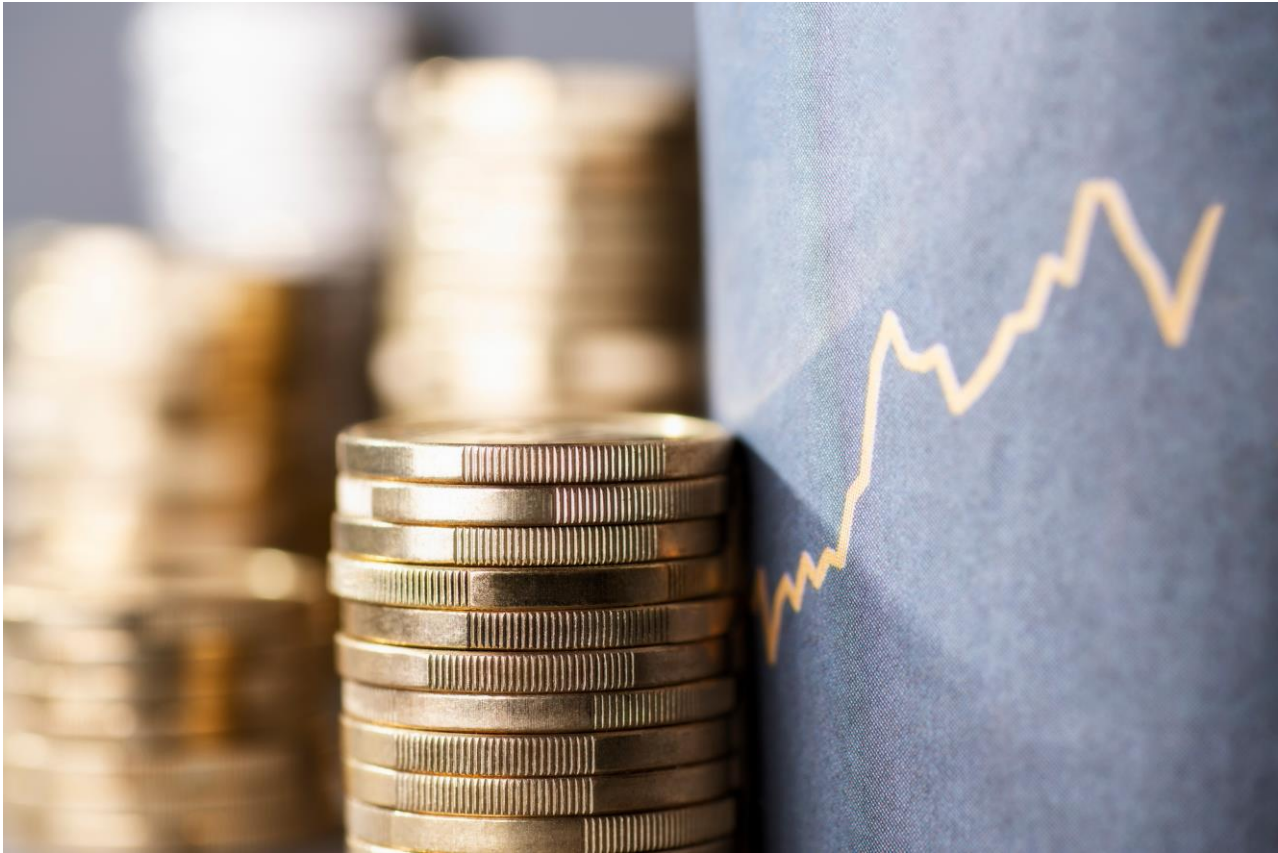




CARTEL REGULATION 2019 INDIA CHAPTER

30th November 2017



By: Competition Team at Chitale & Chitale Partners

Legislation and institutions

1. Relevant legislation

• **What is the relevant legislation?**

The relevant legislation is the Competition Act 2002, as amended (the Competition Act).

2. Relevant institutions

• **Which authority investigates cartel matters? Is there a separate prosecution authority? Are cartel matters adjudicated or determined by the enforcement agency, a separate tribunal or the courts?**

The Competition Commission of India (CCI), established under the provisions of the Competition Act, is the regulatory body and is responsible for investigating and adjudicating matters under the Competition Act, including on matters relating to cartels.

