



## CRITICAL COMPETITION SNIPPETS

### REVOLUTIONIZING INDIA'S COMPETITION LAWS LANDSCAPE: KEY REGULATORY UPDATES ON DE MINIMIS EXEMPTIONS, JURISDICTIONAL THRESHOLDS, PENALTIES, TURNOVER CALCULATIONS, AND THE PATH TO SETTLEMENTS AND COMMITMENTS.

1. In a series of significant developments, on 05.03.2024, the Ministry of Corporate Affairs (MCA) notified certain much-anticipated provisions of the Competition (Amendment) Act, 2023 (Amendment Act) to the Competition Act, 2002 (Competition Act). To supplement this, the Competition Commission of India (CCI) on 06.03.2024, published a series of anticipated regulations. Furthermore, the MCA also released two notifications on 07.03.2024. The relevant regulations and notifications are listed below:
  - i. **Notification S.O. 1131 (E) No. 1074 dated March 7, 2024 (De Minimis Revision Circular)**, which revises the previously notified target based De Minimis exemptions;
  - ii. **Notification S.O. 1130 (E) No. 1073 dated March 7, 2024 (Jurisdictional Thresholds Revision Circular)**, which revises the jurisdictional thresholds set out under Section 5 of the Competition Act;
  - iii. **Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024 (Penalty Guidelines)**, which set out the methodology for calculating penalty for contraventions of the provisions of the Competition Act;
  - iv. **Competition Commission of India (Determination of Turnover or Income) Regulations, 2024 (Turnover Regulations)**, which clarify how turnover, or income shall be determined for the purposes of Section 27 of the Competition Act;
  - v. **Competition Commission of India (Settlement) Regulations, 2024 (Settlement Regulations)**, which enable an enterprise to file a settlement application to the CCI; and,
  - vi. **Competition Commission of India (Commitment) Regulations, 2024 (Commitment Regulations)**, which enable an enterprise undergoing an investigation under Section 26(1) of the Competition Act to file a commitment application.

## REVISIONS IN THE DE MINIMIS THRESHOLD AND JURISDICTION THRESHOLD UNDER THE COMPETITION ACT.

2. The CCI, by way of the De Minimis Revision Circular and Jurisdictional Thresholds Revision Circular, has increased the: (i) threshold to avail the benefit of de-minimis exemption based on the assets or turnover of the target enterprise, (ii) the jurisdictional thresholds set out under Section 5(a) of the Competition Act for the purpose of determining whether a merger or acquisition is required to be notified to the CCI. The revised thresholds are applicable for a period of two years from the date of the notifications, i.e., till 7 March 2026 and have been set out below:

THRESHOLDS FOR AVAILING DE MINIMIS EXEMPTION						
		ASSETS		OR	TURNOVER	
		PREVIOUS THRESHOLD	NEW THRESHOLD		PREVIOUS THRESHOLD	NEW THRESHOLD
TARGET ENTERPRISE	IN INDIA	≤ INR 350 CRORE	≤ INR 450 CRORE		≤ INR 1000 CRORE	≤ INR 1250 CRORE

THRESHOLDS FOR FILING NOTICE						
		ASSETS		OR	TURNOVER	
		PREVIOUS THRESHOLD	NEW THRESHOLD		PREVIOUS THRESHOLD	NEW THRESHOLD
ENTERPRISE LEVEL	INDIA	> INR 2000 CRORE	> INR 2500 CRORE		> INR 6000 CRORE	> INR 7500 CRORE
	WORLD WIDE WITH INDIA LEG	> USD 1 BILLION WITH ATLEAST > INR 1000 CRORE IN INDIA	> USD 1.25 BILLION WITH ATLEAST > 1250 CRORE IN INDIA		> USD 3 BILLION WITH ATLEAST > INR 3000 CRORE IN INDIA	> USD 3.75 BILLION WITH ATLEAST > INR 3750 CRORE IN INDIA
OR						
GROUP LEVEL	INDIA	> INR 8000 CRORE	> INR 10000 CRORE		> INR 24000 CRORE	> INR 30000 CRORE
	WORLD WIDE WITH INDIA LEG	> USD 4 BILLION WITH ATLEAST > INR 1000 CRORE IN INDIA	> USD 5 BILLION WITH ATLEAST > 1250 CRORE IN INDIA		> USD 12 BILLION WITH ATLEAST > INR 3000 CRORE IN INDIA	> USD 15 BILLION WITH ATLEAST > INR 3750 CRORE IN INDIA

## THE CCI NOTIFIES PROVISIONS CONCERNING GLOBAL TURNOVER AND PENALTY

3. The CCI notified Sections 20 and 35 of the Amendment Act which amend Sections 27 and 48 of the Competition Act, respectively. Simultaneously, to supplement these changes, on 06.03.2024, the CCI notified the Penalty Guidelines and the Turnover Regulations.



