



**Luthra *and* Luthra**  
LAW OFFICES INDIA

## COMPETITION LAW ALERT

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SPECIAL EDITION

### INSIDE

Features of the Competition (Amendment) Bill, 2022

In this special edition of the Luthra & Luthra Law Offices India (L&L) Competition Law Alert, we encapsulate the salient features of the Competition (Amendment) Bill, 2022 (Bill). The Bill seeks to amend the existing competition laws keeping in mind the fast-growing economy.

## The Competition (Amendment) Bill, 2022 introduced by the Government

As stated in our August edition of the newsletter, the Minister of State for Corporate Affairs introduced the Bill in the Lok Sabha on August 5, 2022. However, the Lok Sabha on August 17, 2022, has referred the Bill to the Standing Committee on Finance for examination and report within three months. This has resulted in a delay in the implementation of the Bill.

The Bill finds its footing from the report prepared by the high-level Competition Law Review Committee (CLRC) in 2019.

In this special edition of our newsletter, we have analyzed the key compartments of the Bill.

### Key changes on the enforcement side

#### a) Settlements and Commitments

The Bill has introduced the much-awaited mechanism for 'settlement' and 'commitment', allowing parties under investigation (for contraventions under Section 3(4) of the Act, or abuse of dominance under Section 4 of the Act) to offer commitments in respect of the alleged contravention or settle the matter with the Competition Commission

of India (CCI). This mechanism would not be available in case of hardcore cartels and other anti-competitive agreements between competitors (under Section 3(3) of the Act).

The Bill states that 'Commitments' will be considered between the start of an investigation and its completion, whereas 'Settlements' will be considered after the investigation Report is submitted by the Director General, CCI (DG), but before a final order is passed by the CCI. In both the cases, a formal application along with a fee, will have to be filed before the CCI by the opposite party. The Bill states that the informant (the complainant), the DG, as well as the opposite party will be heard on the proposals and the final order of the CCI adopting the settlement or commitment will not be appealable. The Bill also states that if a party fails to comply with the CCI's commitment/ settlement order or if it comes to the CCI's notice that the party did not make full and complete disclosure or there is a material change in the facts, the CCI can revoke its commitment/ settlement order. By way of a consequence, the party shall also be liable to pay legal costs up to INR 1 crore (approx. USD 127,000).

While the details on the working of these mechanisms will be published through regulations, this new mechanism is likely to have a major impact on the way cases are addressed before the CCI.

#### b) Hub and spoke cartels

The Bill expands the scope of hardcore cartels caught by Section 3(3) of the Act to include 'hub and spoke' arrangements. These are arrangements by parties

involved at different levels of the production chain. The Bill now formally prohibits such conduct.

**c) Introduction of limitation period**

The Bill introduces a limitation period of three years (from the date on which cause of action arose) to file an information with the CCI. However, the CCI is given the discretion to condone the delay.

**d) Expansion of the DG's powers**

The Bill expands the powers given to the DG by permitting the DG's office to (a) retain documents, information, papers, up to a period of 360 days; (b) examining on oath any officers, other employees and agents of the party; (c) summon and examine officers, employees, etc. of a company under investigation on oath, the Bill allows the DG to examine 'agents' on oath. 'Agents' include bankers, legal advisors, and auditors of a company under investigation.

**e) Changes in the leniency regime:**

The Bill, in line with mature jurisdictions like United Kingdom, United States of America, Singapore, has introduced the concept of leniency 'plus'. This allows a party that files for leniency in relation to one cartel and helps in exposing a separate cartel to the CCI to receive a reduction in penalty for both the existing and the newly revealed cartel.

The Bill seeks to strengthen the leniency program by increasing the burden on parties for failing to cooperate till the completion of proceedings. The CCI may consider these factors to reject a marker. The Bill also seeks to allow a party to withdraw a marker as well. However, the

DG / CCI may use the information in the withdrawn leniency application for the purposes of investigation.

**f) Calling for experts:**

The Bill permits parties to call upon experts in the field of economics, commerce, international trade, or any other discipline to provide their opinion before CCI

**g) Clarity on liability of individuals:**

The Bill clarifies that penalty under Section 48 shall mean up to 10% of the average of the income for the last three preceding financial years or in case in case of cartel cases, the penalty can go up to 10% of the income for each year of the continuance of the cartel.

**h) Pre – deposit for appeals from the CCI's final orders**

The Bill proposes a mandatory pre-deposit of 25% of the penalty imposed by the CCI before filing an appeal before the National Company Law Appellate Tribunal.

**Key changes on the Merger control side**

**i) Introduction of deal value thresholds**

Currently, the Act only prescribes asset and turnover based thresholds and if either test is met and no exemption is available, a notification is required to be filed before the CCI. The Bill proposes the introduction of a "deal value" threshold, so that transactions: (a) with a deal value of more than **INR 2,000 crore** (approx. **USD 252 million**); and (b) where either party has "substantial business operations in India", will require to be

notified in India. The CCI will issue regulations to determine the scope of 'substantial business operations. The deal value will include every valuable consideration (direct or indirect or deferred)

**j) Merger review timelines**

The Bill also seeks to reduce the merger review timelines. Currently, the CCI has 30 working days to arrive at its prima facie view on whether a transaction causes Appreciable Adverse Effect on Competition (**AAEC**) or not – this has now been reduced to 20 calendar days. It is also proposed to reduce the overall period of 210 calendar days for the CCI to arrive at a decision on a transaction to 150 calendar days and an additional thirty (30) calendar days would be given to the parties in case of furnishing other relevant information or removing defects from the notice already been filed.

**k) New Threshold of Control:**

The Bill seeks to amend the definition of control to "material influence". The CCI in practice has considered material influence to include factors such as shareholding, special rights, status and expertise of a person etc.

**l) Derogation of standstill obligations for open market purchases**

The Bill proposes to exempt combinations from the standstill obligations under Section 6(2A) of the Act, if the combinations involve: (a) an open offer; or (b) an acquisition of shares or securities, through a series of transactions on a stock exchange. The Bill implies that the acquirer, would be allowed to acquire shares but cannot

exercise any ownership or beneficial rights or voting rights or receive dividends / any other distributions, till the CCI approves such a transaction.

**m) Increase in penalty for making false statements**

The Bill seeks to enhance the penalties for providing false information or failing to furnish material information in relation to a combination from the INR 1 crore (approx. USD 127,000) to INR 5 crore (approx. USD 634,000).

This newsletter is only for general informational purposes, and nothing in this edition of newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts). However, should you have any queries, require any assistance, or clarifications with regard to *anything contained in this newsletter (or competition law in general)*, please feel free to contact Mr. G.R. Bhatia/ Mr. Arjun Nihal Singh, at the below mentioned coordinates. © Luthra & Luthra Law Offices India 2022. All rights reserved.

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