals find favor.

For global dealmakers, the larger challenge with the new rules is that they position the CCI and India's government as another global anti-trust policeman to stand alongside the FTC and the Department of Justice in the US, the European Commission, SAMR in China, and the CMA. There is some distance to travel before a global standard of merger control, arbitrated by the anti-trust equivalent of the World Trade Organization, emerges. Indeed, the competition between competition regulators, and the charting of a route to clearance on a deal, may become yet more complex with the arrival of India at the top table.

THE COMPETITION BETWEEN COMPETITION REGULATORS, AND THE CHARTING OF A ROUTE TO CLEARANCE ON A DEAL, MAY BECOME YET MORE COMPLEX WITH THE ARRIVAL OF INDIA AT THE TOP TABLE.

The lessons of recent regulatory interventions, such as Microsoft-Activision, Broadcom-VMware or Illumina-Grail, are being digested and no uniform set of insights from them can be applied to future cases. Anti-trust in general is a blend of law, high politics, geopolitics and industrial policy and, as such, merger control is an increasingly multilateral discussion. The world's leading competition regulators want to know what customers, competitors, suppliers, market and industry analysts, employees, trade unions and others think—about the deal rationale, the acquirer's track record and the future market dynamics (especially in tech-focused sectors), as well as any synergies arising from the deal.

Those headline cases also underline the good sense of a campaign approach in any deal. Companies need to assess stakeholder risk, as an adjunct to standard due diligence and the assessment of deal execution risk. A good campaign will anticipate potential anti-trust opposition, build up evidential bases to support a case and undermine objections, and plan how to use the deal announcement to manage those risks through outreach to strategically significant stakeholders. That list of potential stakeholders will now need to include India.

There are many "Indias"—in anti-trust, as in so many other areas of the nation's political, economic and cultural life. The political and policy debates of Delhi must be assessed alongside disparate economic concerns to be found in Mumbai, Bengaluru, Kolkata and so on. The depth of appreciation that sophisticated strategic buyers and investors bring to the diverse interests at play in the US, or EU's respective political economies, should need to be applied to India's tapestry. That rich and sensitive appreciation will inform the stakeholder management strategy, notifications and behavioral remedies, on which, ultimately, success will depend if the Amendment Act delivers its apparent political and geopolitical objectives. ◆

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