



# Competition (Amendment) Act, 2023

## Salient Features

PRE-DEPOSIT FOR APPEALS  
HUB-AND-SPOKE CARTELS  
LENIENCY PLUS

COMMITMENT & SETTLEMENT  
FASTER M&A REVIEWS  
LIMITATION PERIOD

GUIDELINES

GREEN CHANNEL

CONTROL GROUP

OPEN MARKET TRANSACTIONS

DEAL VALUE

GLOBAL TURNOVER

DE MINIMIS

भारतीय प्रतिस्पर्धा आयोग  
Competition Commission of India

## Amendments So Far...



2007



Competition Appellate Tribunal (COMPAT) was established as Appellate Tribunal

2009



Unfair Trade Practices (UTPs) cases pending before NCDRC transferred to COMPAT

2017



COMPAT was replaced with NCLAT as Appellate Tribunal

## Competition (Amendment) Act, 2023 ('the Amendment Act')

### Timelines

August 2022

The Competition (Amendment) Bill, 2022, was introduced in the Parliament and was referred to the Parliamentary Standing Committee on Finance

December 2022

The Parliamentary Standing Committee submitted its report with recommendations

29 March 2023

The Bill was passed by the Lok Sabha

03 April 2023

The Bill was passed by the Rajya Sabha

11 April 2023

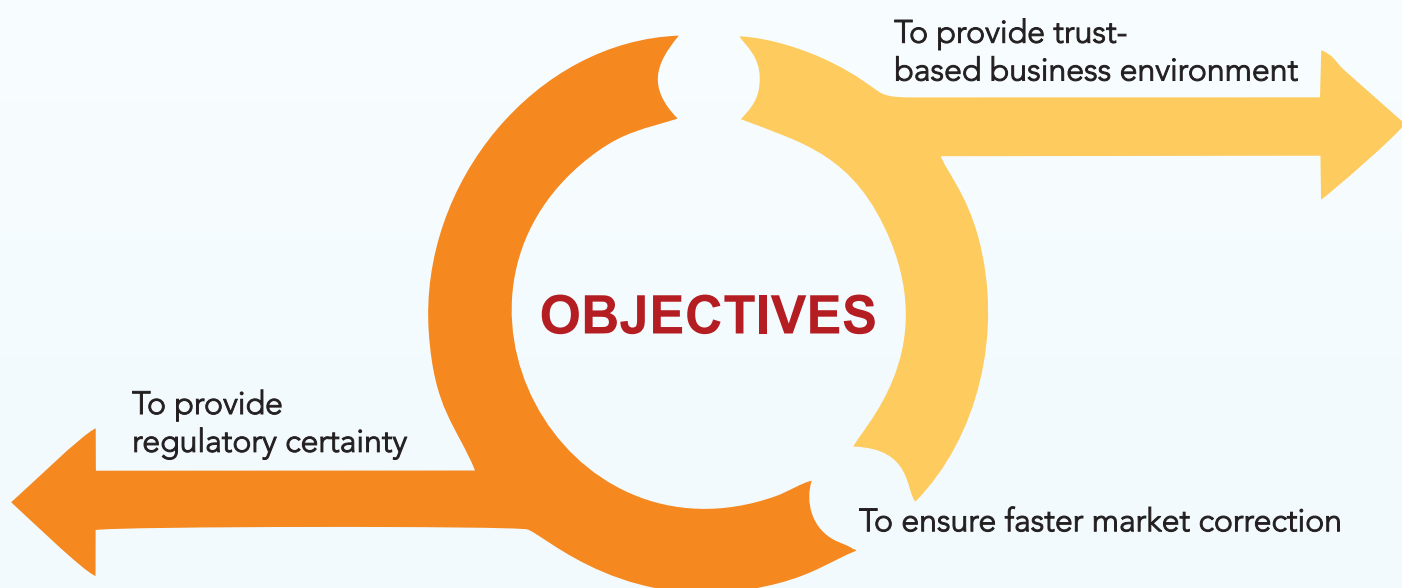
The Bill received the Presidential assent

## When Competition Amendment Act, 2023 will come into force?.....

- ▶ The Amendment Act comes into force on such date as the Central Government may, by notification, in the official gazette specify
- ▶ Different dates may be appointed for different provisions of this Act

