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The Competition (Amendment) Bill, 2022

Introduction

The Competition (Amendment) Bill, 2022 seeks to carry out certain essential structural changes in the governing structure of the CCI and changes to substantive provisions to address the needs for new age markets. CCI, set up under the Competition Act, has the mandate to promote competition and curb unfair business ways across sectors.

- The Competition Act, 2002 was passed by the Parliament in the year 2002, to which the President accorded assent in January, 2003. It was subsequently amended by the Competition (Amendment) Act, 2007.
- It follows the philosophy of modern competition laws. The Act prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control and M&A), which causes or likely to cause an appreciable adverse effect on competition within India.
- In recent times, the Competition Commission of India (CCI) has ordered probes as well as passed various orders with respect to alleged unfair business practices in the growing digital markets. India's competition regulation, the Competition Act, 2002, is two decades ago and may not always account for considerations that are unique to the current platform economy.

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NEED OF THE BILL

There has been a significant growth of Indian markets and a paradigm shift in the way businesses operate in the last decade. In view of the economic development, emergence of various business models and the experience gained out of the functioning of the Commission, the Government of India constituted Competition Law Review Committee, to examine and suggest the modifications in the said Act. After review of the recommendations proposed by the Committee, public consultations and with a view to provide regulatory certainty and trust-based business environment, it is considered imperative to amend the said Act.

OBJECTIVES OF PROPOSED BILL

The Competition (Amendment) Bill, 2022, inter alia, seeks to achieve the following objectives:—

- (a) Changes in certain definitions like “enterprise”, “relevant product market”, “Group”, “Control”, etc., to provide clarity;
- (b) Broadening the scope of anti-competitive agreements and inclusion of a party facilitating an anti-competitive horizontal agreement under such agreements;
- (c) Provisions for reduction of time-limit for approval of combinations from two hundred and ten days to one hundred and fifty days and forming a prima facie opinion by the Commission within twenty days for expeditious approval of combinations;
- (d) Provisions for “value of transaction” as another criteria for notifying combinations to the Commission;
- (e) Limitation period of three years for filing information on anti-competitive agreements and abuse of dominant position before the Commission;
- (f) Appointment of the Director General by the Commission with the prior approval of the Central Government;
- (g) Introduction of Settlement and Commitment framework to reduce litigations;
- (h) Incentivizing parties in an ongoing cartel investigation in terms of lesser penalty to disclose information regarding other cartels;
- (i) substitution of a provision which provides for penalty up to rupees one crore or imprisonment up to three years or both in case of contravention of any order of the National Company Law Appellate Tribunal with provision for contempt; and
- (j) Issuance of guidelines including on penalties to be imposed by the Commission.

SALIENT FEATURES OF THE BILL

Some of the important amendments proposed in the Competition (Amendment) Bill, 2022 are given below:

Sections of the Principal Act	Proposed amendments in the Competition (Amendment) Bill, 2022
Throughout the Competition Act, 2002	The Bill seeks to substitute the reference of Companies Act, 1956 to Companies Act, 2013 throughout the Competition Act, 2002 (hereinafter referred to as the principal Act)
<i>Amendment of section 2.</i>	The Bill seeks to amend certain definitions of the Act such as 'enterprise', 'relevant product market', etc.
<i>Amendment of section 3.</i>	Broaden of Scope of Anti-Competitive Agreements: The Bill seeks to amend section 3 of the Act to broaden the scope of anti-competitive agreements and also to include a party facilitating an anti-competitive horizontal agreement under such agreements.
<i>Amendment of section 5.</i>	The Bill seeks to amend section 5 of the Act to insert new clauses (d) and (e) to provide that if the value of any transaction in connection with acquisition of any control, shares, voting rights, etc., exceeds Rs. 2,000 crore, it would require filing a notice of combination before the Commission and to empower the Central Government to exempt certain transactions from the requirement to file combination notice under the Act. It further provides to substitute the Explanation to define the terms of turnover, value of transaction, etc.
<i>Amendment of section 6.</i>	<p>Provisions for reduction of time-limit for approval of combinations: The Bill seeks to amend section 6 of the Act to omit the reference of 30 days and to reduce the overall time limit of assessment of combinations to a period of 150 days from 210 days. It further provides to enable the Commission to extend the time limit up to a maximum period of 30 days to accommodate the request of parties to file additional information or to remove defects in the notice. It also provides to introduce a separate channel for certain combinations which shall be eligible for deemed approval upon filing of a notice under sub-section (4) of section 6 of the Act.</p> <p>Insertion of a new section 6A. {Open offers, etc.} The Bill seeks to insert a new section 6A after section 6 of the principal Act to provide that the provisions contained in sub-section (2A) shall not prevent the implementation of an open offer or an acquisition of shares or</p>

