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As of January 2013, what is known as probably the world heftiest merger control filing fee structure will be abolished. As a matter of fact, further to an ancillary addition to the so-called “Deregulation Decree”—sponsored by Prime Minister Mario Monti and passed by the Italian Parliament on March 22, 2012—Italy has abandoned a regime that had drawn bitter criticism among practitioners and companies alike.

The current, soon-to-be-old, system calculates fees as a percentage (1.2 percent) of the value of each merger transaction subject to filing in Italy, with a cap of EUR 60,000 and a floor of EUR 3,000. Pursuant thereof, *de facto*, all relevant concentrations which triggered Italian merger control rules also attracted the top EUR 60,000 amount. Unlike other jurisdictions where the fee is determined in direct relation to the amount of work required to assess the concentration (e.g. the German Bundeskartellamt, which weighs the amount of the filing fee after the case has been disposed of), the fee in Italy is set (and will be until the new rules take effect next year) regardless of the complexity of the deal and/or whether a serious investigation is warranted.

As irrational as it sounded, such a funding model had been envisaged as a way to sustain the Italian Antitrust Authority's (“IAA”) own budget. Given that mergers have a certain degree of predictability, the size of the filing fees was conceived so as to cover a significant portion of IAA's operating costs.

Needless to say, a filing fee envisaged as a pure revenue-making instrument makes the “easy” mergers pay for the “difficult” ones. Moreover, it places on mergers—and on companies wishing to consummate a concentration—the burden of supporting the IAA's enforcement activities, which, to a large extent, are instead dictated by cartels and monopolization cases.

In addition to the above problem, the “old” system creates an inherent conflict of interest, as any derogation eventually granted by the IAA as to certain types of transactions would have, in principle, placed at risk the sustainability of the IAA itself. For example, for years there has been a discussion as to whether Italian merger control rules should be amended so as to make sure that the two existing merger thresholds (Article 16 of Law 287 of 1990) are concurrent and not, as they are today, alternative. No change was ever approved. As a result, major companies operating in Italy which, by themselves, exceed the first turnover threshold, have to notify any concentration, even if the target's turnover in Italy is negligible.

All of the above will change as of Jan. 2013.

Under the new legislation:

1. *Repeal of the Filing Fee*: As of January 2013, merger-filing fees will be abolished altogether.

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2. *Amendment to the Merger Thresholds*: Likewise, as of January 2013, the turnover thresholds provided by Art. 16 of the Law 287 of 1990 shall no longer be considered cumulative, but rather alternative. As a consequence, corporations will have to notify a merger only if and when both the thresholds provided by the law are achieved (i.e. when both the combined aggregate domestic turnover of all corporations concerned and the target's aggregate domestic turnover exceed the turnover thresholds as yearly readjusted by the Authority). Therefore, according to the new cumulative thresholds, a considerable number of mergers which are now reportable to the IAA will, in the future, no longer require filing in Italy.

However, not all that shines is gold. A third, surely less pleasant, novelty has been introduced as well. As of January 2013, in order to contribute to the financing of the IAA and to compensate for the loss of income from repealing the filing fee, an annual tax will be levied on all corporations making more than EUR 50 million in turnover.

The tax shall be equivalent to the 0.008 percent of the income resulting in the last official financial accounts of the undertaking. A company making EUR 50,000,000 should e.g. pay a yearly tax of EUR 4,000. There is, however, a maximum amount of EUR 400,000.

At present, it is not totally clear how the tax will be applied. It is fair to speculate that the tax shall apply to all companies incorporated in Italy and that the “company's turnover” should be considered as the worldwide aggregate turnover, not necessarily the portion generated in Italy.

In sum, an overhaul of merger control indeed. But with a firm and ironic tenet: companies must somewhat pay for the pleasure of having their mergers reviewed.