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Analysing developments impacting business

CCI PUBLISHES DRAFT REGULATIONS ON SETTLEMENT AND COMMITMENT MECHANISM

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The Competition (Amendment) Act, 2023 (CAA23) which significantly amended the Competition Act, 2002 (Act) was enacted on 11 April 2023. A detailed overview of the CAA23 along with our views are available [here](#), [here](#), [here](#) and [here](#). The CAA23 is being implemented in a staggered manner. Certain provisions which do not require supporting regulations for their implementation were notified on 18 May 2023, while the remaining provisions are expected to be notified once the Competition Commission of India (CCI) finalises the attendant regulations.

On 23 August 2023, the CCI released the draft (i) The Competition Commission of India (Settlement) Regulations, 2023 (**Draft Settlement Regulations**)¹ and (ii) The Competition Commission of India (Commitment) Regulations, 2023 (**Draft Commitment Regulations**)² for public consultation - the first in a series of expected regulations.

Discussed below are the key highlights of the Draft Settlement Regulations and Draft Commitment Regulations.

[Filing of settlement and commitment applications](#)

Who can file?

A commitment application can be filed by a party against whom an investigation has commenced in relation to (i) an abuse of dominant position and / or (ii) anticompetitive vertical agreement provided the investigation is not complete.

A settlement application can be filed by a party against whom the Director General (DG) (i.e. investigative wing of the CCI) has found a violation of (i) an abuse of dominant position and / or (ii) anticompetitive vertical agreement.

When?

A commitment application can be filed within 45 days of the receipt of the investigation order passed by the CCI.

A settlement application can be filed within 45 days of the receipt of the DG's investigation report.

¹ The Draft Settlement Regulations can be accessed [here](#)

² The Draft Commitment Regulations can be accessed [here](#)

What should a settlement and commitment application contain?

In addition to fact-based disclosures, such as, a full and true disclosure of material facts, past contraventions of the Act, and ongoing CCI proceedings, a settlement application and commitment application must include the following details:

- i. manner in which the proposal in the application will address the alleged contravention,
- ii. competition concerns, and
- iii. manner of implementation and monitoring of the proposal in the application.

What is the statutory filing fee?

The applicable statutory fee will depend on the turnover of the settlement applicant or the commitment applicant (as the case may be) in the preceding financial year, and ranges from INR 500,000 to INR 5,000,000.

Consideration of the commitment or settlement application

What is the procedure to be followed by the CCI during the consideration of a settlement application or commitment application?

As a first step, the CCI will form a *prima facie* opinion as to its satisfaction with the settlement application or commitment application (as the case may be). In case the CCI is not satisfied, the applicant, may submit a revised proposal within 15 days. Thereafter, the CCI shall invite third parties (including counter parties and the DG) to submit their opinion within 21 days.

After consideration of the third-party opinions, the CCI may do the following:

- i. agree to the proposal and close proceedings qua the applicant; or
- ii. reject the proposal; or
- iii. seek a revised proposal.

If the proposal is rejected, the CCI shall proceed with its inquiry under the Act, after giving the settlement applicant or commitment applicant (as the case may be) an opportunity to be heard.

For settlements, the proceedings shall be concluded within 120 days of the receipt of the application, subject to extensions for reasons to be recorded.

For commitments, the proceedings shall be concluded within 90 days of the receipt of the application, subject to extensions for reasons to be recorded.

What are the factors to be considered by the CCI while deciding the outcome?

The CCI will consider the following factors while confirming / rejecting a settlement application or commitment application:

- whether the alleged contraventions have been addressed by the proposal;
- whether the proposal can be implemented effectively and expeditiously;

- ease of monitoring implementation of the proposal;
- whether the terms of the proposal make the markets more contestable; and
- whether the applicant has already modified its conduct and policies which have been found to be in prima facie violation of the Act.

How will the settlement amount be determined?

- For arriving at the settlement amount, the CCI will be guided by the penalty guidelines which are to yet to be published.
- The settlement amount may extend up to the maximum penalty that would have otherwise been leviable for a contravention of the Act.
- The CCI may offer a settlement discount of up to 15% depending on mitigating factors such as, extent of cooperation and the nature of disclosures volunteered by the settlement applicant.

There is no amount payable in relation to commitments.

How will the settlement order or commitment order be implemented?

- In certain cases, the CCI may appoint independent agencies (such as accounting firms, law firms, etc.) to oversee implementation.

Will the settlement or commitment affect follow-on damages case?

- Although a settlement will not prejudice the proceedings for damages, the Draft Settlement Regulations state that a settlement order shall not be construed as a finding of contravention. This means that in case of follow-on damages, applicants may face challenges in demonstrating loss qua a settlement applicant.
- As for commitments, since (i) commitment orders shall be passed before the submission of the DG investigation report and (ii) there shall be no admission of guilt, there arises no question of follow-on damages.

Miscellaneous

- The CCI will be empowered to use disclosures provided under a settlement application or commitment application against the respective applicants or any other parties to the inquiry who are not part of the settlement or commitment proceedings.
- In certain cases, the settlement application or the commitment application (as the case may be) may be allowed in relation to some (and not all) of the contraventions noted in the DG's investigation report and the investigation *qua* remaining contraventions shall continue.

Comment

The Draft Regulations pave way for implementing the CAA23's newly introduced settlement and commitment provisions to "short circuit" vertical restraints and abuse of dominance

proceedings. The Draft Regulations will undergo extensive consultation and it is hoped that they will eventually reflect and address various stakeholders' views. Ultimately, it will be important that the settlement and commitment regime remains a plausible alternative and is well-balanced, offering a win-win situation to both the CCI and businesses, while avoiding long spells of inquiries and litigation that often stretch for years.

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