

COVID-19 PANDEMIC: INDIA COMPETITION LAW UPDATE

Whilst the world is focused on beating the crisis caused by COVID-19, competition authorities across the world are doing their bit to ensure that consumers are not exploited in this unprecedented situation. The common man's mantra to curb the spread of the virus is self-isolation and work-from-home is the new norm. The magic wand that has turned this into reality is technology and IT teams are working tirelessly to avoid any disruptions. Here is a snapshot of the key updates on how the Competition Commission of India (**CCI**) is dealing with this pandemic.

Urgent matters only:

As a precautionary measure to prevent the spread of COVID-19, the CCI has decided to adjourn all matters listed for hearing (excluding urgent matters) till 31 March 2020. While discouraging non-essential visitors, the CCI has mandated that visitors submit a self-declaration form in the prescribed format.¹

The National Company Law Appellate Tribunal (**NCLAT**), the appellate body of the CCI, has decided to hear only urgent matters till 1 April 2020. It has further notified that the filing counter at the NCLAT will also remain closed. On days when the Bench sits to hear urgent matters, bare minimum staff will be assigned duty work.²

The Supreme Court of India and various High Courts (including the High Courts of Delhi and Mumbai) have restricted their working to urgent matters only.

Pre-Filing Consultations (PFCs):

To avoid travel from Mumbai to Delhi for PFCs, the CCI has allowed PFCs through video conferencing. A party seeking a PFC may apply through the usual process of email application providing all requisite details including a specific request for PFC through video conferencing. The video conferencing service in Mumbai is available at the Office of Regional Director, Registrar of Companies, Ministry of Corporate Affairs.

The CCI allows PFCs to parties seeking informal guidance in relation to combinations on the following issues:

- (i) determining filing related requirements;
- (ii) information to be given in the notice to be filed for a proposed combination; and
- (iii) green channel combinations.³

E-filings on CCI's web portal:

Although the CCI Registry is accepting filings as usual, urgent filings can also be made electronically to avoid a visit to the CCI. The CCI allows filings to be made in electronic form.⁴ Unlike the United States (**US**) and the European Union (**EU**), there is no intimation from the CCI requesting parties to delay non-urgent merger filing or extending its approval timelines.

¹ https://www.cci.gov.in/sites/default/files/whats_newdocument/pm.pdf.

² <https://nclat.nic.in/Useradmin/upload/17913153645e74a43918f9c.pdf>.

³ https://www.cci.gov.in/sites/default/files/press_release/PR482019-20.pdf.

⁴ <https://www.cci.gov.in/what-e-filing>.

No change to standard competition compliance:

As the situation currently stands in India, there is no exception to any collusive activity or abusive conduct which takes place amidst the global crisis caused by COVID-19. However, any conduct/activity (which may otherwise be anti-competitive), temporarily undertaken by an enterprise to fight the crisis in compliance with the direction of the Government, may not be penalized under the (Indian) Competition Act, 2002.

Key announcements by foreign competition authorities to fight COVID-19 crisis:

Following are some of the key announcements from other mature competition law jurisdictions:

- In the United States, the Department of Justice (**DOJ**) has published an advisory announcing that individuals or companies that fix prices or rig bids for personal health protection equipment such as sterile gloves and face masks could face criminal prosecution.⁵ The DOJ has requested an additional 30 days to complete its review of pending or proposed merger transactions and has made provisions for electronic filing systems and phone and video-conferencing systems for conducting meetings and depositions.⁶
- The US Federal Trade Commission (**FTC**) has also announced that it will temporarily allow Hart-Scott-Rodino filings electronically, electronic signatures on certifications and affidavits, and will not be granting requests for early termination. The FTC is conducting a matter-by-matter review of its investigations and litigations to consider appropriate modifications of statutory or agreed-to timing. Commissioner meetings will be conducted by telephone or videoconference rather than in-person.⁷
- Due to the complexities and disruptions caused by the COVID-19, the European Commission has requested companies to delay merger notifications originally planned until further notice, where possible.⁸ The European Commission has suspended three Phase II investigations due to companies failing to comply with information deadlines, which may have been caused by coronavirus.⁹
- In the United Kingdom, the Competition and Markets Authority has temporarily relaxed elements of competition law to allow super-markets to work together essentially allowing them to share data with each other on stock levels, cooperate to keep shops open, or share distribution depots, delivery vans and pool staff.¹⁰

Although the CCI has not made any announcements amending its procedures/ timelines, the CCI is watching the situation closely along with the Government and may make certain announcements, as and when necessary.

⁵ <https://www.justice.gov/opa/pr/justice-department-cautions-business-community-against-violating-antitrust-laws-manufacturing>.

⁶ <https://www.justice.gov/opa/pr/justice-department-announces-antitrust-civil-process-changes-pendency-covid-19-event>.

⁷ <https://www.ftc.gov/news-events/blogs/competition-matters/2020/03/changes-bureau-procedure-during-covid-19-coronavirus>.

⁸ https://ec.europa.eu/competition/mergers/information_en.html

⁹ https://globalcompetitionreview.com/article/1216418/eu-suspends-three-phase-ii-investigations?utm_source=LinkedIn&utm_medium=social-media&utm_campaign=

¹⁰ <https://www.gov.uk/government/news/supermarkets-to-join-forces-to-feed-the-nation>.