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To
The Hon'ble Chairperson
Parliamentary Standing Committee on Finance
Parliament of India
New Delhi – 110001

2nd September, 2022

Subject: Representation to the Parliamentary Standing Committee on Finance in relation to the Competition Amendment Bill, 2022 as referred to it by the Hon'ble Speaker of the Lok Sabha, India

Dear Sir,

Please find attached a representation in relation to the **Competition Amendment Bill, 2022** as referred to the Standing Committee of Finance by the Hon'ble Speaker of the Lok Sabha, India.

The fellows at the Centre are willing to appear before the Committee in-person and depose on invitation.

Best regards,
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PRELIMINARY COMMENTS

It is submitted as follows:

1. The legislative exercise undertaken by the Government of India is a timely intervention to update the Competition Act, 2002 in requirement with the evolution of new-age markets and learn from the past precedent and correct the drafting errors.
2. The Government under the stewardship of Ministry of Corporate Affairs (MCA) had earlier formed a Competition Law Review Committee (CLRC) which consisted of various experts to obtain their recommendations on the implementation of the Competition Act, 2002 and the requirement of subsequent amendments thereof.
3. The Government under the stewardship of MCA then floated a Draft Competition Amendment Bill, 2020 for public comments.
4. The Government then tabled the Competition Amendment Bill, 2022 which has now been referred to the Parliamentary Standing Committee on Finance under your chairmanship for further consideration.

COMMENTS ON THE BILL

5. The changes brought by the said amendment Bill can largely be categorized under the following headers: a) introduction of settlement and commitment scheme; b) introducing the deal-value threshold in merger and combination scheme; c) change in the definition of 'relevant market'; d) including hub-and-spoke agreements under section 3 of the Act through the usage of explicit language; and e) introducing a timeframe for the receipt of 'information'.

Introduction of Settlement and commitment scheme

It is submitted that the introduction of settlement and commitment scheme is a welcome move as the Competition Act, 2002 is an economic law and the said provisions would allow the Competition Commission of India to make efficient allocation of the resources available with it. The Commission may implement these provisions to invoke behavioural changes in the contravening entities by allowing them to reach a compromise, and at the same time save its own resources which would have been otherwise wasted in conducting detailed investigation. The genesis of such provisions would inform that the Commission may utilize the saved resources to identify more cartels which would be existing in the economy thereby enhancing consumer welfare.

The scheme of settlement and commitment is easier said than done. The spirit of such a provision is to provide a form of amnesty to the contravening entities in exchange of the cooperation extended. What, however, remains pivotal is the structure of the competition commission and the modus of implementation of the Indian Competition Act, 2002, i.e. public or private or both in India. As far as the structure of the Indian competition commission is concerned, it is known that there is no clear demarcation of the executive and adjudicatory wing. This leaves the settling or committing parties in a lurch as they may have to face a similar set of officers during adjudication, should the proposal to settle or commit fail with the executive wing. It is precisely for this reason that the European Commission, even though has

similar provisions, has reserved the right to file an appeal against its decisions. Another dimension to the said scheme is that majority of the cases to the Indian competition commission are being filed by private entities. There is a likelihood that these informant parties may not be satisfied with the terms of settlement and commitment arrived by the respondent entities and the Commission thereby further strengthening the case for a right to appeal. A more detailed analysis of such a scheme published in the form of a research paper is attached with this representation as an Annexure.

Deal-value threshold

It is submitted that the said criteria is a welcome move in the light of development of new-age markets. The said criteria would allow the Indian competition commission to review mergers which may not be covered under the turnover or asset threshold but still have substantial impact on lessening of competition in the market. The implementation of such power is, however, yet to be seen and much depends on how the CCI enforces the said provision.

Change in the definition of 'relevant product market'

It is submitted that the change in the definition of the term 'Relevant Product Market (RPM)' is in line with the trajectory of the Indian economy. The earlier definition of RPM only considered the 'demand-side' view, however the amendment balances the same with 'supply-side' view. Such a definition would allow the Commission to take a holistic approach when it comes to delineating RPM and identify subsequent competition concerns. It is worth noting that implementation of section 4 of the Act depends very much on the delineation of RPM and given the unified nature of markets, the concept of 'substitutability/ interchangeability' ought to give equal weightage of the production technology adopted by the supplier.