## Need for amendments: Background .....

- ▶ Significant growth of Indian markets and a paradigm shift in the way businesses operate
- ▶ The Government of India constituted Competition Law Review Committee (CLRC) in 2018, to examine and suggest the modifications in the Competition Act, 2002
- ▶ CLRC submitted its recommendations to the Government in 2019
- ▶ After review of the recommendations proposed by CLRC and public consultations, amendments to the law were mooted
- ▶ The aim was to provide regulatory certainty and trust-based business environment



## The Competition (Amendment) Act 2023 – Key Amendments - At a Glance

Broadening the scope of anti-competitive agreements

Reduction in time-limit for review of M&As from 210 days to 150 days

Introduction of Deal Value as another criterion for notifying M&As

Limitation Period of 3 years for filing Information(s)

Penalty indexed to Global Turnover

Introduction of Settlement & Commitment framework for faster market correction

Hub-and-Spoke type arrangements brought under the presumptive rule of Appreciable Adverse Effect on Competition (AAEC)









Leniency Plus

Framing of Regulations after public consultations



Issuance of Guidelines

Appointment of the Director General by the Commission, with prior approval of Central Government

## Competition Amendment Act: Anti-Trust Enforcement

-  Broadening the scope of anti-competitive agreements
-  Limitation Period
-  Commitments and Settlements framework
-  Leniency Plus
-  'Hub and Spoke' Arrangements under presumptive rule of AAEC
-  Provision to Avoid Multiplicity of Proceedings
-  Penalties for contraventions to be indexed to Global Turnover
-  Provision Enabling Parties to Call Experts




### Introduction of Limitation Period

-  Introduction of limitation period of 3 years for filing Information/ Reference for anti-competitive agreements and abuse of dominant position
-  This would provide certainty to businesses/markets and facilitate ease of doing business




### Introduction of Settlements and Commitments Mechanism

The Amendment Act introduces a 'Settlement & Commitment' framework to reduce litigation

#### Settlement

-  The settlement mechanism would apply to alleged contraventions related to certain anti-competitive agreements and abuse of dominance
-  An application for settlement may be filed only after receipt of investigation report but prior to such time as may be prescribed by Regulations, before the passing of final order by the CCI
-  CCI may impose certain conditions which may include settlement amount

#### Commitment




-  The Commitment framework enables parties to offer commitments for certain type of anti-competitive agreements and abuse of dominance (as available for settlements)
-  An application for commitment may only be submitted after an inquiry has been initiated by CCI, but within such time (as may be prescribed by Regulations), prior to the receipt of investigation report by the party concerned
-  Empowers CCI to accept commitments on such terms and the manner of implementation & monitoring, as may be specified by Regulations

## Broadening the scope of anti-competitive agreements

The Amendment Act broadens the scope of the provisions of Section 3 of the Competition Act that deals with anti-competitive agreements

It provides for 'any other' types of agreements to be captured within the ambit of anti-competitive agreements

## Leniency Plus

-  The CCI can now grant additional leniency to an existing leniency applicant in lieu of "true and vital" disclosures vis-a-vis a separate undisclosed cartel
-  To encourage additional cartel disclosures by granting incentives to the disclosing party
-  May result in disclosure of more cartels during the course of investigations

## 'Hub-and-Spoke' Arrangements under presumptive rule of AAEC

The Amendment Act provides for presumption of Appreciable Adverse Effect on Competition (AAEC) against participants, who may not be engaged in identical or similar trade, to be part of the agreement under Section 3(3) if they participate or intend to participate in furtherance of such agreement

This would capture hub-and-spoke cartels within the presumptive framework of Appreciable Adverse Effect on Competition

## Provision to Avoid Multiplicity of Proceedings

The Amendment Act enables the Commission to not inquire into agreement referred to in Section 3 or conduct of an enterprise under Section 4, if:

- ▶ The same or substantially the same facts and issues raised in the information received under Section 19 or
- ▶ The reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order

## Provision Enabling Parties to Call Experts

The Amendment Act enables Parties to call upon experts from the fields of economics, commerce, international trade or from any other discipline to provide an expert opinion in connection with any matter related to a case.