3. Changes

• **Have there been any recent changes, or proposals for change, to the regime?**

The government notified section 3 of the Competition Act, which prohibits anticompetitive agreements (including cartels) and other related provisions of the Competition Act vide a notification dated 15 May 2009, thereby making the CCI functional with effect from 20 May 2009. As of now, there are no proposals for change in the regime.



Section 53A of the Competition Act relating to the Competition Appellate Tribunal (the CompAT) has been amended (in the Finance Act 2017) to provide for the National Company Law Appellate Tribunal (the NCLAT), established under provisions of the Companies Act 2013 to be the appellate authority for the purposes of the Competition Act. The amending section of the Finance Act 2017 came into force with effect from 26 May 2017 and all appeals, applications or proceedings pending before the CompAT were transferred to the NCLAT. Prior to enforcement of section 3 of the Competition Act, the Monopolies and Restrictive Trade Practices Act 1969 (the MRTP Act) was the applicable legislation with regard to restrictive trade practices, including cartels, and the Monopolies and Restrictive Trade Practices Commission (the MRTP Commission) was the appropriate authority. The Competition (Amendment) Ordinance 2009 (the Ordinance) was promulgated by the president on 14 October 2009, amending section 66 of the Competition Act, which provided for the MRTP Commission to exercise jurisdiction under the provisions of the MRTP Act for a period of two years in respect of cases or proceedings filed before the commencement of the Competition Act. With effect from the promulgation of the Ordinance, all cases pending before the MRTP Commission were transferred to the CompAT with immediate effect. The Ordinance was subsequently passed by the Parliament of India as the Competition (Amendment) Act 2009.

4. Substantive law

- **What is the substantive law on cartels in the jurisdiction?**

The Competition Act is the substantive legislation on cartels in India. Under the Competition Act, the following agreements or arrangements between enterprises, persons or associations involved in the same or similar trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods or provision of any services are presumed to have an adverse effect on competition in the relevant market and would therefore be considered anticompetitive agreements, unless proven otherwise:

- those that directly or indirectly determine purchase or sale prices;
- those that limit or control production, supply, markets, technical development, investment or provision of services;
- those that share the market or source of production or provision of services by way of allocation of the geographical area of market, type of goods or services, number of customers in the market, or any other similar way; and
- those that directly or indirectly result in bid rigging or collusive bidding.

The Competition Act also defines certain vertical agreements as illegal. Any agreement between enterprises or persons at different stages or levels of the production chain, including tie-in arrangements, exclusive supply or distribution agreements, or resale price maintenance, having or likely to have an appreciable adverse effect on competition in India will be anticompetitive agreements and will be dealt with in accordance with the provisions of the Competition Act.

The substantive test is appreciable adverse effect on competition in the relevant market in India. There is a presumption under the Competition Act that horizontal cartels have an appreciable adverse effect on competition in India.

Application of the law and jurisdictional reach

5. Industry-specific provisions

- **Are there any industry-specific infringements? Are there any industry-specific defences or antitrust exemptions? Is there a defence or exemption for government-sanctioned activity or regulated conduct?**

There are no industry-specific offences and defences provided for under the Competition Act. However, the CCI is required to have due regard to factors such as the creation of barriers to new entrants in the market, driving existing competitors out of the market and the accrual of benefits to consumers while determining whether an agreement has an appreciable adverse effect on competition. Further, the Competition Act excludes joint ventures if such joint ventures result in an increase of efficiency in production, supply, distribution, storage, acquisition or control of goods or provisions of services. The Competition Act exempts any reasonable restrictions or conditions imposed for protecting intellectual property rights and the right of a person to export goods to the extent the



agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export. Also, sovereign functions of the government including all activities carried on by the departments of the central government dealing with atomic energy, currency, defence and space do not fall within the purview of the definition of enterprise and are therefore exempt. In addition to the above exemptions, the central government is vested with the power to exempt any practice or agreement in accordance with any obligation assumed under any treaty, agreement or convention between India and any other country, or exempt any enterprise which performs a sovereign function on behalf of the government or any class of enterprise in the interest of security of the nation or public interest. between India and any other country, or exempt any enterprise which performs a sovereign function on behalf of the government or any class of enterprise in the interest of security of the nation or public interest

6. Application of the law

- **Does the law apply to individuals or corporations or both?**

The Competition Act applies to individuals and other persons, including companies, partnership firms, corporations established under central or state legislation, cooperative societies, and also to associations of individuals and other type of persons.