### Earlier Regime and the Amendment

4. Section 27 of the Competition Act empowers the CCI to pass orders and levy penalties on enterprises for entering into any anti-competitive agreements or for abusing their dominant position. The CCI may issue a cease-and-desist order, impose penalties, modify the agreements, or pass other orders as it deems fit under Section 27 of the Competition Act. Section 20 of the Amendment Act amends the provision concerning the imposition of penalty by the CCI.
5. Earlier when there was a contravention of the provisions of the Competition Act, the CCI had the power to impose a penalty up to ten percent (10%) of the average of the enterprise's turnover for the last three financial years. In the case of cartels, a penalty of up to three times the profit or ten percent of its turnover for each year of the continuance of such an agreement, whichever is higher, could be imposed.
6. During the initial years, the CCI levied penalties based on the total turnover of the enterprise. The term 'turnover' has been defined under Section 2(y) of the Competition Act to include value of sales of goods or services. However, this was challenged since it led to levy of disproportionate penalties on multi-product and multi-national enterprises for the same offence. *In Excel Crop Care Limited v. Competition Commission of India and Others, COMPAT, Appeal No. 79 of 2012*, the Supreme Court interpreted the term turnover to mean relevant turnover, i.e., turnover of the products or services which were the subject matter of the contravention. It observed that when there is a contravention of the Competition Act involving a given product, other products could not be justifiably included for imposing penalty as such an activity would be against the "ethos of competition law". It upheld the doctrine of proportionality wherein the punishment should be proportionate to the harm caused.
7. However, now, as per Section 20 of the Amendment Act, Section 27 of the Competition Act has been amended and an explanation has been added to it which defines turnover for the purpose of imposition of penalty under the said section. Turnover would mean "**Global Turnover**" derived from all the products and services by a person

or an enterprise. Furthermore, the criterion has been expanded to include income for imposition of penalties on individuals along with turnover, to be determined as per the Turnover Regulations.

## Turnover Regulations

8. The Turnover Regulations, inter alia, provide for the criteria for determination of turnover of an enterprise for the purposes of Section 27 of the Competition Act and determination of Income of an Individual for the purposes of Sections 27 and 48 of the Competition Act.
9. **Determination of Turnover** - Regulation 3 of the Turnover Regulations lays down the criteria for determination of turnover of enterprises for the purpose of Section 27 of the Competition Act:
  - **Inclusions:** It states that turnover or income shall include value of sales (or revenue or receipts), and other operating revenue, as per the audited financial statements maintained by the enterprise.
  - **Exclusions:** It excludes 'other income', 'indirect taxes', 'trade discounts' and 'intra group sales'.
  - Additionally, if an enterprise is required to prepare a consolidated financial statement, turnover or income shall be based on the same. If not, then the amount certified by the enterprise's statutory auditor or Chartered Accountant (CA) shall be considered.
10. **Determination of Income of Individuals:** The Turnover Regulations also prescribe the criteria for determining the income of an individual for the purpose of Section 48 and Section 27 of the Competition Act. It is pertinent to note that Section 48 of the Competition Act provides that when provisions of Competition Act are contravened by a company, every person who was in charge of and responsible for the conduct of the company shall also be liable along with the company. Further, if it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any director, manager, secretary, or other officer, they shall be guilty and punished accordingly as well. As per the newly amended Section 48, penalties up to ten percent of the average income for the last three years shall be imposed on such individuals. In the case of cartels, such persons shall be liable to a penalty of up to ten percent of the income for each year of the continuance of such agreement.

11. For the purpose of calculating the income of individuals, the following criteria has been provided:

- **Inclusions:** Income of individuals shall be the gross total income as per the Income Tax Returns (ITRs) as prescribed under the Income Tax Act, 1961.
- **Exclusions:** It shall exclude income from (i) house property and from (ii) capital gains.
- In case ITRs are not available or required to be filed, or tax returns are filed in either multiple or no jurisdictions, income shall be the total income as certified by a CA and supported by an affidavit by such individual.

### **Penalty Guidelines**

12. The Penalty Guidelines introduce a structured methodology and provide a degree of predictability in the computation of penalties. They set a range within which the penalty shall be imposed on an entity for their anti-competitive conduct.

