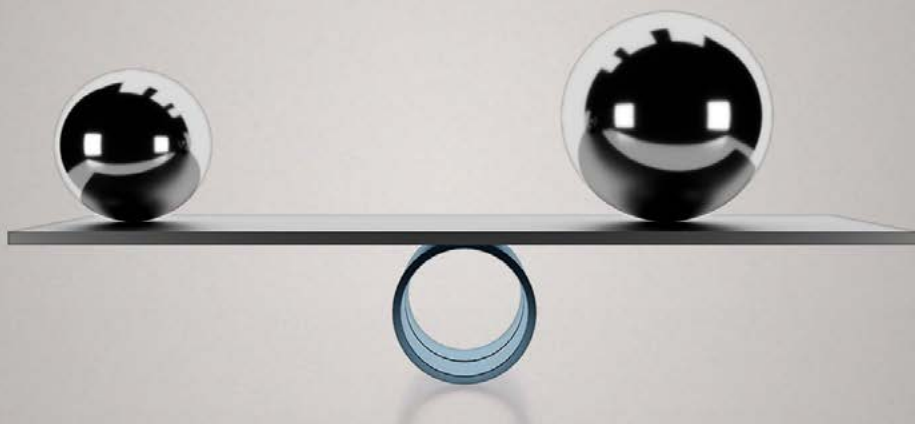


23 August 2023



Draft Regulations on Commitments and Settlements Published for Comments

On 23 August 2023, the Competition Commission of India (**CCI**) published draft regulations for Commitments¹ and Settlements² proceedings, for comments.

Earlier this year, the Competition (Amendment) Act, 2023 (**Amendment Act**), materially amended the Competition Act, 2002 (**Competition Act**) including allowing parties to apply to the CCI to make commitments in, or settle, cases of anti-competitive vertical agreements and abuse of dominance. This mechanism is not available in case of cartels.³

Under the Amendment Act, Commitments (Section 48B) can be offered between the commencement of the Director General's (**DG**) investigation and its completion (marked by the issuance of the Investigation Report (**DG Report**)), whereas Settlements (Section 48A) can be offered after the DG Report is issued, but before a final order is issued by the CCI.

While the relevant provisions are yet to enter into force, the CCI's publication of these regulations is the first step towards enforcement of the Commitments and Settlements regimes. Comments can be provided only through the CCI's website by 13 September 2023.⁴

The key features proposed in the draft regulations for

Commitments and Settlements are set out below.

Commitments

Timing

A Commitment Application must be filed within 45 days from the receipt of the *prima facie* order passed by the CCI (extensions can be granted to condone a delay of up to 30 days). This is a reduction from the timeframe allowed in the Amendment Act. The entire Commitment proceedings are to be concluded within 90 days from the receipt of the Commitment Application (extensions can be granted if deemed appropriate). The inquiry into the applicant will remain in abeyance till the CCI reaches a final decision on the Commitment Application.

Form and Contents of the Commitment Application

Apart from basic corporate information and details of previous contraventions or ongoing proceedings if any, the Commitment Application should include: (i) details of the CCI's *prima facie* opinion in relation to the case; (ii) full and true disclosure of facts in respect of the alleged contraventions; (iii) details of the nature, duration, gravity and impact of the alleged contraventions; (iv) details of how the commitments offered address the alleged contraventions and competition concerns;

¹ Available at <https://cci.gov.in/images/stakeholderstopicsconsultations/en/draft-commitment-regulations1692788680.pdf>. Additionally, a background note on the Commitment Regulations published by the CCI is available at <https://cci.gov.in/images/stakeholderstopicsconsultations/en/background-note1692788633.pdf>.

² Available at <https://cci.gov.in/images/stakeholderstopicsconsultations/en/draft-settlement-regulations1692787026.pdf>. Additionally, a background note on the Settlement Regulations published by the CCI is available at <https://cci.gov.in/images/stakeholderstopicsconsultations/en/background-note1692788719.pdf>.

³ A detailed briefing on the key changes made in the Amendment Act is available at <https://www.amsshardul.com/insight/indian-competition-amendment-bill-new-challenges-and-opportunities/>.

⁴ The comments can be provided at <https://cci.gov.in/stakeholders-consultations/15> and <https://www.cci.gov.in/stakeholders-consultations/16>.



and (v) the manner of implementation and monitoring of the commitments offered.