7. Extraterritoriality

- **Does the regime extend to conduct that takes place outside the jurisdiction? If so, on what jurisdictional basis?**

The Competition Act empowers the CCI to inquire into and pass appropriate orders on anticompetitive agreements entered into outside India or where a party to such agreement is outside India. However, there has to be an territorial nexus. Thus, such an anticompetitive agreement should have or be likely to have an appreciable adverse effect on competition within India.

8. Export cartels

- **Is there an exemption or defence for conduct that only affects customers or other parties outside the jurisdiction?**

Yes, the Competition Act carves out an exception with regard to reasonable restrictions or conditions imposed for protecting the right of a person to export goods to the extent the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

Investigations

9. Steps in an investigation

- **What are the typical steps in an investigation?**

The CCI can inquire into an alleged contravention of the provisions of the Competition Act by a cartel either on its own motion, on receipt of information from any person, consumer, or trade or other association, or by recommendation made by the central or state government or a statutory authority. Information from any person, consumer, or trade or other association is required to be accompanied by the prescribed fees. The Competition Commission of India (General) Regulations 2009 (the General Regulations) provide that the reference or information given to the CCI should specify the name, address, contact details, manner of service of notice or other documents, etc, and should be signed by an authorised person. The CCI will hold its first ordinary meeting within 15 days of the date of placement of the matter, and form an opinion on the existence of a prima facie case within a maximum period of 60 days. The CCI may call for a preliminary conference to form a prima facie opinion, and may also invite the complainant and such other person as is necessary for the preliminary conference. Where the CCI is of the opinion that no prima facie case exists, it can close the matter and pass orders regarding closure. If the CCI concludes that a prima facie case exists, it may direct the Director General (DG) to investigate the matter and furnish a report to the CCI by the specified date.

10. Investigative powers of the authorities

- **What investigative powers do the authorities have? Is court approval required to invoke these powers?**

In discharging its functions, the CCI is guided by the principles of natural justice. It has the power to regulate its own procedure. While discharging its functions, the CCI has the powers of a civil court in



relation to matters such as summoning and enforcing the attendance of any person, discovery and production of documents, receiving evidence on affidavit, and issuing commissions for examination of witnesses and documents requisitioning any public record or document. The CCI also has the power to call experts from the fields of economics, commerce, accountancy, international trade, etc, to assist in the conduct of the inquiry. The CCI has the power to direct a person to produce books or other documents that may be in the custody or control of such person, or to provide any information that may be in the possession of a person in relation to the trade carried on by such person. The DG has all the powers that are conferred on the CCI and can determine the manner in which evidence may be adduced. The DG can admit evidence adduced as material evidence, admit on-the-record documents, admit entries in accounts books, admit the opinion of experts, etc.

International cooperation

11 Inter-agency cooperation

- **Is there cooperation with authorities in other jurisdictions? If so, what is the legal basis for, and extent of, cooperation?**

Under the Competition Act, the CCI is empowered to enter into a memorandum or arrangement with agencies of foreign countries for the discharge of its duties or performance of its functions. Such memorandum or arrangement can be entered into by the CCI only with the prior approval of the central government. The CCI has cooperation arrangements in place with competition regulators of other jurisdictions.

12 Interplay between jurisdictions

- **Which jurisdictions have significant interplay with your jurisdiction in cross-border cases? If so, how does this affect the investigation, prosecution and penalising of cartel activity in cross-border cases in your jurisdiction?**

Agencies of foreign jurisdictions with which CCI has entered into a memorandum or arrangement may cooperate with the CCI in investigation of cross-border cases.

International cooperation

13 Decisions

- **How is a cartel proceeding adjudicated or determined?**

The investigation report of the DG is placed before the CCI. The CCI may forward a copy of the report to the parties concerned. If the DG has concluded in its report that there is no contravention of the provisions of the Competition Act by the cartel, the CCI may invite objections, recommendations or suggestions from the informants being the central or state government or the statutory authority, or from the parties concerned. If, after considering the objections or suggestions received, the CCI agrees with the findings of the DG, it may close the investigation. If, after considering the objections, recommendations and suggestions, the CCI is of the opinion that further inquiries are called for, it may direct such inquiries into the matter by the DG or by an officer or expert of the CCI, or itself proceed with further inquiries in accordance with the provisions of the Competition Act.