**Base: Penalty up to 30% of the average relevant turnover or income.**

**Ceiling: Penalty up to 10% of the average global turnover for the preceding three financial years.**

13. **Methodology for determination of penalty** to be imposed on an enterprise under Section 27(b) of the Competition Act,

<b>Step 1</b>	Determination of the Average or Relevant Turnover / Income	Relevant Turnover is defined as turnover derived, directly, or indirectly, from the sale of products and/or services to which the contravention relates.
<b>Step 2</b>	Determination of Base Amount of up to 30% of the Average or Relevant Turnover / Income	Factors considered to arrive at the base amount are as follows: <ul style="list-style-type: none"> <li>○ Nature and gravity of the contravention.</li> <li>○ Nature of the industry or sector affected and its implications on the economy.</li> <li>○ Any other factors that the CCI may deem appropriate.</li> </ul>

<p><b>Step 3</b></p>	<p>Adjusting the penalty amount up to legal maximum penalty of the 10% of the average global turnover, i.e., turnover derived from all products and services by such enterprise.</p>	<p>The CCI may consider the following <i>mitigating / aggravating factors</i> while adjusting the amount:</p> <ul style="list-style-type: none"> <li>a) Duration of the contravention and/ or duration of involvement of the enterprise in such contravention.</li> <li>b) Role of the enterprise in orchestrating the contravening conduct.</li> <li>c) Recourse to coercive or retaliatory measures on other enterprises to participate in the contravention and/ or any retaliatory measures taken against other enterprise(s) with a view to enforcing the conduct or practices constituting the contravention.</li> <li>d) Repeated contravention.</li> <li>e) Admission of contravention, if any, by the enterprise and the stage at which such admission is made.</li> <li>f) Furnishing of cogent evidence by the enterprise establishing that its involvement in the contravention was substantially limited.</li> <li>g) Extent of co-operation by the enterprise during the Director General's (DG) investigation and/ or proceedings before the CCI. Voluntary termination of alleged anti-competitive conduct, under intimation to the CCI.</li> <li>h) Voluntary termination of alleged anti-competitive conduct, under intimation to the CCI.</li> <li>i) Implementation of a competition compliance program within the enterprise; and/ or</li> <li>j) Any other factor which the CCI may deem appropriate in the facts and circumstances of each case.</li> </ul>
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14. Such an amount may be further increased by the CCI (subject to the legal maximum of up to 10% of average global turnover of the past three financial years), if it believes that the penal amount arrived at is not sufficient to create deterrence. Additionally, in case determining relevant turnover is not feasible, the CCI may consider global turnover.
15. **Penalty in case of cartels:** As per the Penalty Guidelines, in the case of cartels, the penalty can extend up to ten percent (10%) of the average global turnover or 3 times the profit for each year of continuance of the cartel (whichever is higher). Further, the factors mentioned above shall also be taken into cognizance. However, no base amount shall be calculated.
16. **Determination of Penalty on Individuals under Section 48 of the Competition Act:** The maximum penalty payable shall be ten percent (10%) of the average income over the last three financial years. Regulation 5 also provides the factors that the CCI may consider while determining the percentage of the average income, the CCI shall consider various factors such as: the role, extent, and duration of involvement of such person, the nature and gravity of contravention by the company, repeated contravention, extent of cooperation, among other factors.
17. **Factors for consideration while determining penalty for gun-jumping.** Section 43A of the Competition Act empowers the CCI to impose a penalty on an entity which fails to notify a combination to the CCI under Section 6(2) of the Competition Act. The maximum penalty payable shall be one percent (1%) of the total combined turnover/ asset value, or the deal value. While determining the amount of penalty to be imposed, the CCI shall consider factors such as consummation or part consummation of the combination without giving notice, the violation of standstill obligations, non-furnishing of information, voluntary filing of notice, conduct of parties etc.
18. While determining the monetary penalty under Sections 42, 43, 44 and 45 of the Competition Act, the CCI shall consider the extent of reasons of non-compliance or non-cooperation, nature of misleading information, knowledge of the person furnishing the incomplete / true information regarding its veracity, repeated contravention, and other factors.
19. **Residuary Powers of the CCI:** While the guidelines provide a structured methodology, the CCI has retained residuary powers, allowing flexibility in exceptional circumstances. Any deviation from the general methodology will require written documentation, ensuring transparency and accountability.



## SETTLEMENT AND COMMITMENT FRAMEWORK IN INDIA

20. Under the newly notified Settlement Regulations and Commitment Regulations, parties being investigated for vertical anti-competitive agreements and/ or abuse of dominance under Sections 3(4) and 4 of the Competition Act respectively can either: (a) offer commitments after the CCI orders an investigation under Section 26(1) of the Competition Act but before the receipt of report from the DG (**Commitment Application**), or, (b) offer settlement to the CCI after receiving the report from the DG but before a final order has been passed by the CCI (**Settlement Application**). Some the key provisions of the Settlement / Commitment (**S&C**) framework are:

