

Interview with Ravneet Kaur, Chairperson of the Competition Commission of India

Ravneet Kaur

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The Competition Act 2002 has recently been amended by the Indian Parliament. The amendments seem to be a mixed bag of clarificatory as well as substantive forward-looking changes such as settlements and commitments, expedited timelines for combinations, etc. What are your views on these amendments and how they align with the Competition Commission of India (CCI)'s enforcement priorities in promoting a healthy competitive environment in India?

Ravneet Kaur: The recent amendments to the Competition Act of India represent a substantial leap forward in enhancing the effectiveness of the regulatory framework governing competition in the country. These reforms, which encompass both procedural clarifications and substantive provisions, will serve as a formidable tool for fostering economic growth while preserving the tenets of healthy competition across diverse sectors.

One of the most noteworthy aspects of these amendments is the introduction of settlements and commitments provisions, which reflects India's resolve to ensure quicker market correction. These mechanisms will enable companies to address competition concerns, potentially avoiding protracted legal battles. The reduction in the overall timelines for merger review process is another

amendment of paramount importance, enabling improvement in ease of doing business as it significantly expedites investment, mergers and acquisitions – a critical driver of economic growth. Another very important feature of these amendments is the increased emphasis on stakeholder consultation during the drafting of regulations. This inclusive approach enhances transparency and accountability of the regulatory process.

These reforms not only align with the government's 'ease of doing business' objectives but also promise to invigorate India's economic landscape by fostering robust competition while offering businesses a more predictable and conducive environment. I am sure that these amendments will usher in a new era of antitrust regulation in the country and will prove to be a significant milestone in the evolution of competition law in the country.

The introduction of settlements and commitments is the most sought-after change, aimed towards swiftly addressing competition issues without getting into a lengthy investigation process. As with the introduction of the leniency regime, and the green channel route, how much flexibility will the CCI extend to encourage use of settlements and commitments mechanisms? Will the CCI consider issuing guidance notes or FAQs on implementational aspects of these new provisions?

RK: The introduction of settlements and commitments mechanisms is indeed a fundamental development in our antitrust enforcement efforts. These mechanisms offer a pragmatic approach to swiftly address competition issues, obviating detailed investigation and litigation. They hold immense potential in promoting procedural economy and expediency in our enforcement actions. The benefits of these negotiated remedies are substantial, particularly in reducing the time and resources spent on lengthy investigations. However, it is also crucial to ensure that this flexibility remains within the boundaries of the robust framework set up by the Competition Act, to achieve the desired results of market corrections while safeguarding the integrity of the process.

Efficiency in enforcement actions is the primary goal. To that end, a streamlined process for settlements and commitments is essential, reducing the burden on the parties and the regulatory system. This efficiency should encompass clear procedures, timelines, and guidelines to ensure that all stakeholders have a predictable and transparent environment for participation. With these objectives in mind, we are in the process of laying down regulations for settlements and commitments. As far as guidance notes or FAQs are concerned, the same may be provided at an opportune time based on the requirement and our enforcement experience.

I am very hopeful that these fast-track mechanisms will serve as a powerful tool in advancing competition goals while fostering a competitive and fair business environment.

Only a few jurisdictions across the globe have introduced deal value thresholds for ex ante approval of mergers and acquisitions. How does the CCI plan to balance facilitating M&A activity in a growing economy like India and regulatory requirements? Do you see the deal value threshold impacting most transactions or will the criteria be tailored to capture specific kinds of combinations?

RK: Competition law is one of the most dynamic limbs of the economic regulatory framework and it is of utmost importance that the same is in sync with the realities of the times. The law must evolve with evolution of markets to stay relevant. The concerns regarding ‘killer acquisitions’ escaping merger review due to usage of traditional assets/turnover framework have been discussed by regulatory agencies across the world with increasing prominence. The Competition Law Review Committee (CLRC) examined this issue in 2019 and recommended the introduction of additional thresholds to review mergers. Accordingly, the government, through the current Amendment Act, has introduced alternative thresholds for merger review, based on the transaction value.

As regards maintaining balance between M&A activity in a growing economy like India and effective regulation, there are adequate safeguards in the legislative framework itself. The deal value threshold has been introduced with the requirement of a local nexus in the form of substantial business operations in India. The Act requires this to be specified through regulations: CCI has accordingly proposed a draft regulation for consultation. As can be noted, the criterion for a local nexus is sufficiently objective to avoid any ambiguities and consequent uncertainties.

The Amendment Act has linked computation of penalties for violating competition law based with global total turnover of the infringing enterprises. How would the CCI reconcile this with the ‘relevant turnover’ metric and the principle of ‘proportionality’ laid down by the Supreme Court in the *Excel Crop* decision?

RK: At the outset, I would like to clarify that the Amendment Act provides for a maximum ceiling based on global total turnover and not the base level, thereby giving sufficient space to CCI to modulate the penalty based on the facts of each matter. This also recognises that penalties based solely on relevant turnover may be insufficient in deterring anti-competitive behaviour, especially for larger multinational corporations operating in India. This shift aligns with international

best practices, where multiple jurisdictions globally possess the power to impose penalties based on global turnover.

The determination of penalties is a very case-specific process and necessitates taking into account both aggravating and mitigating factors present in a given matter. Factors such as gravity of the infringement, duration of the violation and cooperation in the investigation should guide our assessment. This approach not only ensures that penalties appropriately produce deterrence but also reflects the overarching principle of proportionality.

The Amendment Act also allows the CCI to issue penalty guidelines which will provide clarity on our approach in determination of penalties. The guidelines will provide stakeholders clarity regarding the factors and methodologies used in penalty assessment.

The CCI is witnessing an increasing number of investigations into the market behaviour of large technology companies like Apple, Google, Amazon, Meta, etc. With the recent amendments, do you think that the CCI is now better equipped to expeditiously implement market correction in the digital sector?

RK: First and foremost, it is important to note that the existing competition law has provided a robust foundation for addressing anti-competitive activities in digital markets, which has also been recognised by the CLRC. The recent amendments have bolstered this framework. The Amendment Act provides additional merger notification criteria by introducing deal value thresholds. The introduction of these thresholds ensures that potentially anti-competitive transactions in the digital space receive the necessary regulatory scrutiny.

Given the omnipresence of digital platforms in economic activities, enforcement actions in the digital markets will continue to be an important area for CCI to ensure fair and contestable markets. The recent amendments to the Competition Act have significantly enhanced CCI's capabilities in safeguarding competition in the digital sector and promoting a level playing field for all market participants.