Under the General Regulations, the parties are not entitled to produce additional evidence, either oral or documentary, that was previously in the possession or knowledge of the party but was not produced before the DG during the investigation. The CCI may require any of the parties or any other person to produce such documents or other material objects as evidence as it may consider necessary. The CCI, after considering the pleadings and evidence, examining witnesses, etc, may pass such appropriate orders as it deems fit. In cases where the CCI has passed interim orders temporarily restraining any party, it is required to hear the party as soon as possible. The CCI also has the power to combine any number of persons or enterprises, jointly and severally, as parties in the same proceedings.



14 Burden of proof

- **Which party has the burden of proof? What is the level of proof required?**

The provisions under the Competition Act relating to anticompetitive agreements do not specify the party on whom the burden of proof rests. As such, in normal cases the burden would lie on the complainant. However, horizontal cartels that directly or indirectly determine purchase or sale prices or limit or control production, supply, markets, technical development, investment or provision of services or shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way or directly or indirectly result in bid rigging or collusive bidding, are presumed to have an appreciable adverse effect on competition.

Even though the Competition Act does not specify the level of proof required, the general legal principles regarding level of proof are followed.

15 Circumstantial evidence

- **Can an infringement be established by using circumstantial evidence without direct evidence of the actual agreement?**

Yes, the CCI considers it appropriate to infer the existence of an agreement on the basis of circumstantial evidence where direct evidence of the existence of an agreement is not present.

16 Appeal process

- **What is the appeal process?**

Appeals from the CCI lie with the NCLAT. The NCLAT, inter alia, has jurisdiction under the Competition Act to hear and dispose of appeals against the directions issued, decisions made or orders passed by the CCI, inter alia:

- on the existence or non-existence of a prima facie case;
- on closure of the case by the CCI based on the report of the DG;
- on any sanction of the CCI after concluding the existence of a cartel in contravention of the provisions of the Competition Act;
- on orders passed by the CCI in matters taking place outside India but having an effect on competition in India;
- on any interim orders;
- on matters relating to a penalty imposed by the CCI for non-compliance with directions issued by it or by the DG, or for making false statements, omitting to furnish any material information or furnishing false information; or
- on a matter of the imposition of a lesser penalty by the CCI.

The NCLAT is guided by the principles of natural justice and has the power to regulate its own procedure. It has the same powers as those vested in a civil court for the purposes of discharging its function. The NCLAT may execute its order or may send it to a civil court having local jurisdiction for execution. The form and fee for appeal is prescribed under the Competition Appellate Tribunal (Form and fee for filing an appeal and fee for filing compensation applications) Rules 2009. The amount of fee prescribed for appeals with respect to the imposition of a penalty by the CCI is 1,000 rupees for every 100,000 rupees of penalty imposed, subject to a maximum fee of 300,000 rupees. The amount of fee payable in respect of any other appeal against a direction, decision or order of the CCI is 10,000 rupees. Appeals must be filed within 60 days from the date on which a copy of the direction, decision or order made by the CCI is received. The NCLAT may condone a delay in filing an appeal if it is satisfied that there was sufficient cause for it not being filed within the 60-day period. Appeals from the NCLAT lie with the Supreme Court of India within 60 days from the date of communication of the decision or order. Every appeal, together with an affidavit in support and a certified copy of the impugned order, is required to be submitted to the registrar of the NCLAT who, after verification, will register such an appeal. Registered appeals are put forward to the NCLAT for hearing with a notice to the appellant. After the hearing, the NCLAT may either admit the appeal or dismiss it summarily. On



acceptance of an appeal, the NCLAT may direct a notice to be issued to concerned parties.

Sanctions

17 Criminal sanctions

- **What, if any, criminal sanctions are there for cartel activity?**

The sanctions imposed under the Competition Act are civil in nature, and the proceedings are civil proceedings. The Competition Act does not prescribe any criminal sanctions for violations of its provisions and thus no imprisonment is provided for under the Competition Act for cartel conduct. The Competition Act prescribes imprisonment only in cases of the contravention of orders of the CCI, the furnishing of false evidence or documents, or the non-furnishing of details, etc.

18 Civil and administrative sanctions

- **What civil or administrative sanctions are there for cartel activity?**

If, after an inquiry, the CCI concludes that a cartel is in contravention of the provisions of the Competition Act, it may pass such orders or issue such directions as it may deem fit, including for discontinuance of the cartel agreement, a bar on re-entering into such agreements or for modification of the cartel agreement. In addition, the CCI may also impose a penalty upon each producer, seller, distributor, trader or service provider involved in such cartel of up to three times the profit for each year of the duration of such agreement or 10 per cent of the turnover for each year of its duration, whichever is higher. The CCI also has the power to impose lesser penalties on cartel members in accordance with the regulations framed thereunder.

