



August 2022

## Competition (Amendment) Bill heads to Parliament

In February 2020, the Ministry of Corporate Affairs released the draft Competition (Amendment) Bill 2020 inviting public comments on the proposed amendments to the Competition Act, 2002 (“**Competition Act**”). After 30 (thirty) months, on August 5, 2022, [the Competition Amendment Bill 2022](#) (the “**Bill**”) was introduced in the Lower House (Lok Sabha) of the Parliament.

The Bill proposes far-reaching amendments to the Indian competition law including the introduction of: (a) ‘deal value’ criterion for mergers & acquisitions (“**M&A**”), (b) shortening of M&A review timelines (c) settlement and commitment procedure for non-cartel cases, and (d) leniency plus.

A summary of the key amendments proposed to the Competition Act by the Bill is set out below:

### Enforcement

- 1. Introduction of settlements and commitments procedure:** The Bill proposes to introduce provisions allowing an enterprise under inquiry for abuse of dominant position and anti-competitive agreements (except cartels) to offer settlements and commitments to the Competition Commission of India (“**CCI**”). While the commitments can be offered at any time after an investigation has been initiated but before the investigation report is issued, the settlements can be only offered after the investigation report is issued but before the CCI issues its final decision. The CCI’s decision on settlements/commitments will not be appealable.
- 2. Introduction of ‘leniency plus’:** The ‘leniency plus’ policy will allow an enterprise that files for leniency in one cartel and helps in discovering a new/separate cartel to receive an additional reduction in penalty for the cartel already being investigated.
- 3. Cartel facilitator can now be penalised:** Under the existing framework, the cartel agreement between competitors (i.e., engaged in similar trade) is presumed to have an appreciable adverse effect on competition in India. This presumption will now extend to a cartel facilitator, whether such facilitator is engaged in similar trade. This is in line

with the approach adopted by mature jurisdictions to cover illegal agreements, including hub and spoke arrangements<sup>1</sup>.

4. **Introduction of the limitation period:** The CCI can only entertain information (complaint) that has been filed within 3 (three) years from the date the cause of action first arose. However, the CCI has the power to condone the delay in case of belated information (complaint).
5. **Parties can call experts:** The parties can now call upon experts from the fields of economics, commerce, international trade or any other discipline to provide their opinion in a case before the CCI.
6. **Deposit penalty to prefer an appeal:** Appeals before the appellate tribunal, the national company law appellate tribunal, against CCI orders will require a 25% deposit of penalty amount as a condition precedent for the appeal being entertained.

## Merger Control

1. **Introduction of 'Deal Value' thresholds:** Under the existing framework, only a transaction that crosses specified asset or turnover thresholds requires approval from the CCI. The Bill proposes to introduce an additional "deal value" criterion for assessing whether a transaction (M&A) requires approval from the CCI. A transaction will now require approval of the CCI if: (a) the deal value exceeds INR 2,000 crore (Indian Rupees two thousand crore)<sup>2</sup>; and (b) where either party has "*substantial business operations in India*"<sup>3</sup>. This threshold will not be affected by the small target-based (*de minimis*) exemption.
2. **Reduction in approval timelines:** The statutory timeline for the CCI to form its *prima facie* view<sup>4</sup> on a merger notification is proposed to be reduced from 30 (thirty) working days to 20 (twenty) calendar days. Further, the overall timeline is also proposed to be reduced from 210 (two hundred ten) calendar days to 150 (one hundred fifty) calendar days (extendable by an additional 30 (thirty) calendar days in certain events).
3. **Definition of 'control':** The interpretation of the term 'control' forms one of the cornerstones of the merger control rules. The Competition Act defines the term 'control' to include, controlling the affairs or management of the target enterprise. The CCI by way of its decisional practice has clarified that control includes 'material influence' i.e., the lowest form of control in addition to de facto and de jure control. The CCI has interpreted material influence as the presence of factors that enable an entity to influence the affairs and management of another enterprise. These factors include majority shareholding, veto rights (attached to minority shareholding), board representation, contractual covenants etc. The Bill proposes to codify '*material influence*' as a standard for control.
4. **Waiver of standstill obligations<sup>5</sup> in certain cases:** Under the existing framework, the parties to a transaction are not permitted to acquire any shares prior to receiving CCI approval for a notifiable transaction. The Bill proposes a dilution of the standstill obligations in case of an open offer and acquisition of convertible shares/securities on a stock

<sup>1</sup> Hub-and-spoke arrangements are cartels that are not co-ordinated through direct exchanges between the horizontal competitors, but through indirect exchanges via a vertically related supplier or retailer.

<sup>2</sup> Approx. USD 253,000,000 (US Dollar two hundred fifty-three million)

<sup>3</sup> The CCI will issue regulations to prescribe the requirements for assessing whether an enterprise has "substantial business operations in India".

<sup>4</sup> Per CCI's decisional practice, approximately 90% of merger notifications were cleared within 30 (thirty) working days (as the combinations raised no competition law concerns).

<sup>5</sup> The Indian merger control regime is suspensory in nature and hence, the parties cannot consummate a notifiable transaction, in full or in part, prior to the CCI approval i.e., parties need to comply with standstill obligations.

exchange provided: (a) a merger notification is promptly filed with the CCI; and (b) the acquirer does not exercise any rights/ interest/ receive dividends in such shares/ securities.

5. **Increased penalty for non-disclosure/ omission:** Under the existing framework, where the parties make false statements or omit to disclose material facts in the merger notification, penalties between INR 50,00,000 (Indian Rupees fifty lakh)<sup>6</sup> to INR 1,00,00,000 (Indian Rupees one crore)<sup>7</sup> can be imposed by the CCI. The Bill proposes to increase the maximum penalty to INR 5,00,00,000 (Indian Rupees five crore)<sup>8</sup>.

## Competition Practice

Since the inception of the Indian competition regime, JSA has been a one-stop shop for all types of competition and anti-trust-related matters. As such, the team's in-depth understanding of the competition law, coupled with its commercially focused litigation skills has been the cornerstone on which it deals with matters relating to cartelisation (including leniency), abuse of dominance, vertical agreements, and dawn raid before the Competition Commission of India and appellate courts. The team regularly advises clients on general competition law issues arising from day-to-day business strategies and conducts competition compliance training for clients. Given the team's continued involvement with the regulator, coupled with its balanced and practical approach to competition law, it has been instrumental in shaping the competition law jurisprudence in India.

Over the years, the team has developed a reputation of not only being well regarded by its peers but also for having developed a good working relationship with the regulatory authorities. As such our lawyers have been involved in drafting statutory regulations and have represented the Indian competition law fraternity at various competition law seminars, workshops, and advocacy & public awareness programs across the world. The team's expertise (including team members) has been widely recognised by various leading international rankings and publications including Chambers and Partners, Who's Who Legal, Global Competition Review, Benchmark Litigation, Asialaw, and the Legal 500.

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<sup>6</sup> Approx. USD 60,000 (US Dollar sixty thousand)

<sup>7</sup> Approx. USD 120,000 (US Dollar one hundred-twenty thousand)

<sup>8</sup> Approx. USD 640,000 (US Dollar six hundred forty thousand)



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