



## Draft Competition (Amendment) Bill 2020 – Main Implications

Last week, the Ministry of Corporate Affairs (MCA) notified the Draft Competition (Amendment) Bill 2020 (*Draft Bill*). The proposed changes reflect recommendations made by the Competition Law Review Committee (CLRC) in July 2019. Public comments may be made until 6 March 2020.

The 49 page Draft Bill contains a large number of proposed amendments to the Competition Act, 2002 (*Act*). Many of these have important implications for enterprises subject to the Act. A few of these are addressed below.

### Anti-Competitive Agreements

The jurisdiction of the Competition Commission of India (CCI) over anti-competitive agreements is to be expanded. At present, only horizontal and vertical agreements are expressly addressed, though the CCI has asserted jurisdiction over other types of agreements with an appreciable adverse effect on competition (AAEC). It is proposed expressly to include “other agreements” which will be subject to a rule of reason analysis. “Hub and spoke” cartels, involving players at different levels of the supply chain, are also addressed - it is proposed to cover non-competitors in such a scenario who will be liable where they actively participate in the furtherance of an anti-competitive agreement between competitors.

### Protection of Intellectual Property Rights

Up to now, an intellectual property rights (IPR) defence has been available under Section 3 of

the Act covering anti-competitive agreements. The defence is limited to a number of IPR rights under specified Indian legislation. It is now proposed to extend the defence to cover abuse of dominance under Section 4 of the Act and to extend its scope to any law in force relating to the protection of IPR. This is a welcome change, especially if, as appears to be the case, non-Indian IPR laws are to be included.

### Settlements and Commitments

It is proposed to introduce a procedure allowing parties to apply to settle investigations against them. This will apply only to cases of restrictive agreements under Section 3(4) of the Act (covering vertical agreements and the new “residual” category of agreements with an AAEC (see above)) and abuses of dominant position under Section 4. It will *not* apply to horizontal agreements, including cartels. Notwithstanding this significant limitation, the settlement procedure is likely to have a major impact on the way on which competition cases are addressed by the CCI.

### Merger Control

A number of proposed amendments may result in more transactions being subject to CCI review. At present, deals only have to be notified where prescribed turnover/asset thresholds are met. It is now proposed to allow the Central Government to introduce deal value, market share or other notifiability criteria. This may result in strategic high value transactions, especially in digital markets, becoming subject to merger review. The Draft

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# Competition Matters

Bill also affirms the CCI's shifting stance on the issue of control. Having started with a test of "decisive influence" the CCI has moved to the test of "material influence", which is now sought to be codified.

Other amendments reflect the desire to reduce the burden of doing business in India. It is proposed to allow the Central Government to specify combinations that will be deemed to be approved on submission of notice in a given format; the CCI has in fact already introduced a "green channel" to cover combinations where the parties have no

horizontal overlap, no vertical relationships and no complementary businesses. It is also proposed that the Central Government may specify criteria for exempting transactions in the public interest. Another amendment dilutes the obligation not to implement a merger before CCI clearance (the "standstill" obligation) in the case of open offers or acquisitions through series of transactions on a regulated stock exchange. Finally, in an attempt to speed up the review process, it is proposed that the current overall 210-day review period be reduced to 150 calendar days.

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