19 Guidelines for sanction levels

- **Do fining or sentencing principles or guidelines exist? If yes, are they binding on the adjudicator? If no, how are penalty levels normally established? What are the main aggravating and mitigating factors that are considered?**

The penalty is calculated by the CCI on a case-by-case basis depending upon the facts and circumstances of each case. The Competition Act requires the CCI to follow the principles of natural justice. The General Regulations require the CCI to order imposition of a penalty only after a show cause notice has been issued and reasonable opportunity to represent the case has been given to the person against whom such penalty is to be levied. The Competition Act and the regulations are binding on the CCI. The Supreme Court of India has held that the penalty cannot be imposed on the 'total turnover' and had to be restricted to the 'relevant turnover' (ie, the turnover in respect of the quantum of supplies made of the product for which the cartel was formed, and not the total turnover).

20 Debarment

- **Is debarment from government procurement procedures automatic, available as a discretionary sanction, or not available in response to cartel infringements? If so, who is the decision-making authority and what is the usual time period?**

The Competition Act does not provide for debarment from government procurement procedures as a sanction for contravention. However, the CCI has the power to pass any order as it may deem fit in the interest of justice. Qualifying conditions for tender process may also make restrictions in this regard.



21 Parallel proceedings

- **Where possible sanctions for cartel activity include criminal and civil or administrative sanctions, can they be pursued in respect of the same conduct? If not, how is the choice of which sanction to pursue made?**

The sanctions are civil in nature, and the CCI has been granted powers to pass any or all orders and directions as it may deem fit in the interests of justice.

Private rights of action

22 Private damage claims

Are private damage claims available for direct and indirect purchasers? What level of damages and cost awards can be recovered?

The NCLAT has the power to adjudicate compensation claims that may arise from the findings of the CCI or the orders of the NCLAT or for any loss or damage shown to have been suffered by any person due to noncompliance with the orders of the CCI or of the NCLAT by such cartels or their members. The Competition Act does not provide for the level of damages. The eligibility and quantum of damage is to be determined by the NCLAT.

23 Class actions

Are class actions possible? If yes, what is the process for such cases? If not, what is the scope for representative or group actions and what is the process for such cases?

Yes, class actions are possible. Upon obtaining the permission of the NCLAT, a person may make an application on behalf of all the persons who have suffered damage. On grant of such permission, the NCLAT is required to issue a notice by personal service or public advertisement, and interested persons may apply to join as parties. No abandonment, withdrawal of such application or any agreement or compromise is allowed except with the specific approval of the NCLAT. An order passed by the NCLAT will be binding on all persons concerned.

Cooperating parties

24 Immunity

- **Is there an immunity programme? If yes, what are the basic elements of the programme? What is the importance of being 'first in' to cooperate?**

The Competition Act provides the CCI with the power to impose lesser penalties. If a member of a cartel or an individual who has been involved in the cartel on behalf of a cartel member is the first to make a vital disclosure by submitting evidence of a cartel, enabling the CCI to form a prima facie opinion regarding the existence of a cartel or is first to make a vital disclosure by submitting evidence that establishes the contravention of the provisions of Competition Act by a cartel in a matter under investigation and the CCI, or the DG did not, at the time of application, have sufficient evidence to establish such a contravention, the CCI may impose a lesser penalty on such member and the individual. The Competition Commission (Lesser Penalty) Regulations 2009 as amended (the Lesser Penalty Regulations), which were notified by the government on 13 August 2009, contain guidelines for imposing full or partial leniency. An applicant making first disclosures is eligible for full leniency (ie, up to 100 per cent) provided that disclosures are made prior to the CCI having gathered sufficient evidence to enable it to form a prima facie opinion or the evidence disclosed helps CCI or the DG to establish a contravention of section 3 of the Competition Act. Prior to the amendments to the Lesser Penalty Regulations made by the CCI (Gazette Notification on 8 August 2017), only members of a cartel and not its employees or officers could apply to the CCI for a lesser penalty.