Consideration of a Commitment Application

While assessing the effectiveness of the commitments offered, the CCI shall consider the nature and type of conduct, duration and extent of the alleged contraventions, whether the commitments adequately address any competition concerns, and whether they can be implemented effectively and expeditiously and are easy to monitor.

Invitation of Comments, Objections and Suggestions

The CCI shall provide an opportunity to the party concerned, the DG and any other party to submit their comments, objections and suggestions, based on a non-confidential summary of the Commitment Application. In appropriate cases, the CCI can also invite public comments based on such a non-confidential summary published on its website. Public comments must be filed within 21 days.

Nature and Effect of a Commitment Order

The CCI's order accepting the offered commitments (**Commitment Order**) shall not be construed as a finding of contravention by the Commitment Applicant. Additionally, even if a party's Commitment Application is accepted by the CCI, the CCI can continue its inquiry into other parties who may not be a part of the Commitment proceedings. Significantly, the CCI can use the information submitted in the Commitment Application against the applicant and such other parties. Further, if the Commitment Application only relates to some of the alleged contraventions as noted in the CCI's *prima facie* order, the CCI's inquiry on the remaining contraventions will continue. Orders passed by the CCI accepting or rejecting a Commitment Application are not appealable.

Implementation and Monitoring

The CCI can appoint independent agencies to oversee the implementation of the Commitments offered.

Revocation

If a Commitment Applicant fails to comply with the Commitment Order, or it comes to CCI's notice that the Commitment Applicant has not made full and true disclosure, or there has been a material change in the facts, the CCI can impose legal costs borne by the CCI of up to INR 10 million (approximately USD 121,000) and may also restore the inquiry, after providing

an opportunity to the Commitment Applicant for hearing.

Fees

A Commitment Application has to be accompanied by a filing fee, which shall be between INR 0.5 million (approximately USD 6,100) and INR 5 million (approximately USD 61,000) (depending on the Applicant's turnover).

Settlements

Timing

A Settlement Application should be filed within 45 days from the receipt of the DG Report (extensions can be granted to condone a delay of up to 30 days). This is a reduction from the timeframe allowed in the Amendment Act. The entire settlement proceedings are to be concluded within 120 days from the receipt of the Settlement Application (extensions can be granted if deemed appropriate).

Form and Contents of the Settlement Application

A Settlement Application must contain the same details as those to be included in a Commitment Application. In addition, a Settlement Application must include details of the findings of the DG Report and how it proposes to address those concerns.

Consideration of a Settlement Application

The CCI will consider a Settlement Application on similar criteria and basis as it considers a Commitment Application.

Invitation of Comments, Objections and Suggestions

The CCI shall provide an opportunity for comments, objections and suggestions to the party concerned, the DG and any other party on the same basis and criteria as a Commitment Application. These must be submitted within 21 days. Notably, unlike Commitment Applications, there is no provision for public comments in Settlement Applications.

Nature and Effect of a Settlement Order

As in the case of Commitments, the CCI's order accepting the offered Settlements (**Settlement Order**) shall not be construed as a finding of contravention by the Settlement Applicant, which will require further scrutiny as the amendments to the Competition Act specifically allow for follow-on actions for damages to lie based on Settlement Orders. Orders passed by the CCI accepting or rejecting a Settlement Application are not appealable.



Separately, similar to the case with Commitments, even if a party's Settlement Application is accepted by the CCI, the CCI can continue its inquiry into other parties who are not a part of the Settlement proceedings and can use the information in the Settlement Application against the applicant and such other parties. Further, if the Settlement Application only relates to some of the alleged contraventions as noted in the DG Report, the CCI's inquiry on the remaining contraventions will continue.

Settlement Amount

The Settlement Application will only be accepted by the CCI on the payment of the settlement amount (which is unilaterally determined by the CCI). The CCI may (considering the level of cooperation, nature of disclosure and the settlement proposal)

provide a settlement discount and reduce the amount determined by up to 15%.

Implementation and Monitoring

The CCI will follow the same implementation and monitoring process for a Settlement Application as it would for a Commitment Application.

Revocation

The CCI will follow the same revocation process for a Settlement Application as it would for a Commitment Application.

Fees

The fees for a Settlement Application are the same as for a Commitment Application.

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