Inclusion of hub-and-spoke agreement under section 3(3) of the Act through the usage of explicit language

It is submitted that the sub-sections under section 3 of the Act need to be read in tandem instead of a piecemeal basis. Section 3(1) of the Act qualifies as a 'dicta' to individuals and enterprises that they shall not form an anti-competitive agreement (ACA). Section 3(2) is a derivative of section 3(1) of the Act which says all such ACAs if formed would be void in nature. Section 3(3) of the Act talks about horizontal restraints which are placed on the enterprises. Section 3(4) of the Act talks about vertical restraints imposed on the enterprises and section 3(5) is the non-obstante clause which talks about the exception being carved out for restrictions imposed under the IPR law and reasonable bar placed on the jurisdiction of the Indian competition commission. While the clauses defined under section 3(3) of the Act are 'exhaustive' in nature, the types of vertical agreements defined under section 3(4) of the Act are only 'inclusive' in nature. It is, therefore, submitted that there is no requirement to amend the text of section 3 of the Act as hub-and-spoke agreements can be covered under section 3(4) of the Act.

Introducing a timeframe for receipt of 'information'

It is submitted that there is no requirement of introducing such a timeframe. The amended text of the law suggests a timeframe of three years for the receipt of information from the Informants from the date of 'cause of action'. It is stated that the Indian competition commission is empowered to take suo moto cognizance of the offences committed under the Act and introduction of such a timeframe, if at all it is required, should be squarely applicable on the suo moto powers of the competition commission as well. Even otherwise, such a clause is unwarranted from the perspective of overall aims and objects and scheme of the Act. First and foremost, the offences under the Competition Act, 2002 are 'in rem' in nature as contrary to 'in personam' which is the case with consumer disputes and the definition of 'cause' would in itself be under dispute. Secondly, the implementation of the Act over the last 13 years would inform that the approach of the Indian competition commission is lackadaisical in nature where in some of the cases it does not even give an opportunity to be heard to the informant entities. Such a timeframe would give the Indian competition commission additional reasons to not look into even genuine concerns brought forward by the informant under the technicality of timeline. The Indian competition commission through the enactment of the CCI General Regulations, 2009 charges a hefty fee from the enterprises for receipt of an information thereby further strengthening the case to look into the concerns on merits rather than on the basis of timeframe.

ADDITIONAL COMMENTS

6. Section 8 of the Act talks about the appointment process of the Chairperson and members of the Commission. Under the legislative text, the scope given to the Indian government is pretty large where it can appoint administrators, lawyers, economists, academicians or technocrats as members of the competition commission. Such a scope should be restricted and there should be a clear mandate under the law that professionals who are formally trained in the field of competition law and economics or have substantial experience in implementation of the same should only be appointed as members or chairperson of the commission. Based on the past experience, it is only the retired administrators and bureaucrats who are being elected by the Government as the Chairperson of the commission which can be proved through material available record have no training in the said field. Inspiration may be drawn from the Reserve Bank of India which in the past has been headed by academicians who are formally trained in the given field thereby making the body efficient.

7. Section 53A of the Act talks about establishment of the National Company Law Appellate Tribunal (NCLAT) as the appellate body to challenge orders passed by the competition commission. Such a provision should be amended to incorporate the Competition Appellate Tribunal (compAT) which was the position before 2017 to adjudicate on appeals arising out the commission's orders. Further, technical members before the compAT should also be professionals who are formally trained in the field of competition law and economics or have substantial experience in implementation of the same.

CLAUSE-BY-CLAUSE RESPONSE

S. No.	Clause	Comment
	for the words and figures "the Companies Act, 1956", wherever they occur, the words and figures "the Companies Act, 2013" shall be substituted;	NA
2.	2(ea) "commitment" means the commitment referred to in section 48B	NA
	2(h) a person or a department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, but does not include any activity of the Government relatable to the 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	NA
	2(ka) "party" includes a consumer or an enterprise or a person or an information provider, or a consumer association or a trade association, or the Central Government or any State Government or any statutory authority, as the case may be, and shall include an enterprise or a person against whom any inquiry or proceeding is instituted; and any enterprise or person impleaded by the Commission to join the proceedings;	NA
	in clause (l), in sub-clause (vi), for the words and figures "section 617 of the	NA