25 Subsequent cooperating parties

- **Is there a formal partial leniency programme for parties that cooperate after an immunity application has been made? If yes, what are the basic elements of the programme? If not, to what extent can subsequent cooperating parties expect to receive favourable treatment?**

Partial leniency may be granted to members who have not been granted full leniency but make a disclosure to establish a contravention of the provisions of the Competition Act. Such disclosures are required to have significant added value with respect to the evidence already in the possession of the CCI, that is the additional evidence enhances the ability of the CCI or the DG to establish the existence of a cartel. For the second applicant and third and subsequent applicants in priority status, the Lesser Penalty Regulations prescribe a reduction of up to 50 per cent and 30 per cent respectively of the penalty that may be levied.

26 Going in second

- **What is the significance of being the second cooperating party? Is there an ‘immunity plus’ or ‘amnesty plus’ option?**

Partial leniency may be granted to members who have not been granted full leniency but make a disclosure to establish a contravention of the provisions of the Competition Act. Such disclosure is required to have significant added value with respect to the evidence already in the possession of the CCI. For the applicant marked as second in the priority status, the Lesser Penalty Regulations prescribe a reduction of up to 50 per cent of the full penalty leviable and third and subsequent applicants may be given up to 30 per cent reduction of the full penalty.

27 Approaching the authorities

- **Are there deadlines for initiating or completing an application for immunity or partial leniency? Are markers available and what are the time limits and conditions applicable to them?**

A lesser penalty can only be imposed by the CCI in cases where the report of investigation by the DG has not been received before such disclosure is made and the disclosures have sufficient evidence to enable the CCI to form a prima facie opinion or enable the CCI or the DG to establish a contravention of section 3 of the Competition Act. Thus, the application for leniency should be made accordingly. The benefit of a reduction in the penalty up to or equal to 100 per cent will only be considered if no other applicant has been granted such benefit by the CCI. Markers are available subject to filing a detailed application within 15 days from the date of communication in this regard by the CCI.

28 Cooperation

- **What is the nature, level and timing of cooperation that is required or expected from an immunity applicant? Is there any difference in the requirements or expectations for subsequent cooperating parties?**

Benefit of a reduction in the penalty up to or equal to 100 per cent may be granted by the CCI only where a member of a cartel is the first to make a vital disclosure by submitting evidence of a cartel, enabling the CCI to form a prima facie opinion or the applicant is the first to make a vital disclosure by submitting such evidence which establishes the contravention of section 3 of the Competition Act. Also, the CCI and the DG should not have sufficient evidence to form such a prima facie opinion or sufficient evidence to establish such a contravention. The applicant seeking leniency is required to:

- cease further participation in the cartel unless otherwise directed by the CCI;
- provide vital disclosure in respect of the contravention;
- provide all relevant information, documents and evidence that may contribute to the establishment of a cartel or as may be required by the CCI without concealing, destroying, manipulating or removing the relevant documents in any manner; and
- cooperate genuinely, fully, continuously and expeditiously throughout the investigation and other proceedings.



The CCI may subject the applicant to further restrictions or conditions after considering the facts and circumstances of the case. If the CCI has reason to believe that the applicant has not complied with the condition on which the lesser penalty was imposed, it may levy the penalty that the person would otherwise be subject to under the Competition Act. The Lesser Penalty Regulations further provide that the discretion of the CCI with regard to a reduction in the fine is to be exercised having due regard to the stage at which the applicant comes forward with the disclosure; the evidence already in possession of the CCI; the quality of the information provided by the applicant; and the entire facts and circumstances of the case. Applicants subsequent to the first are required to disclose evidence that has significant added value, that is such evidence should enhance the ability of the CCI or the DG to establish the existence of a cartel.

29 Confidentiality

- **What confidentiality protection is afforded to the immunity applicant? Is the same level of confidentiality protection applicable to subsequent cooperating parties? What information will become public during the proceedings and when?**

The CCI will treat as confidential the identity of and the information submitted by an applicant, whether such applicant is first or subsequent. However, there are exceptions under which the CCI may disclose the identity of the applicant or the information submitted by the applicant, such as when the disclosure is required under law or the applicant has agreed to such disclosure in writing, or the disclosure is a public disclosure. The DG may also seek waiver of confidentiality for evidentiary information or documents from the applicant, without compromising its identity, so as to counter the contentions of other cartel members.



