

Competition Act: Govt to introduce a 'commitment and settlement' clause

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The amendment will be made to regulate acquisitions by digital firms that don't have large assets in India, such as Facebook and escape CCI scrutiny

The Centre will introduce a 'commitment and settlement' clause in the Competition Act. This is likely to be amended in the upcoming winter session of Parliament.

The enabling clause will allow those found in contravention of the competition law to 'commit' to correct its ways to avoid further action even before the investigation is completed, Competition Commission of India (CCI) Chairperson Ashok Kumar Gupta told Business Standard.

Even in cases where the investigation is over, evidence has been found, and the adjudicating process has started, the companies will still be able to enter into a settlement. The companies will have to pay a fine and avoid legal proceedings after ensuring any anti-competitive practice will be corrected.

"This will reduce the burden of litigation on us and allow us to better utilise our resources. We don't want to get into a long-drawn process, which then delays market correction as well," said Gupta.

However, companies will not be able to simply get away by giving the 'commitment'. The government will work out a mechanism for deterrence alongside the enabling provision. Cartelisation will be kept strictly out of the purview of this provision.

The change is in line with the thought process of corporate affairs, the nodal ministry for CCI that is seeking to decriminalise all compoundable offences under the Companies Law. The government plans to create a provision for deferred prosecution arrangement or compromise settlement if public interest is not being harmed in the Companies Act.

PERFORMANCE OF CCI		
	2016-17	2017-18
Alleged anti-competitive conduct noticed	161	72
Prima facie order passed	167	74
Investigations completed by DG	23	36
No. of orders passed in anti-competitive conduct	78	72
Amount of penalty levied (in ₹ crore)	288.28	436.65

Source: Competition Commission of India

According to a report by AZB & Partners, CCI, on an average, has taken approximately four years to reach final decisions it had issued in the year 2018 under Section 27 of the Competition Act, 2002. Around 476 of CCI's orders have been appealed before the Competition Appellate Tribunal, between the years 2009 and 2017.

The legislative work for amending the Competition Act is under way. "These measures will bring ease of doing business in the country," added the CCI chairperson.

The UK and the European Union have adopted the 'commitment and settlement' approach in their competition laws. "Commitment procedures can facilitate quicker resolution of cases, with swift changes to the market, and certain and ready results, as opposed to long, costly, and often uncertain outcomes," the AZB & Partners report said.

CCI also plans to look into the deal size of an acquisition and any such transaction crossing a certain threshold would draw the CCI's scrutiny. Currently, the CCI looks into a deal when an acquired company has a turnover of at least Rs 1,000 crore and assets worth Rs 350 crore or more.

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In order to better monitor the progress of investigations, the government wants to create single-point accountability by merging the offices of CCI and Director General (DG), CCI. The antitrust watchdog will also set up timelines for completion of investigations.

With one-third of its posts vacant, there is a growing backlog of pending cases with CCI's investigative arm, said the Office of the DG.

"Investigation is at arm's length and DG is still the fact-finding body. We are only the adjudicatory authority. But this will help us better monitor the progress and ensure timeliness," added Gupta.

Making Corporate India Comply

CCI is also planning to expand its presence by setting up regional offices in key metro cities to assist in investigations and for advocacy of best practices in the sector.

The Competition Act was legislated in 2002, but the CCI became fully operational in 2009.