

Standing Committee Report Summary

The Competition (Amendment) Bill, 2022

- The Standing Committee on Finance (Chair: Mr. Jayant Sinha) submitted its report on the Competition (Amendment) Bill, 2022 on December 13, 2022. The Bill seeks to amend the Competition Act, 2002. The Act establishes the Competition Commission of India (CCI) for regulating market competition. Key observations and recommendations of the Committee include:
 - **Deal value threshold:** The Act prohibits any person or enterprise from entering into a combination which may cause an appreciable adverse effect on competition. Combinations imply mergers, acquisitions, or amalgamation of enterprises. The prohibition applies based on certain thresholds on cumulative assets and cumulative turnover. The Bill expands the definition of combinations to include transactions with a value above Rs 2,000 crore. The Committee noted that the Bill does not provide guidance on how the deal value will be calculated. This can potentially bring transactions which are unlikely to cause an appreciable adverse effect on competition under CCI's scrutiny. It recommended that the Bill should provide for the manner of calculation of transaction value to be determined by regulations.
 - The Bill further provides that for the application of the deal value threshold, an enterprise which is a party to the transaction should have substantial business operations in India. The Committee recommended that the criterion should be applied only to the enterprises that are being acquired.
 - **Settlement and Commitment framework:** The Bill permits CCI to close inquiry against enterprises for entering into anti-competitive agreements or abusing their dominant position if they offer: (i) settlement, or (ii) commitments. The Committee recommended that settlements should also be permitted for cartels.
 - It observed that the Bill does not specify if settlements and commitments would require an admission of guilt. It recommended that admission of guilt should not be mandated. It also recommended that the applicant should be allowed to appeal to the CCI to revisit the settlement/commitment after the CCI's final order in this regard. The Committee noted that under the Bill, the power to discontinue the settlement/commitment proceedings rests with the CCI. It recommended amending the Bill to allow applicants to withdraw their settlement application within seven working days from the date of the hearing.
 - **Anti-competitive agreements:** Under the Act, any agreement between enterprises or persons, engaged in identical or similar businesses shall be presumed anti-competitive and have an appreciable adverse effect on competition if it: (i) directly or indirectly determines purchase or sale prices, (ii) controls production, supply, markets, or provision of services, or (iii) directly or indirectly leads to collusive bidding. The Bill adds that enterprises or persons not engaged in identical or similar businesses shall be presumed to be part of such agreements, if they actively participate in the furtherance of such agreements. The Committee noted that there is no clarity in the Bill on active participation in anti-competitive agreements. This could potentially cover: (i) entities providing intermediation services in digital markets, and (ii) consortiums, industry associations, and trade unions organising meetings to share sensitive information. It recommended that in such cases, the intent for active participation must be proved.
 - **IPR exemption in abuse of dominant position:** The Committee noted that an exemption for Intellectual Property Rights (IPR) is granted in case of anti-competitive agreements. However, this exemption is not extended to cases of abuse of dominant condition. The Committee opined that without an explicit defence for IPR, CCI will not allow any dominant entity to use IPR as a defence in the investigation of abuse of the dominant position. It recommended that IPR as a defence should be allowed in investigations involving alleged abuse of dominant position.
 - **Time limit for approval of combinations:** The Bill proposes to reduce the timeline for the CCI to pass an order on approval of combinations from 210 days to 150 days. It also seeks to fix a timeline of 20 days for the CCI to form a prima facie opinion on whether a combination would cause an appreciable adverse effect on competition. The Committee observed that the proposed timelines will put undue burden on the CCI. It recommended against changing the existing timelines.

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