TOPICS

» Tricky FDI proposals set to get sole screen test

The Government is attempting to revive an old proposal for a comprehensive law to scan foreign investment in sectors such as telecommunications, defence, aviation and ports for potential security threats, unmindful of the resistance it has faced in the past. The National Security Council (NSC) has argued that a comprehensive legislation is necessary in view of the open investment policy that India follows at present.

An umbrella legislation, to be called National Security Exception Act and modelled on the Exon Florio Act of the US, would empower the government to block mergers and acquisitions and takeovers of Indian companies in sensitive sectors if there is a credible evidence that the investor is a threat to national security.

The National Security Exception Act would subject foreign participation in sensitive sectors and locations and from countries of concern to special security screening, both at the times of approval and during the period of operation. The Ministry of Finance would be the nodal body for implementing and monitoring the security guidelines while the Reserve Bank of India would be directed to follow a ☐threshold criterion☐ and apprise the nodal body in cases where foreign investment is above a particular amount. Foreign investors would also be made to submit a commitment to the government that they would not take any step that may harm India☐s security.

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» Competition Commission of India not at odds with cost-efficient cartels

With effect from May 20, 2009 the Government made it punishable for companies to enter anti-competitive agreements or abuse their market dominance, but the nuanced approach that will be followed by the regulator will make it easier for companies to defend such deals. The CCI is to soon start taking up cases where corporate behaviour stifles competition in the market. The Competition Commission of India (CCI) is unlikely to consider agreements among companies aimed at boosting efficiency as anti-competitive, unless it can be conclusively proved that such pacts hamper fair competition.

Agreements that will not be considered anti-competitive are called vertical agreements, which include deals between a manufacturer and a distributor or a retailer aimed at reducing cost and enhancing efficiency. Such agreements will not be considered as anti-competitive unless proved otherwise. The onus of proving that such agreements hamper competition will lie with the complainant and the burden of proof will not lie with the person charged with the offence.

However, another class of agreements called horizontal agreements, or a cartel, will be presumed as anti-competitive, with the onus of proving innocence lying with the company charged with cartelization. The kind of agreements that will come under the CCI□s radar broadly include those among companies to share markets or source of production, tying the sale of one product with the sale of another product, bid rigging, refusal to sell or insisting that a retailer cannot sell a product at a price lower than the one indicated on the product.

The other key provision that the government has enforced is abuse of dominance. This includes predatory pricing, limiting production of goods or provision of services, restricting the entry of new players or using the dominant position in one market to protect or to enter into another market.

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ARA LAW - Advocates & Solicitors

3/F Mahatma Gandhi Memorial Bldg.,
7, Netaji Subhash Road, Charni Road (West),
Mumbai - 400 002.
Tel: (+91 22) 6619 9800
Fax : (+91 22) 66199899
E-mail: mumbai@aralaw.com

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