## Competition Amendment Act: Merger Control

**Reduction of timelines  
for review of M&As**

**Deal Value  
Threshold (DVT)**

**De Minimis  
exemption**

**Changes in definition  
of  
'Control' & 'Group'**

**Explanation for  
computation of  
'Turnover'**

**Green Channel**

**Enabling provision to  
allow open market  
transactions**

## Reduction of overall time period

The Amendment Act provides for reduction of overall timeline for review of combinations (M&As) to 150 days, as against 210 days as presently provided

Timelines for prima facie opinion have been introduced in the Amendment Act. The Commission to form prima facie opinion within 30 days of receipt of combination notice

If no prima facie opinion is formed within this period, the combination shall be deemed to have been approved

## Deal Value Threshold (DVT)

- In addition to the criteria of assets and turnover to determine notifiability of a transaction, value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation that exceeds INR 2000 crore has been provided as a new notification criterion
- Provided that the enterprise which is being acquired or taken control of or merged or amalgamated has such substantial business operations in India, as specified by the regulations

### De-Minimis exemption

Where either the value of assets or turnover of the enterprise being acquired, taken control of, merged or amalgamated in India is not more than such value as prescribed, the same shall not constitute a combination

Through introduction of this provision, the de-minimis exemption, which was provided through a notification has been included in the Competition Act itself

De-Minimis exemption not applicable to combinations notifiable on basis of deal value threshold. Requirement of substantial business operations in India to work as de-minimis for such combinations



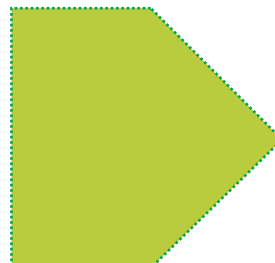
## Change in definition of 'Control' & 'Group'

01

The definition of 'control' has been amended to include "the ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions"

02

The definition of 'group' in explanation (b) to section 5 of the Act has also been amended to "two or more enterprises where one enterprise is directly or indirectly, in a position to exercise twenty-six per cent or such other higher percentage as may be prescribed, of the voting rights in the other enterprise"



## Explanation for computation of 'turnover'

This has the objective of clarifying the scope of turnover to be considered for the purpose of ascertaining whether the transaction meets the financial thresholds

The methodology for computation of 'turnover' has been added as Explanation(c) to Section 5 of the Competition Act

It defines 'turnover' as meaning the turnover certified by the statutory auditor on the basis of the last available audited accounts of the company in the financial year in which the combination notice has been filed, which shall be determined by excluding intra-group sales, indirect taxes, trade discounts and all amounts generated through assets or business from customers outside India

## Green Channel

01

The CCI, through regulations, introduced Green Channel for automatic approval of combinations in August 2019 in the spirit of promoting trust based regulation

02

It was a first of its kind system in the world, wherein the transactions get automatically deemed approved on the day of filing. This dispensation is presently available to those parties that do not exhibit overlap, be it horizontal, vertical or complementary

03

The Amendment Act now incorporates the Green Channel into the Competition Act

## Enabling provision to allow open market transactions

01

The merger control regime in India is suspensory in nature, and no notifiable transaction can be consummated prior to CCI's approval

02

The Amendment Act allows market purchases and other transactions on stock exchanges to be undertaken as an exception to standstill obligations

03

Under this framework for market purchases (through open offer or acquisition of shares through a series of transactions on a regulated stock exchange), parties can conduct market purchases without a prior notification to the Commission

04

Subsequently, they are required to give a notice to the Commission within a specified time period. However, parties shall not exercise any ownership or beneficial rights or interest in such shares, until receiving the Commission's approval for the combination except as specified by regulations