	Companies Act, 1956", the words, brackets and figures "clause (45) of section 2 of the Companies Act, 2013" shall be substituted;	
	2(p) public financial institution" means public financial institution as defined in clause (72) of section 2 of the Companies Act, 2013 and includes a State Financial Corporation, State Industrial Corporation or State Investment Corporation;';	NA
	2(t) "relevant product market" means a market comprising of all those products or services— (i) which are regarded as inter-changeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use; or (ii) the production or supply of, which are regarded as interchangeable or substitutable by the supplier, by reason of the ease of switching production between such products and services and marketing them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices;';	It is submitted that the change in the definition of the term 'Relevant Product Market (RPM)' is in line with the trajectory of the Indian economy. The earlier definition of RPM only considered the 'demand-side' view, however the amendment balances the same with 'supply-side' view. Such a definition would allow the Commission to take a holistic approach when it comes to delineating RPM and identify subsequent competition concerns. It is worth noting that implementation of section 4 of the Act depends very much on the delineation of RPM and given the unified nature of markets, the concept of 'substitutability/ interchangeability' ought to give equal weightage of the production technology adopted by the supplier.
	2(ua) settlement" means the settlement referred to in section 48A;'.	NA
	Second proviso to 3(3) Provided further that an enterprise or association of enterprises or a person or association of persons though not engaged in identical or similar trade shall also be presumed to be part of the agreement under this sub-section if it actively participates in the furtherance of such agreement.";	It is submitted that the sub sections under section 3 of the Act need to be read in tandem instead of a piecemeal basis. Section 3(1) of the Act qualifies as a 'dicta' to individuals and enterprises that they shall not form an anti-competitive agreement (ACA). Section 3(2) is a derivative of section 3(1) of the Act which says all such ACAs if formed would be void in nature. Section 3(3) of the Act talks about horizontal restraints

		which are placed on the enterprises. Section 3(4) of the Act talks about vertical restraints imposed on the enterprises and section 3(5) is the non-obstante clause which talks about the exception being carved out for restrictions imposed under the IPR law and reasonable bar placed on the jurisdiction of the Indian competition commission. While the clauses defined under section 3(3) of the Act are 'exhaustive' in nature, the types of vertical agreements defined under section 3(4) of the Act are only 'inclusive' in nature. It is, therefore, submitted that there is no requirement to amend the text of section 3 of the Act as hub-and-spoke agreements can be covered under section 3(4) of the Act.
	3(4) for the words "Any agreement amongst enterprises or persons", the words "Any other agreement amongst enterprises or persons including but not restricted to agreement amongst enterprises or persons" shall be substituted	3(4) for the words "Any agreement amongst enterprises or persons", the words "Any other agreement amongst enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons" shall be substituted
	3(4)(b) for the word "supply", the word "dealing" shall be substituted	NA
	Proviso to 3(4) Provided that nothing contained in this sub-section shall apply to an agreement entered into between an enterprise and an end consumer.';	The said proviso is unnecessary
	3(4) '(a) "tie-in arrangement" includes any agreement requiring a purchaser of goods or services, as a condition of such purchase, to purchase some other distinct goods or services; (b) "exclusive dealing agreement" includes any agreement restricting in any manner the purchaser or the	NA

	seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be;';	
	3(4) in clause (c), after the word "goods", at both the places where it occurs, the words "or services" shall be inserted; in clause (d), after the word "goods", at both the places where it occurs, the words "or services" shall be inserted; in clause (e), for the words "includes any agreement to sell goods on condition", the words "includes, in case of any agreement to sell goods or provide services, any direct or indirect restriction" shall be substituted;	NA
	3(5)(g) any other law for the time being in force relating to the protection of other intellectual property rights.".	NA
	In section 4 of the principal Act, in sub-section (2), in clause (a), in the Explanation, for the words "discriminatory condition or price", the words "condition or price" shall be substituted.	NA
	In section 5 of the principal Act,— (A) in clause (c), in sub-clause (ii), in item (B), for the word "India.", the words "India; or" shall be substituted; (B) after clause (c), the following clauses shall be inserted, namely:— "(d) value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds rupees two thousand crore: Provided that the enterprise which is a party to the transaction has such substantial business operations in India as may be specified by regulations. (e)	It is submitted that the criteria of 'deal-value' is a welcome move in the light of development of new-age markets. The said criteria would allow the Indian competition commission to review mergers which may not be covered under the turnover or asset threshold but still have substantial impact on lessening of competition in the market. The implementation of such power is, however, yet to be seen and much depends on how the CCI enforces the said provision.