Update and trends

The CCI passed an order on 19 April 2018, imposing a penalty on Panasonic and Geep Industries (India) Private Limited (Geep) liable for leading Indian zinc-carbon dry cell battery manufacturers Eveready colluding to fix prices of zinc-carbon dry cell batteries in contravention of the provisions of section 3(3)(a) read with section 3(1) of the Competition Act, 2002. This case was initiated by the CCI suo motu, pursuant to receiving an application under the Lesser Penalty Regulations dated 7 September 2016 and subsequent submissions dated 22 September 2016 from manufacturers based on the disclosure made by Panasonic in May 2016 under the Lesser Penalty Regulations. During the investigation, the Director General carried out simultaneous search and seizure operations at the premises of Eveready, Nippo and Panasonic on 19 April 2018 that while observing that it had concluded in its earlier order dated 23 August 2016, and seized incriminating material such as handwritten notes, emails and various other documents. Subsequently, Eveready and Nippo, came to the opinion that Panasonic had prior knowledge of the time of price increases of such zinc-carbon dry cell batteries.

The CCI, in its order, observed that the three battery manufacturers, namely Eveready and Nippo filed applications under the Lesser Penalty Regulations in August 2016 and September 2016, respectively, about the time of price increases of such zinc-carbon dry cell batteries. The CCI, in its order, observed that the three battery manufacturers, by its involvement in the primary cartel and Panasonic used this prior knowledge as leverage to negotiate and increase the basic price of the conduct relating to price coordination, limiting production, supply as well as market allocation which were in contravention of the provisions of section 3(3)(a), 3(3)(b) and 3(3)(c) read with section 3(1) of the Competition Act. It was further observed that the conduct was carried out to maintain price parity in the market. Additionally, after considering out from 2008, prior to 20 May 2009, the date on which section 3 of the Competition Act was enforced, and up to 23 August 2016 – the date of search and seizure operations by the Director General and therefore email communications between their key managerial personnel – the CCI would have jurisdiction.

While calculating the leviable penalty, the CCI took into consideration all relevant factors including the duration of the cartel, industry conditions, etc, and decided to levy a penalty on the three battery manufacturers at the rate of 1.25 times of their profit for each financial year from 2009/10 to 2016/17. Additionally, considering all in contravention of section 3(3) of the Competition Act. It was also of the facts and circumstances of the case, the penalty for individual observed by the CCI that such conduct continued from 1 October 2010, officers of the three manufacturers was calculated at the rate of when Panasonic and Geep entered into a written agreement, until 30 April 2016, when the last supplies were made by Panasonic to Geep. Pursuant to the Lesser Penalty Regulation, the CCI granted Panasonic a 100 per cent reduction, hence no penalty was levied of Panasonic for each year from mid 2010/11 to April 2016/17. However, on Eveready was penalised after a reduction of 30 per cent and its officials were granted a 100 per cent reduction of the and Nippo was penalised after a reduction of 20 per cent under the penalty under the Lesser Penalty Regulations, hence no penalty was Lesser Penalty Regulations. Also, a nominal penalty was imposed on Panasonic and its officials. A penalty was imposed on Geep ADIMC and its officers were penalised at the rate of 10 per cent of the at the rate of 4 per cent of the turnover for each year from mid 2010/11 average of their income for preceding three years. to April 2016/17. Individual officials of Geep were penalised at the rate

Another case involving Panasonic was decided by the CCI under of 10 per cent of the average of their income for the preceding three the Lesser Penalty Regulations on 30 August 2018. The CCI held years.

30 Settlements

- **Does the investigating or prosecuting authority have the ability to enter into a plea bargain, settlement or other binding resolution with a party to resolve liability and penalty for alleged cartel activity? What, if any, judicial or other oversight applies to such settlements?**

Subject to the provisions of the Competition Act and the Lesser Penalty Regulations, the CCI has the authority to grant full and partial leniency resulting in a reduction of the fine. The Competition Act does not make provision for any plea bargain, settlement or other binding resolution with the party to resolve liability and penalty.

31 Corporate defendant and employees

- **When immunity or partial leniency is granted to a corporate defendant, how will its current and former employees be treated?**

Where leniency is granted to a corporate defendant, the same treatment would also be extended to its employees who are named in the application made by the corporate defendant or who have individually applied for leniency and who cooperate. The Lesser Penalty Regulations make provision for



employees and officers of a member of a cartel to apply for leniency for themselves even where the corporate defendant, being a member of the cartel, fails to do so.