## Competition Amendment Act: Other Changes...

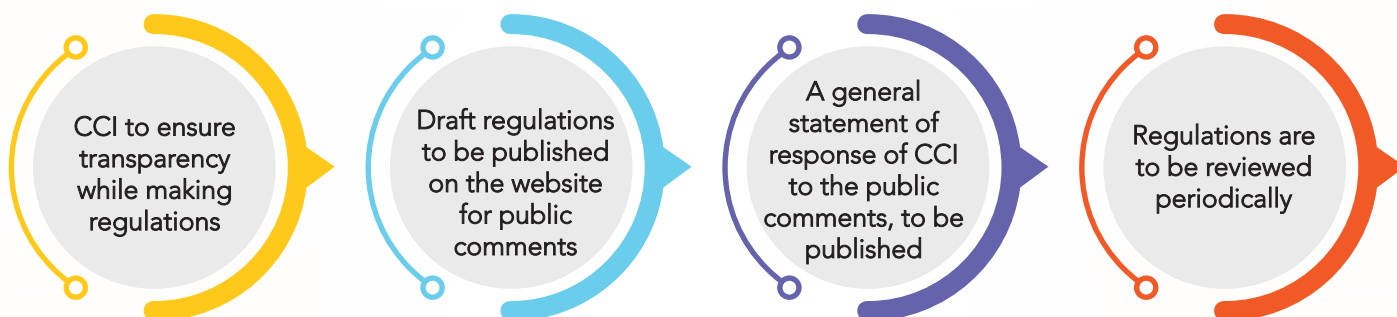
### Appointment of Director General

The Director General will be appointed by CCI after prior approval of the Central Government.

### Issuance of Guidelines

The CCI has been empowered to publish guidelines on the provisions of the Competition Act or the Rules and Regulations made thereunder either on a request made by a person or on its own motion.

### Transparency in making regulations by CCI



### Pre-deposit for Appeal

Parties will be required to pre-deposit 25% of the penalty amount, in order to file an appeal before NCLAT.

## WAY FORWARD



### Drafting of Regulations on:

• Settlements and Commitments

• Deal Value Threshold

• Leniency Plus

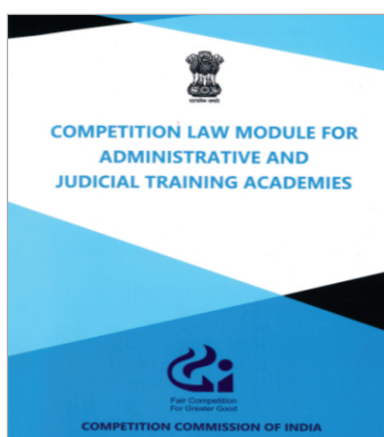
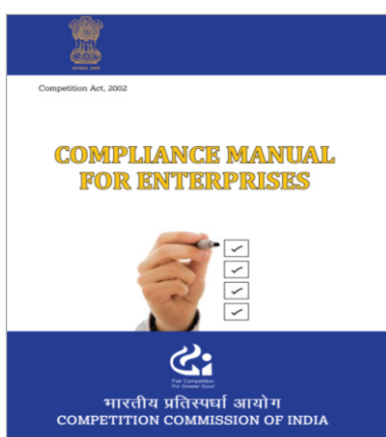
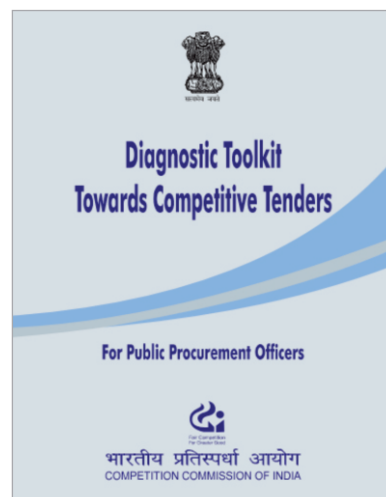
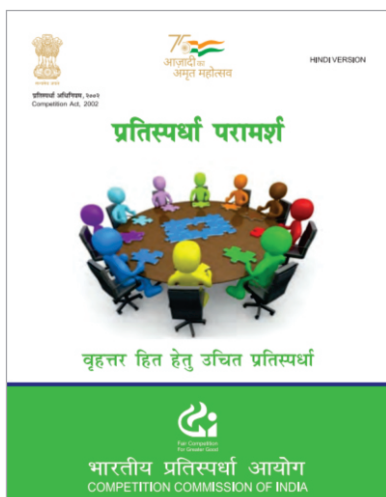
• Turnover



### Drafting of Penalty Guidelines



### Periodic Review of Regulations



Advocacy booklets are available in 13 languages including Hindi and English. For details visit [www.cci.gov.in](http://www.cci.gov.in)

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