	notwithstanding anything contained in clause (a) or clause (b) or clause (c), where either the value of assets or turnover of the enterprise being acquired, taken control of, merged or amalgamated in India is not more than such value as may be prescribed, such acquisition, control, merger or amalgamation, shall not constitute a combination under section 5."; (C) for the Explanation, the following Explanation shall be substituted, namely:— 'Explanation.—For the purposes of this section,— (a) "control" means the ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions by— (i) one or more enterprises, either jointly or singly, over another enterprise or group; or (ii) one or more groups, either jointly or singly, over another group or enterprise; (b) "group" means two or more enterprises where one enterprise is directly or indirectly, in a position to— (i) exercise twenty-six per cent. or such other higher percentage as may be prescribed, of the voting rights in the other enterprise; or (ii) appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or (iii) control the management or affairs of the other enterprise; (c) "turnover" means the turnover certified by the statutory auditor on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (2) or sub-section (4) of section 6 and such turnover in India shall be determined by excluding intra-group sales, indirect taxes, trade discounts and all	

	amounts generated through assets or business from customers outside India, as certified by the statutory auditor on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (2) or sub-section (4) of section 6; (d) "value of transaction" includes every valuable consideration, whether direct or indirect, or deferred for any acquisition, merger or amalgamation; (e) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed combination falls and if such financial statement has not yet become due to be filed with the Registrar under the Companies Act, 2013 then as per the statutory auditor's report made on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (2) or sub-section (4) of section 6, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights under the laws provided in sub-section (5) of section 3; (f) where a portion of an enterprise or division or business is being acquired, taken control of, merged or	

	amalgamated with another enterprise, the value of assets or turnover or value of transaction as may be applicable, of the said portion or division or business or attributable to it, shall be the relevant assets or turnover or relevant value of transaction for the purpose of applicability of the thresholds under section 5.'.	
	In section 6 of the principal Act,— (a) in sub-section (2),— (i) for the words "within thirty days of", the words "after any of the following, but before consummation of the combination" shall be substituted; (ii) in clause (a), after the word, brackets and letter "clause (c)", the words, brackets and letter "and clause (d)" shall be inserted; (iii) in clause (b), after the word, brackets and letter "clause (a)", the words, brackets and letter "and clause (d)" shall be inserted; (iv) the following Explanation shall be inserted, namely:— 'Explanation.—For the purposes of this sub-section, "other document" means any document, by whatever name called, conveying an agreement or decision to acquire control, shares, voting rights or assets or if the acquisition is without the consent of the enterprise being acquired, any document executed by the acquiring enterprise, by whatever name called, conveying a decision to acquire control, shares or voting rights or where a public announcement has been made in accordance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 made under the Securities and Exchange Board of	NA

	India Act, 1992 for acquisition of shares, voting rights or control such public document.';	
	in sub-section (2A),— (i) for the words "two hundred and ten days", the words "one hundred and fifty days" shall be substituted; (ii) the following proviso shall be inserted, namely:— "Provided that in case the party to the combination requests for additional time to furnish relevant information or remove defects to the notice filed under sub-section (2), the Commission may, by order, grant additional time which shall not be more than thirty days for furnishing relevant information or removing defects, as the case may be.";	This would ensure timely approval of the mergers thereby facilitating ease of doing business
	Section 6 (c) in sub-section (3), for the words and figures "sections 29, 30 and 31", the words, figures and letter "sections 29, 29A, 30 and 31" shall be substituted; (d) for sub-sections (4) and (5) and the Explanation, the following shall be substituted, namely:— '(4) Notwithstanding anything contained in sub-sections (2A) and (3) and section 43A, if a combination fulfils such criteria as may be prescribed and is not otherwise exempted under this Act from the requirement to give notice to the Commission under sub-section (2), then notice for such combination may be given to the Commission in such form and on payment of such fee as may be specified by regulations, disclosing the details of the proposed combination and thereupon a separate notice under sub-section (2) shall not be required to be given for such combination.	NA

