

COMPETITION NEWS ALERT

May 24, 2023

The Government of India, Ministry of Corporate Affairs, vide gazette notification, S.O. 2228(E), dated 18th May 2023, has enforced the following important Sections/provisions of the **Competition (Amendment) Act, 2023** with effect from **18 May 2023**.

SECTION OF THE MAIN COMPETITION ACT, 2002	TITLE	DESCRIPTION
2	Definitions	Commitment, Enterprise, Party, Relevant Product Market.
3	Anti-competitive agreements (Horizontal Agreements, including cartels)	Introduction of element of <i>mens rea</i> for horizontal anti-competitive agreements by facilitators (“Hubs”).
3	Anti-competitive agreements (Vertical Agreements)	<ul style="list-style-type: none"> (i) Widening the net to include agreements other than vertical anti-competitive agreements between manufacturers and dealers. (ii) “Services” included in Tie-in arrangements & exclusive dealing agreements. (iii) Excluding agreements between enterprise and end consumer.
19.	(Power of CCI to) Inquiry into certain agreements and dominant position of enterprise	<ul style="list-style-type: none"> (i) Prescribing period of limitation of 3 years for filing Information or reference to CCI on any anti-competitive agreement or market conduct of a dominant enterprise. (ii) Introducing additional factors to be considered while determining the relevant product and geographical market.
22.	Meetings of Commission	Casting vote of the Chairperson Removed.

26.	Procedure for inquiry under section 19	<p>(i) Incorporating principles of <i>Res judicata</i>, i.e., CCI may not inquire about the allegation under Section 3 and 4 if the same or substantial facts and issues raised have already been decided in any previous case.</p> <p>(ii) DG on the direction of Commission to further investigate and submit Supplementary investigation report.</p>
35.	Appearance before Commission	Parties allowed to call experts for opinion with respect to any matter related to a case pending before Commission.
41.	(Powers of) Director General (DG) to investigate contravention	<p>(i) Enhanced & independent powers to DG to investigate, call for documents, enforce appearance of witnesses and conduct surprise search and seizure operations (“<i>Dawn Raids</i>”).</p> <p>(ii) DG can now also direct “agents” of the parties to depose on oath before him, including bankers, auditors and legal advisers.</p>
44.	Penalty for making false statement or omission to furnish material information	Maximum penalty increased from Rupees one crore Rupees to five crores.
53B	Appeals to Appellate Tribunal	Mandatory pre deposit of 25% penalty as condition precedent to admission of appeal for hearing before the NCLAT.
59A (New)	Compounding of certain offences	The power of NCLAT to compound certain offences under the Act, excluding offences punishable with imprisonment or imprisonment with fine.
64A (New)	Process of issuing regulations	Statutory obligation upon Commission to publish draft regulations on its website and invite public comments and publish the statement of the responses so received before publishing regulations under the main Act and to periodically review such regulations.

Please note the following Important amendments are yet to be notified.

SECTION OF THE MAIN COMPETITION ACT, 2002	<u>TITLE</u>	<u>DESCRIPTION</u>
5.	Combinations	(i) Deal Value threshold. (ii) Dilution of standard for “Control” from “decisive influence” to ‘material influence’ while assessing mergers & acquisitions.
6.	Regulation of Combinations	(i) Reduction of the time-limit for approvals of combinations (M&As) from two hundred and ten days to one hundred and fifty days. (ii) Reduction of time limit for forming a <i>prima facie</i> opinion by the Commission to issue a show cause notice to parties within fifteen days (from existing 30 days) for expeditious approval of combinations. (iii) Reduction of time limit for formation of prima facie opinion, whether the proposed combination is likely to cause appreciable adverse effect on competition (AAEC) in India or not within 30 colander days (as against 30 Working days at present).
6(4) (New)	Regulation of Combinations	Introduction of “Green channel” or deemed approval for certain categories of combination not likely to have appreciable adverse effect on competition (AAEC).
6A (New)	Open offers etc.	Waiver of standstill obligations for open market purchases - The existing “standstill obligations” in case of an open offer/public announcement and acquisition of convertible shares/securities on a stock exchange is waived off provided: (a) a merger notification is promptly filed with the CCI; and (b) the acquirer does not exercise any ownership or beneficial rights/ interest/ receives dividends in such shares/ securities till the receipt of approval from CCI.
16.	Appointment of DG etc.	Power of the Commission to appoint DG with prior approval of Central Government.
<u>26 (9) (New)</u>	Procedure for inquiry under section 19	Power of Commission to close case, in case DG report recommends contravention, after hearing the parties and issue of show cause notice to the affected party.

<u>27.</u>	Orders by Commission after inquiry into agreements or abuse of dominant position	Penalties to be imposed on “Global “Turnover - Explanation 2 to Section 27 – “Turnover” means global turnover derived from all the products and services.
<u>46.</u>	Power to impose lesser penalty	(i) Enhancing scope of leniency for busting cartels -Introduction of “leniency plus”- (ii) Power of Commission to allow withdrawal of leniency application.
<u>48A (New)</u>	Settlement	A new window, after the receipt of the investigation report to “settle” the case with the Commission with payment of such amount and on such terms and subject to monitoring of the implementation of the settlement terms by CCI. Avoids detailed inquiry, hearings etc. before the Commission.
<u>48B (New)</u>	Commitment	A new window, before the receipt of the investigation report but soon after CCI directs such investigation (on finding a prima facie case for violation of the law) on such terms and subject to monitoring of the implementation of the commitment’s terms by CCI. Avoids detailed investigation before DG, inquiry before CCI, hearings etc. before the Commission.

For any further information/clarification, please feel free to write to:

Mr. MM Sharma - mmsharma@vaishlaw.com

Mr. Sudhanshu Prakash - sudhanshu@vaishlaw.com

2023, VAISH ASSOCIATES ADVOCATES ALL RIGHTS RESERVED

New Delhi

1st, 9th, 11th Floor,
Mohan Dev Building, 13, Tolstoy Marg,
New Delhi, 110001 (India)
+91 11 42492525
delhi@vaishlaw.com

Mumbai

106, Peninsula Centre,
Dr. S.S. Rao Road, Parel,
Mumbai, 400012 (India)
+91 22 42134101
mumbai@vaishlaw.com

Bengaluru

105 -106, Raheja Chambers,
#12, Museum Road,
Bengaluru, 560001 (India)
+91 80 40903588/89
bangalore@vaishlaw.com

DISCLAIMER: The material contained in this publication is solely for information and general guidance and not for advertising or soliciting. The information provided does not constitute professional advice that may be required before acting on any matter. While every care has been taken in the preparation of this publication to ensure its accuracy, Vaish Associates Advocates neither assumes responsibility for any errors, which despite all precautions, may be found herein nor accepts any liability, and disclaims all responsibility, for any kind of loss or damage of any kind arising on account of anyone acting/ refraining to act by placing reliance upon the information contained in this publication.