S.No.	Nature of Provision	Commitment Regulations	Settlement Regulations
1.	<b>Timeline</b>	An entity under scrutiny for anti-competitive vertical agreement and/ or abuse of dominance can offer commitments to the CCI <u>within 45 days (extendable by 30 days) of receiving the CCI's <i>prima facie</i> order or before the receipt of the DG Report, whichever is earlier</u> ( <b>Commitment Applicant</b> ).	Any entity facing the CCI's inquiry for anti-competitive vertical agreements and/ or abuse of dominance can apply for settlement with the CCI <u>within 45 days of receipt (extendable by 30 days) of the DG Report.</u> ( <b>Settlement Applicant</b> ).
2.	<b>Defects</b>	In case of defects, the Commitment Applicants are granted 10 working days (or such other period as the CCI may specify) to remove defects or provide complete information / documents. If these defects are not removed, then the CCI may reject the application. If the CCI is unsatisfied with the commitments offered by the applicant, it shall communicate the same to the applicant within 15 working days and the	In case of defects, the Settlement Applicants may be asked to rectify them within 10 working days from the date of the said communication. If the CCI is unsatisfied with the settlement offered by the applicant, it shall communicate the same to the applicant within 15 working days and the applicant shall have a final opportunity to file a revised application within 30 days.



		applicant shall have a final opportunity to file a revised application within 30 days from the date of the said communication by the CCI.	
3.	<b>Conclusion of Proceedings</b>	The proceedings must conclude <u>within 130 working days</u> of CCI's receipt of the Commitment Application. This period is further extendable by the CCI.	Such an application must be submitted before the CCI decides the case and the proceedings must conclude <u>within 180 working days</u> of CCI's receipt of the Settlement Application. This period is further extendable by the CCI.
4.	<b>Contents of Application</b>	The Commitment Application must include details of CCI's <i>prima facie</i> order directing investigation. The Commitment Application must also include details such as the Commitment Applicant's name, legal status, registration number along with the complete registered address; the name and details of the authorized representative of the Commitment Applicant; proof of payment of fees; full and true disclosure of facts in respect of the alleged contraventions; previous contraventions and pending proceedings (if any); any past settlement/ commitment application(s); details of the commitments offered including how the same address the alleged contraventions, competition	The Settlement Application must include the details of the findings of the report of the DG. The Settlement Application must also include details such as the Settlement Applicant's name, legal status, registration number along with the complete registered address; the name and details of the authorized representative of the Settlement Applicant; proof of payment of fees; full and true disclosure of facts in respect of the alleged contraventions and the DG findings; previous contraventions and pending proceedings (if any); any past settlement/ commitment application(s); details of the proposal for settlement including as to how the same addresses

		concerns and the manner of implementation and monitoring thereof; details of nature, gravity and impact of the alleged contraventions; a summary; details of other competition authorities, fora or courts, if any, which have examined or are currently examining the alleged contraventions; undertakings and waivers; and any other information that may assist the CCI.	the alleged contraventions, competition concerns and the manner of implementation and monitoring thereof; details of nature, gravity and impact of the alleged contraventions; a summary; details of other competition authorities, fora or courts, if any, which have examined or are currently examining the alleged contraventions; undertakings and waivers; and any other information that may assist the CCI.
5.	<b>Addressing Selective Allegations</b>	The Commitment Regulations allows for selective commitment proposals, thereby allowing the continuation of inquiry into the remaining contraventions.	The Settlement Applicant must cover all the alleged contraventions.
6.	<b>Undertaking and Waivers</b>	The Commitment Applicant has to submit an undertaking and waiver as per Schedule I of the Commitment Regulations, as a precondition for making the application, which will continue to operate even after the rejection of the application. Such undertaking shall: (i) admit to the CCI's jurisdiction and right to initiate proceedings, (ii) agree to the CCI's enforcement of any claims against it arising from any violation of the order, (iii)	The Settlement Applicant has to submit an undertaking and waiver as per Schedule I of the Settlement Regulations, as a precondition for making the application, which will continue to operate even after the rejection of the application. Such undertaking shall: (i) admit to the CCI's jurisdiction and right to initiate proceedings, (ii) agree to the CCI's enforcement of any claims against it arising from any violation of the order, (iii)

		waive the right to take any legal action against the CCI concerning any issues in the commitment order, (iv) waive the right to contest findings of fact and law, appeal or review before the National Company Law Appellate Tribunal ( <b>NCLAT</b> ) or other courts, and any plea of limitation or laches for initiating or restoring of the proceedings in the event of violation of the commitment order.	waive the right to take any legal action against the CCI concerning any issues in the settlement order, (iv) waive the right to contest findings of fact and law, appeal or review before the National Company Law Appellate Tribunal ( <b>NCLAT</b> ) or other courts, and any plea of limitation or laches for initiating or restoring of the proceedings in the event of violation of the settlement order.
<b>7.</b>	<b>Withdrawals</b>	The Settlement or Commitment Applicant may withdraw their applications any time before the CCI passes a final order either accepting or rejecting the application.	

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