

MAY 08, 2023

AMENDMENTS BROUGHT IN BY THE COMPETITION (AMENDMENT) ACT, 2023

I. KEY DATES:

The Competition (Amendment) Bill, 2023 was passed by the Lok Sabha on March 29, 2023, the Rajya Sabha on April 03, 2023, and received Presidential assent on April 11, 2023.

II. REASON FOR ENACTMENT:

The Competition Amendment Act, 2023 (hereinafter the '**Amendment Act**') brings significant reforms and changes to India's Competition Law to align with its current economic fundamentals and global anti-trust practices. The key changes introduced by the Amendment Act have been listed below:

❑ Deal Value Thresholds:

Value of transactions exceeding INR 2,000 Crores are required to be notified to the Competition Commission of India (the '**CCI**') for its prior approval provided, the target enterprise has 'substantial business operations' in India. It is to be noted that the scope of 'substantial business operations' will be determined by the CCI by means of regulations.

❑ Shortened Timeline for Approval of Combinations:

Reduction in maximum timeframe from 210 days to 150 days for approval of combinations. In other words, the CCI will have a maximum of 150 days commencing from the day of notice of the proposed combination to either approve the combination or issue an order.

❑ Provision for 'Deemed Approval':

Concept of 'deemed approval' has been introduced. It provides that if CCI does not form a prima facie opinion on whether a combination will cause an appreciable adverse effect on competition within 30 days of receipt of notice under Section 6(2) of the Competition Act, 2002 (the '**Act**'), the combination will be considered/ deemed approved.

❑ Amendment to the definition of 'Control':

The Amendment Act has diluted the scope of the definition of 'Control'. The ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions, would be sufficient to establish 'Control'. However, the Amendment Act does not clarify as to what may constitute 'Material Influence'.

ABOUT THE FIRM

AKS Partners (formerly known as A.K. Singh & Co) is a law firm based in New Delhi (India) that provides a comprehensive range of legal services and solutions to domestic and international clients. The Firm offers a unique blend of the local knowledge to apply the regulatory, economic, political and cultural context to legal issues and develop case strategies.

We regularly handle technically challenging and complex multi-jurisdictional matters. Our team is spearheaded by one of the highly recognised lawyers with extensive experience in international dispute resolution and strong government and diplomatic backgrounds. This experience gives us the deepest understanding of the key decision points that are critical in navigating complex & complicated matters and managing government regulations.

❑ Derogation from Standstill Obligations for Stock Market Purchases:

Combination involving open offer or acquisition of shares or securities convertible into other securities from various sellers, through a series of transaction on a regulated stock exchange has been exempted from the standstill obligation under Section 6(2A) of the Act. However, the acquirer should not exercise any ownership or beneficial rights or interest in the acquired shares or convertible securities, including voting rights and receipts of dividends until the CCI approves the acquisition, except as specified by regulations.

❑ Penalty for False Statement or Omissions:

Penalty for making false statements or omission to submit material information has been increased from INR 1 Crore to INR 5 Crores.

❑ Imposing Penalties based on Global Turnover:

The CCI can now impose penalties up to 10% of the average (calculated on the basis of preceding 3 financial years) of the global turnover or income of the enterprise, to such person or enterprise who have entered into anti-competitive agreements or has abused its dominant position. 'Global Turnover' means turnover derived from all products or services by an enterprise or person. The Amendment Act changes the penalty calculation method which was earlier based on 'relevant turnover' of an enterprise, as mandated by the Supreme Court in *Excel Crop Care Ltd v. CCI and Others*, (2017) 8 SCC 47.

❑ Settlement and Commitments:

The Amendment Act introduces a mechanism which enables the parties who are under investigation for abuse of dominant position or anti-competitive vertical restraints, to propose a settlement or offer commitments to CCI to close the inquiry proceedings. However, this option is not applicable to cartels. There can be no appeal against any order passed by the CCI. The CCI will outline the procedure of settlement and commitment through regulations.

❑ Modifications to the 'Leniency Regime':

If a member of a cartel provides full, true and vital disclosure with respect to another cartel and such disclosure enables the CCI to form a *prima facie* opinion under Section 26(1) of the Act, then the CCI may grant a lesser penalty to such member in respect to the first cartel already being investigated. The Amendment Act also allows the leniency applicant to withdraw its application for lesser penalty according to the regulation specified. However, Director General ('DG') and the CCI are entitled to use the evidence provided in the application for the purpose of investigation except its admission.

❑ Expansion of Scope of Cartels:

Definition of 'cartels' has been broadened to encompass hub and spoke arrangements. This is done by presuming that if an enterprise participates in the furtherance of a horizontal agreement, it is part of such an agreement, even if it is not involved in an identical or similar trade.

❑ Limitation Period:

Complaints must be filed with the CCI within 3 years from the date of the cause of action, as per the Amendment Act. However, CCI has been given the power to condone delays if it is satisfied that there has been sufficient cause for not filing the same within the stipulated time.

❑ **Provision to prevent multiple proceedings:**

Amendment Act empowers the CCI to reject the complaint if it pertains to similar facts and issued that have been addressed in a previous CCI order.

❑ **Appointment of DG:**

The Amendment Act has now entrusted the CCI with the appointment of DG subject to the prior approval from the Central Government.

❑ **Powers of DG:**

Amendment Act allows the DG to keep any information, books, papers, other documents or records in his custody for a total period of 360 days (split in two equal tranches of 180 days) subject to information, books, papers, other documents or records being returned after expiry of first 180 days and then again, if the need arises, the DG may call and keep the same in custody for further period of 180 days. It also enables DG to examine 'agents' on oath, in addition to officers and employees of a company under investigation.

❑ **Penalty for Appeals:**

The appealing party is required to deposit 25% of the CCI-imposed penalty for filing an appeal before the National Company Law Appellate Tribunal.

❑ **Calling of Experts:**

Parties have right to call upon experts from the fields of economics, commerce, international trade, or from any other discipline to provide an expert opinion before CCI.

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AWARDS & RECOGNITIONS



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