	<p>securities convertible into other securities from various sellers through a series of transactions on a regulated stock exchange from coming into effect with certain conditions.</p> <p>Explanation.—For the purposes of this section, "open offer" means an open offer made in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 made under the Securities and Exchange Board of India Act,1992.'.</p>
<i>Amendment of section 8.</i>	The Bill seeks to amend section 8 of the Act which refers to the composition of the Commission to amend sub-section (2) by including additional qualification for such Members in the field of technology.
<i>Amendment of section 9.</i>	The Bill seeks to amend section 9 of the Act which refers to the composition of the selection committee for Chairperson and Members and also seeks to introduce knowledge and experience in the field of technology as additional criteria for the members of the selection committee.
<i>Amendment of section 12.</i>	The Bill seeks to substitute section 12 of the Act to restrict the acceptance of employment by Chairperson and Members of the Commission within a period of 2 years from the date of ceasing the office.
<i>Amendment of section 16.</i>	The Bill seeks to amend section 16 of the Act to empower the Commission to appoint the Director General with the prior approval of the Central Government.
<i>Substitution of new section for Section 18.</i>	The Bill seeks to substitute section 18 of the Act to enable the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interest of consumers and enter into a memorandum or arrangement with department of Government or statutory bodies.
<i>Amendment of section 19.</i>	The Bill seeks to amend section 19 of the Act to provide that <i>the Commission shall not entertain any information or reference beyond the period of three years from the date of cause of action.</i> However, the Commission may condone the delay if it is satisfied with the reasons given by the parties.
<i>Amendment of section 21.</i>	The Bill seeks to amend section 21 of the Act in order to broaden the grounds on which the statutory authorities may suo motu make a reference to the Commission.
<i>Amendment of section 21A.</i>	The Bill seeks to amend section 21A of the Act to allow the statutory authority to make a reference suo motu to the Commission on any issue which involves any provision of the Act or is relating to promoting the objectives of this Act.
<i>Amendment of</i>	The Bill seeks to amend section 26 of the Act to enable the Commission to

<i>section 26.</i>	pass orders without conducting an inquiry for closure of certain cases; to direct the Director General to investigate the matter and to submit a supplementary report on his finding to enable the Commission to pass an order in this regard.
<i>Amendment of section 27.</i>	The Bill seeks to amend section 27 to empower the Commission to pass orders in relation to anti-competitive agreements and the abuse of dominant position by inserting a reference to income.
<i>Amendment of section 29.</i>	The Bill seeks to amend section 29 of the Act to provide that the Commission shall form prima facie opinion within 20 days of receipt of notice under sub-section (2) of section 6 and further to reduce the period of the completion of investigation within 150 days instead of 210 days. The Bill also seeks to insert a new section 29A for issuance of statement of objections by the Commission and proposal of modifications.
<i>Amendment of section 31.</i>	The Bill seeks to amend section 31 of the Act to omit the word "certain" and provides that combination shall be deemed to have been approved and no separate order shall be required if the Commission does not form a prima facie opinion within 20 days as provided under sub-section (IB) of section 29.
<i>Amendment of section 35.</i>	The Bill seeks to amend section 35 of the Act to insert sub-section (2) to enable a party to call upon experts from the fields of economics, commerce, international trade or any other discipline for an expert opinion in relation to a case before the Commission.
<i>Amendment of section 41.</i>	The Bill seeks to amend section 41 of the Act to provide procedure for investigation, inquiry, etc. and powers of the Director General to investigate the contravention of any provision of the Act.
<i>Amendment of section 43A.</i>	The Bill seeks to amend section 43A of the Act to empower the Commission to impose penalty for non-furnishing of information in relation to combination.
<i>Amendment of section 44.</i>	The Bill seeks to amend section 44 of the Act to enhance the penalty from rupees one crore to rupees five crore.
<i>Amendment of section 46.</i>	Power to impose lesser penalty: The Bill seeks to substitute section 46 of the Act which empower the Commission to impose lesser penalty as may be specified by regulation.
<i>Amendment of section 48.</i>	Contravention by Companies: The Bill seeks to substitute section 48 of the Act to provide for the liability of a person in case of contravention made by the company for contravention of any provisions of the Act, rules, regulations, order or directions issued or made thereunder, to a penalty which shall not be more than ten percent of the average of the income for

	<p>the last three preceding financial years and with certain other provisions.</p> <p>It further seeks to insert new sections 48A, 48B and 48C to provide for various provisions with regard to settlement, commitment, order and, payment of legal costs with its revocation.</p>
<i>Amendment of section 49.</i>	The Bill seeks to amend section 49 of the Act to insert the word "or culture" after the words, "competition advocacy" in order to broaden the grounds of competition advocacy.
<i>Amendment of section 53B.</i>	The Bill seeks to amend section 53B of the Act to insert a proviso in sub-section (2) to empower the appellate tribunal not to entertain an appeal unless the appellant deposits twenty-five per cent. of the amount of penalty imposed by the Commission.
<i>Amendment of section 53N.</i>	The Bill seeks to amend section 53N of the Act to allow the parties to file the application for compensation from orders of the Supreme Court in an appeal against the findings of the Appellate Tribunal under section 53T of the Act.
<i>Amendment of section 53Q.</i>	The Bill seeks to amend section 53Q of the Act to provide contempt proceeding under section 53U if any person contravenes any order of the Appellate Tribunal.
<i>Insertion of new section 59A.</i>	Compounding of certain offences: The Bill seeks to insert new section 59A of the Act to provide the offences punishable under this Act, not being an offence punishable with the imprisonment only or imprisonment and also with fine shall be compoundable.

The full text of the Bill can be accessed from http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/185_2022_LS_Eng.pdf

References

1. The Competition Act, 2002
2. <https://www.cci.gov.in/about-us>
3. The Competition (Amendment) Bill, 2022 to be introduced in Lok Sabha (185 of 2022)