	(5) Upon filing of a notice under sub-section (4) and acknowledgement thereof by the Commission, the proposed combination shall be deemed to have been approved by the Commission under sub-section (1) of section 31 and no other approval shall be required under sub-section (2) or sub-section (2A). (6) If within the period referred to in sub-section (1) of section 20, the Commission finds that the combination notified under sub-section (4) does not fulfil the requirements specified under that sub-section or the information or declarations provided are materially incorrect or incomplete, the approval under sub-section (5) shall be void ab initio and the Commission may pass such order as it may deem fit: Provided that no such order shall be passed unless the parties to the combination have been given an opportunity of being heard. (7) Notwithstanding anything contained in this section and section 43A, upon fulfilment of such criteria as may be prescribed, certain categories of combinations shall be exempted from the requirement to comply with sub-sections (2), (2A) and (4). (8) Notwithstanding anything contained in sub-sections (4), (5), (6) and (7)— (i) the rules and regulations made under this Act on the matters referred to in these sub-sections as they stood immediately before the commencement of the Competition (Amendment) Act, 2022 and in force at such commencement, shall continue to be in force, till such time as the rules or regulations, as the case may be, made under this Act; and	

	(ii) any order passed or any fee imposed or combination consummated or resolution passed or direction given or instrument executed or issued or thing done under or in pursuance of any rules and regulations made under this Act shall, if in force at the commencement of the Competition (Amendment) Act, 2022, continue to be in force, and shall have effect as if such order passed or such fee imposed or such combination consummated or such resolution passed or such direction given or such instrument executed or issued or done under or in pursuance of this Act. (9) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign portfolio investor, bank or Category I alternative investment fund, pursuant to any covenant of a loan agreement or investment agreement. Explanation.—For the purposes of this section, the expression— (a) "Category I alternative investment fund" has the same meaning as assigned to it under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992; (b) "foreign portfolio investor" has the same meaning as assigned to it under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 made under the Securities and Exchange Board of India Act,1992	
	6A. Nothing contained in sub-section (2A) of section 6 and section 43A shall prevent the implementation of an open offer or an acquisition of	NA

	shares or securities convertible into other securities from various sellers, through a series of transactions on a regulated stock exchange from coming into effect, if— (a) the notice of the acquisition is filed with the Commission within such time and in such manner as may be specified by regulations; and (b) the acquirer does not exercise any ownership or beneficial rights or interest in such shares or convertible securities including voting rights and receipt of dividends or any other distributions, except as may be specified by regulations, till the Commission approves such acquisition in accordance with the provisions of sub-section (2A) of section 6 of the Act. Explanation.—For the purposes of this section, "open offer" means an open offer made in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 made under the Securities and Exchange Board of India Act,1992.'.	
	In section 8 of the principal Act, in sub-section (2), after the word "industry,", the word "technology," shall be inserted.	Section 8 of the Act talks about the appointment process of the Chairperson and members of the Commission. Under the legislative text, the scope given to the Indian government is pretty large where it can appoint administrators, lawyers, economists, academicians or technocrats as members of the competition commission. Such a scope should be restricted and there should be a clear mandate under the law that professionals who are formally trained in the field of competition law and economics or have substantial experience in implementation of the same should only be appointed as members or chairperson of the commission. Based on the past

		experience, it is only the retired administrators and bureaucrats who are being elected by the Government as the Chairperson of the commission which can be proved through material available record have no training in the said field. Inspiration may be drawn from the Reserve Bank of India which in the past has been headed by academicians who are formally trained in the given field thereby making the body efficient.
	In section 9 of the principal Act, in sub-section (1), in clause (d), after the word, "industry,", the word "technology," shall be inserted.	Section 8 of the Act talks about the appointment process of the Chairperson and members of the Commission. Under the legislative text, the scope given to the Indian government is pretty large where it can appoint administrators, lawyers, economists, academicians or technocrats as members of the competition commission. Such a scope should be restricted and there should be a clear mandate under the law that professionals who are formally trained in the field of competition law and economics or have substantial experience in implementation of the same should only be appointed as members or chairperson of the commission. Based on the past experience, it is only the retired administrators and bureaucrats who are being elected by the Government as the Chairperson of the commission which can be proved through material available record have no training in the said field. Inspiration may be drawn from the Reserve Bank of India which in the past has been headed by academicians who are formally trained in the given field thereby making the body efficient.
	For section 12 of the principal Act, the following section shall be substituted, namely:—	This substitution would further ally the apprehensions of favourable treatment granted by the Commission to certain

