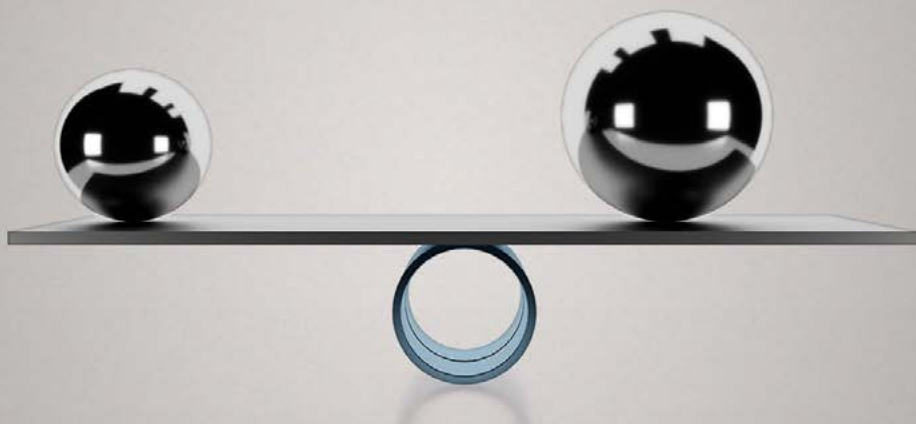


16 October 2023



Draft Competition Commission of India (Lesser Penalty) Regulations, 2023 Published for Comments

Earlier this year, the Competition (Amendment) Act, 2023 (**Amendment Act**) materially amended the Competition Act, 2002¹ (**Competition Act**) and introduced, amongst other changes, a 'leniency plus' framework as well as provisions allowing withdrawal of a leniency application. These provisions required implementing regulations before they could be enforced.

On 16 October 2023, the Competition Commission of India (**CCI**) published the draft CCI (Lesser Penalty) Regulations, 2023² (**Draft Regulations**) for public consultation. Comments can be provided through the CCI's website by 6 November 2023.³

Once implemented, the Draft Regulations will replace the existing leniency regulations. Notable highlights in the Draft Regulations include: (i) the introduction of a leniency plus regime; (ii) provisions allowing the withdrawal of leniency and leniency plus applications; (iii) the conditions when a leniency or leniency plus application may be forfeited; and (iv) expanding the leniency regime to persons facilitating a cartel.

The key changes proposed in the Draft Regulations are set out below.

Leniency Plus

Under the Amendment Act, the existing leniency mechanism has been expanded to include a lesser penalty plus regime. This allows an existing leniency applicant in respect of one

cartel to make full, true and vital disclosures about the existence of another cartel (second cartel) unknown to the CCI. If the applicant's disclosure enables the CCI to form a *prima facie* opinion regarding the existence of the second cartel, an applicant becomes eligible to receive an additional reduction in monetary penalty of up to or equal to thirty percent for the first cartel besides the existing reduction in penalty as per its priority status. It also entitles the applicant to a reduction in penalty up to one hundred percent in respect of the second cartel.

Procedure for Grant of Leniency Plus

To avail of the benefit of leniency plus, an applicant must apply in the format prescribed in Schedule II of the Draft Regulations. The applicant is required to provide: (i) its own details and details on the first cartel; and (ii) disclosures pertaining to the second cartel including details of any similarity in terms of conduct, product and service in the two matters and justifications for how the two matters are separate.

Upon receipt of an application, the CCI shall assess whether the applicant has made "full, true and vital disclosures" in respect of the existence of the second cartel. If the CCI is of the opinion that the application should be rejected, it shall provide the applicant an opportunity of being heard.

Timing

The leniency plus application can be made at any time before

¹ Amendment Act is available at [https://prsindia.org/files/bills_acts/acts_parliament/2023/The%20Competition%20\(Amendment\)%20Act,%202023.pdf](https://prsindia.org/files/bills_acts/acts_parliament/2023/The%20Competition%20(Amendment)%20Act,%202023.pdf).

² Available at <https://cci.gov.in/images/stakeholderstopticsconsultations/en/draft-lesser-penalty-regulations1697431514.pdf>.

³ The comments can be provided at <https://cci.gov.in/stakeholders-consultations/20>.



the CCI receives the investigation report of the Director General (DG) in the first cartel. In the case of more than one applicant applying for leniency plus in respect of a newly disclosed cartel, the CCI shall not consider the application of a subsequent applicant unless the application of the first leniency plus applicant has been rejected.

CCI's Discretion

The Draft Regulations clarify that the reduction in monetary penalty under the leniency plus regime is subject to the CCI's discretion. The CCI must take into account: (i) the likelihood of the newly disclosed cartel being detected by the CCI or the DG in the absence of the leniency plus application; and (ii) any other factor which the CCI deems relevant. The CCI is also required to consider all factors that distinguish the newly disclosed cartel from the existing cartel.

Withdrawal of Leniency Applications

The Amendment Act allows applicants to withdraw a leniency application. To implement this, the Draft Regulations provide leniency and leniency plus applicants the ability to withdraw their applications at any time prior to the receipt of the DG's investigation report by the CCI. However, in line with provisions of the Amendment Act, the DG or the CCI have the liberty to use the information or evidence submitted by the applicant except for the admission of guilt.

Forfeiture of Leniency Benefits

The benefit of leniency / leniency plus may be forfeited if the CCI is satisfied that the applicant has during the course of inquiry / proceedings: (i) failed to comply with the conditions on which the benefit of leniency was granted by the CCI; or (ii) submitted false evidence or omitted to submit any material information knowing it to be material; or (iii) not made a vital disclosure.

Confidentiality

The Draft Regulations also expressly clarify that the CCI has the power to disclose the evidence filed by the leniency applicant or the leniency plus applicant after the receipt of the investigation report by the CCI. This implies that the materials submitted at the time of the application can be disclosed to the other parties.

Expanding the Leniency Regime to Enterprises Facilitating a Cartel

The Amendment Act expands the scope of cartel provisions to include facilitators of cartels, even if they are not engaged in identical or similar trade, where they participate or intend to participate in furtherance of the cartel.⁴ The Draft Regulations permit facilitators of a cartel to apply for leniency / leniency plus.

⁴ For the relevant amendment to the cartel provisions of the Competition Act, please see Section 4 of the Amendment Act available at [https://prsindia.org/files/bills_acts/acts_parliament/2023/The%20Competition%20\(Amendment\)%20Act%202023.pdf](https://prsindia.org/files/bills_acts/acts_parliament/2023/The%20Competition%20(Amendment)%20Act%202023.pdf).

COMPETITION LAW TEAM

Pallavi Shroff

Managing Partner
pallavi.shroff@AMSShardul.com

John Handoll

National Practice Head - Competition Law
john.handoll@AMSShardul.com

Naval Satarawala Chopra

Partner
naval.chopra@AMSShardul.com

Shweta Shroff Chopra

Partner
shweta.shroff@AMSShardul.com

Harman Singh Sandhu

Partner
harman.sandhu@AMSShardul.com

Manika Brar

Partner
manika.brar@AMSShardul.com

Aparna Mehra

Partner
aparna.mehra@AMSShardul.com

Gauri Chhabra

Partner
gauri.chhabra@AMSShardul.com

Yaman Verma

Partner
yaman.verma@AMSShardul.com

Rohan Arora

Partner
rohan.arora@AMSShardul.com

Aman Singh Sethi

Partner
aman.sethi@AMSShardul.com

Nitika Dwivedi

Partner
nitika.dwivedi@AMSShardul.com

Ritwik Bhattacharya

Partner
ritwik.bhattacharya@AMSShardul.com

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