32 Dealing with the enforcement agency

- **What are the practical steps for an immunity applicant or subsequent cooperating party in dealing with the enforcement agency?**

The practical way is to cooperate with the DG and CCI during the investigation and adjudication procedure, and to furnish the required information.

29 Policy assessments and reviews

- **Are there any ongoing or anticipated assessments or reviews of the immunity/leniency regime?**

Currently, there is no ongoing or proposed leniency and immunity policy assessment or reviews. The CCI amended the Lesser Penalty Regulations (Notification dated 22 August 2017) permitting individuals who were involved in a cartel on behalf of an enterprise to seek leniency for themselves. Previously, only enterprises could apply for leniency. The amendment also seeks to remove the restriction of three markers for reduction of penalty. Now the third or subsequent applicant may be granted a penalty reduction of up to or equal to 30 per cent.

Defending a case

34. Disclosure

- **What information or evidence is disclosed to a defendant by the enforcement authorities?**

During the investigation process, as a matter of practice, the DG shares the order passed by the CCI framing a prima facie opinion on the matter and ordering investigation by the DG. The DG does not disclose the information collected during the investigation or obtained from third parties to the defendants or the information provided by one defendant to the other prior to obtaining their replies. Such information is used by the DG to challenge a defendant later during the investigation process. The CCI may share a copy of the DG's final report with the defendants.

35 Representing employees

- **May counsel represent employees under investigation in addition to the corporation that employs them? When should a present or past employee be advised to obtain independent legal advice?**

If there is no conflict of interest between the employees and the corporation, counsel may represent both. If there is a conflict of interest, present or past employees may be advised to seek independent legal advice.

36 Multiple corporate defendants

- **May counsel represent multiple corporate defendants? Does it depend on whether they are affiliated?**

Yes, counsel may represent multiple corporate defendants if there is no conflict of interest. There is nothing in the Competition Act prohibiting this.

37 Payment of penalties and legal costs

- **May a corporation pay the legal penalties imposed on its employees and their legal costs?**

There is no specific provision in the Competition Act barring companies (corporations) from paying the legal costs or penalties imposed on their employees.



38 Taxes

- **Are fines or other penalties tax-deductible? Are private damages awards tax-deductible?**

Penalties or damages are not tax-deductible.

39 International double jeopardy

- **Do the sanctions imposed on corporations or individuals take into account any penalties imposed in other jurisdictions? In private damage claims, is overlapping liability for damages in other jurisdictions taken into account?**

There are no provisions for international double jeopardy under the Competition Act, and the CCI may impose a penalty for the conduct of the concerned party having appreciable adverse effects on competition in India, whether or not any penalty has been imposed in other jurisdictions. Further, the Competition Act does not have any provision restricting the amount of penalty that may be levied by the CCI on the profit or turnover derived in or out of India, neither has it any provision for taking into account overlapping liability for damages in other jurisdictions. The Supreme Court of India recently held that in the case of an enterprise engaged in multi-product business the penalty should be imposed on the relevant turnover instead of overall turnover of the enterprise.

40 Getting the fine down

- **What is the optimal way in which to get the fine down? Does a pre-existing compliance programme, or compliance initiatives undertaken after the investigation has commenced, affect the level of the fine?**

The only way provided under the Competition Act to get the fine down is by way of disclosure of vital information. However, this is also subject to other conditions prescribed in the Competition Act and the Lesser Penalty Regulations.

India				
Is the regime criminal, civil or administrative?	What is the maximum sanction?	Are there immunity and/or leniency programmes?	Does the regime extend to conduct outside the jurisdiction?	Remarks
Proceedings under the Competition Act are civil in nature.	A penalty of up to three times the profit for each year of the duration of cartel or 10 per cent of the turnover for each year of the duration of the cartel, whichever is higher, can be imposed on each of the members and their directors and officers involved in the cartel.	The CCI has the power to impose lesser penalties on members of a cartel and the directors and officers of members that were involved in a cartel if the CCI is satisfied that such member has made full and true disclosures in respect of the alleged contraventions and such disclosures are vital. Lesser Penalty Regulations have been framed for this purpose.	The CCI has the power to inquire and pass appropriate orders in relation to anticompetitive agreements entered into outside India or where a party to such agreement is outside India, if such agreement has or is likely to have an appreciable adverse effect on competition in India.	Hefty penalties are being imposed in cases involving contraventions.



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