	"12. (1) The Chairperson and other Members shall, for a period of two years from the date on which they cease to hold office, not accept any employment in or advise as a consultant, retainer or in any other capacity whatsoever, or be connected with the management or administration of— (a) any enterprise which is or has been a party to a proceeding before the Commission under this Act; or (b) any person who appears or has appeared before the Commission under section 35. (2) Notwithstanding anything contained in section 35, the Chairperson or any other member after retirement or otherwise ceasing to be in service for any reason shall not represent for any person or enterprise before the Commission: Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013.".	entities in return of post-retirement jobs.
	In section 16 of the principal Act, in sub-section (1), for the words "Central Government may, by notification", the words "Commission may, with the prior approval of the Central Government," shall be substituted.	NA
	For section 18 of the principal Act, the following section shall be substituted, namely:— "18. Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition,	NA

	promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country: Provided further that, the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with any statutory authority or department of Government."	
	In section 19 of the principal Act,— (a) in sub-section (1), the following provisos shall be inserted, namely:— "Provided that the Commission shall not entertain an information or a reference unless it is filed within three years from the date on which the cause of action has arisen: Provided further that an information or a reference may be entertained after the period specified in the first proviso if the Commission is satisfied that there had been sufficient cause for not filing the information or the reference within such period after recording its reasons for condoning such delay."	It is submitted that there is no requirement of introducing such a timeframe. The amended text of the law suggests a timeframe of three years for the receipt of information from the Informants from the date of 'cause of action'. It is stated that the Indian competition commission is empowered to take suo moto cognizance of the offences committed under the Act and introduction of such a timeframe, if at all it is required, should be squarely applicable on the suo moto powers of the competition commission as well. Even otherwise, such a clause is unwarranted from the perspective of overall aims and objects and scheme of the Act. First and foremost, the offences under the Competition Act, 2002 are 'in rem' in nature as contrary to 'in personam' which is the case with consumer disputes and the definition of 'cause' would in itself be under dispute. Secondly, the implementation of the Act over the last 13 years would inform

		that the approach of the Indian competition commission is lackadaisical in nature where in some of the cases it does not even give an opportunity to be heard to the informant entities. Such a timeframe would give the Indian competition commission additional reasons to not look into even genuine concerns brought forward by the informant under the technicality of timeline. The Indian competition commission through the enactment of the CCI General Regulations, 2009 charges a hefty fee from the enterprises for receipt of an information thereby further strengthening the case to look into the concerns on merits rather than on the basis of timeframe.
	Section 19 b) in sub-section (3),— (i) in clause (c), the words "by hindering entry into the market" shall be omitted; (ii) in clause (d), for the words "accrual of benefits", the words "benefits or harm" shall be substituted; (c) in sub-section (6), after clause (h), the following clauses shall be inserted, namely:— "(i) characteristics of goods or nature of services; (j) costs associated with switching supply or demand to other areas."; (d) in sub-section (7),— (i) in clause (a), after the words "end-use of goods", the words "or the nature of services" shall be inserted; (ii) after clause (f), the following clauses shall be inserted, namely:— "(g) costs associated with switching demand or supply to other goods or services; (h) categories of customers;".	It is submitted that the change in the definition of the term 'Relevant Product Market (RPM)' is in line with the trajectory of the Indian economy. The earlier definition of RPM only considered the 'demand-side' view, however the amendment balances the same with 'supply-side' view. Such a definition would allow the Commission to take a holistic approach when it comes to delineating RPM and identify subsequent competition concerns. It is worth noting that implementation of section 4 of the Act depends very much on the delineation of RPM and given the unified nature of markets, the concept of 'substitutability/ interchangeability' ought to give equal weightage of the production technology adopted by the supplier.

	In section 20 of the principal Act,— (a) in sub-section (1), for the words, brackets and letter "clause (c) of that section", the words, brackets, letters and figure "clause (c) of section 5 or acquisition of any control, shares, voting right or assets of an enterprise, merger or amalgamation referred to in clause (d) of that section" shall be substituted; (b) in sub-section (3), after the words "value of turnover", the words "or the value of transaction" shall be inserted; (c) in sub-section (4), in clause (c), for the word "combination", the word "concentration" shall be substituted.	NA
	In section 21 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:— "Provided that any statutory authority, may, suo motu, make a reference to the Commission on any issue that involves any provision of this Act or is related to promoting the objectives of this Act, as the case may be. In section 21A of the principal Act, in sub-section (1),— (a) for the words "this Act", the words "an Act" shall be substituted; (b) for the proviso, the following proviso shall be substituted, namely:— "Provided that the Commission, may, suo motu, make a reference to a statutory authority on any issue that involves provisions of an Act whose implementation is entrusted to that statutory authority.".	NA
	In section 22 of the principal Act, in sub-section (3), the words "and in the event of equality of votes, the Chairperson or in his absence, the Member presiding, shall have a	In line with the Delhi HC judgment

