

# Report Summary

## Report of the Competition Law Review Committee

- The Competition Law Review Committee (Chair: Mr. Injeti Srinivas) submitted its report to the Ministry of Corporate Affairs on July 26, 2019 recommending amendments to the Competition Act, 2002. The Act establishes the Competition Commission of India (CCI) to promote competition, prevent anti-competitive practices and protect consumer rights.
- **Governing body:** The Committee recommended that the Act be amended to provide for a governing body, to strengthen the accountability of the CCI. The governing body will consist of a Chairperson, six whole time members, and six part-time members. It will perform quasi-legislative functions, drive policy decisions, and perform a supervisory role.
- **Investigation:** Under the Act, the Director General (DG) conducts inquiries into violations of the Act. The Committee noted that the DG is appointed by the central government and is directly accountable to it. To improve administrative efficiency, it recommended that the office of the DG be subsumed within the CCI.
- **Appellate Authority:** The Committee noted that under the Act, appeals against orders of the CCI are heard by the National Company Law Appellate Tribunal. The Act requires speedy disposal of such appeals, preferably, within a period of six months. However, the Committee noted that the Tribunal is overburdened with cases. Therefore, it recommended that a dedicated bench should be created to hear appeals under the Act.
- **Settlements and commitments:** The Committee noted that certain jurisdictions like the European Union accept remedies from parties to antitrust disputes. These remedies may be in the form of settlements and commitments. Settlements are generally available for cartels and require an admission of guilt from the parties. Commitments are applicable to all cases other than cartels and do not require any admission of guilt.
- The Committee endorsed such a mechanism to ensure speedy resolution of cases. It recommended that the Act be amended to empower CCI to allow settlements and commitments for certain types of anti-competitive agreements (like exclusive supply agreements) and for abuse of dominance.
- **Green channel notifications:** Under the Act, combinations beyond a certain threshold require the approval of CCI. The Committee recommended a ‘green channel’ route for automatic approval of CCI for specific merger and acquisition cases, where there are no major concerns of an appreciable adverse effect on competition. This can include cases of combinations under the Insolvency and Bankruptcy Code.
- **Material influence for determining control:** The Act regulates combinations through methods such as mergers or amalgamations of two enterprises, or through acquisition of shares, voting rights or control over an enterprise. However, the Act does not define what type of rights may amount to ‘control’. The Committee recommended introducing a ‘material influence’ standard to determine what amounts to ‘control’. The Committee suggested that the ‘Material influence’ may be notified through regulation.
- **Time limits for merger assessment:** The Combination regulations notified under the Act require the CCI to provide its preliminary opinion on whether the combination will have an appreciable adverse effect on competition, within 30 days. The Committee recommended that the Act be amended to include this timeline for all combinations (except for green channel combinations). Further, under the Act, combinations may only be notified after 210 days. The Committee suggested that all permissible time exclusions from the 210-day timeline should be codified in the Act to provide certainty and transparency in the process.
- **Hub and spoke cartels:** The Committee noted that the Act does not directly address cartels where a third party (a ‘hub’) facilitates collusion between two or more competitors (the ‘spokes’) by causing sharing of sensitive information between them. It recommended amendments to the Act to include liability of such hubs.
- **Penalties:** The Committee noted that the rate of recovery of penalties under the Act is low because several CCI orders are challenged before courts. One of the reasons for this may be that the penalties imposed seem disproportionate and excessive. Therefore, the Committee recommended that CCI should be mandated to issue guidance on calculation and imposition of penalties under the Act.
- **Deal value thresholds:** The Committee noted that certain combinations, such as transactions forming part of digital markets, do not meet traditional asset thresholds but may still have an effect on competition. It recommended introducing deal value thresholds for such combinations, in addition to existing thresholds.
- **Definitions:** The Committee recommended amendments to the definitions of: (i) ‘cartels’ to include buyers’ cartel, (ii) ‘consumer’ to include government departments or agencies, and (iii) ‘turnover’ (used for the purpose of determining combinations) to exclude intra-group sales, indirect taxes, and trade discounts.

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