	second or casting vote" shall be omitted.	
	In section 26 of the principal Act,— (a) after sub-section (2), the following sub-section shall be inserted, namely:— "(2A) The Commission may not inquire into agreement referred to in section 3 or conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information received under section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order."; (b) after sub-section (3), the following sub-sections shall be inserted, namely:— "(3A) If, after consideration of the report of the Director General referred to in sub-section (3), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter. (3B) The Director General shall, on receipt of direction under sub-section (3A), investigate the matter and submit a supplementary report on his findings within such period as may be specified by the Commission."; (c) in sub-section (4), for the word, brackets and figure "sub-section (3)", at both the places where they occur, the words, brackets, figures and letter "sub-sections (3) and (3B)" shall be substituted; (d) in sub-section (5), for the word, brackets and figure "sub-section (3)", the words, brackets, figures and letter "sub-sections (3) and (3B)" shall be substituted; (e) in sub-section (8), for the word, brackets and figure "sub-section (3)",	Provides consistency to section 26 of the Act

	the words, brackets, figures and letter "sub-sections (3) and (3B)" shall be substituted; (f) after sub-section (8), the following sub-section shall be inserted, namely:— "(9) Upon completion of the investigation or inquiry under sub-section (7) or sub-section (8), as the case may be, the Commission may pass an order closing the matter or pass an order under section 27, and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be: Provided that before passing such order, the Commission shall issue a show-cause notice indicating the contraventions alleged to have been committed and such other details as may be specified by regulations and give a reasonable opportunity of being heard to the parties concerned.".	
	In section 27 of the principal Act, for clause (b), the following clause shall be substituted, namely:— '(b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover or income, as the case may be, for the last three preceding financial years, upon each of such person or enterprise which is a party to such agreement or has abused its dominant position: Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten	NA

	per cent. of its turnover or income, as the case may be, for each year of the continuance of such agreement, whichever is higher. Explanation.—For the purposes of this clause, the expression "turnover" or "income", as the case may be, shall be determined in such manner as may be specified by regulations.'.	
	In section 29 of the principal Act,— (a) in sub-section (1), for the words "within thirty days", the words "within fifteen days" shall be substituted; (b) after sub-section (1A), the following sub-section shall be inserted, namely:— "(1B) The Commission shall, within twenty days of receipt of notice under sub-section (2) of section 6, form its prima facie opinion referred to in sub-section (1)."; (c) in sub-section (2),— (i) for the words "within seven working days", the words "within seven days" shall be substituted; (ii) for the words "within ten working days", the words "within seven days" shall be substituted; (d) in sub-section (3), for the words "within fifteen working days", the words "within ten days" shall be substituted; (e) in sub-section (4), for the words "within fifteen working days", the words "within seven days" shall be substituted; (f) in sub-section (5), for the words "within fifteen days", the words "within ten days" shall be substituted; (g) for sub-section (6), the following sub-sections shall be substituted, namely:— "(6) After receipt of all information, the Commission shall proceed to deal with the case in accordance with the provisions	NA

	contained in section 29A or section 31, as the case may be. (7) Notwithstanding anything contained in this section, the Commission may accept appropriate modifications offered by the parties to the combination or suo motu propose modifications, as the case may be, before forming a prima facie opinion under sub-section (1).".	
	29A. (1) Upon completion of the process under section 29, where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall issue a statement of objections to the parties identifying such appreciable adverse effect on competition and direct the parties to explain within twenty-five days of receipt of the statement of objections, why such combination should be allowed to take effect. (2) Where the parties to the combination consider that such appreciable adverse effect on competition can be eliminated by suitable modification to such combination, they may submit an offer of appropriate modification to the combination along with their explanation to the statement of objections issued under sub-section (1) in such manner as may be specified by regulations. (3) If the Commission does not accept the modification submitted by the parties under sub-section (2) it shall, within seven days from the date of receipt of the proposed modifications under that sub-section, communicate to the parties as to why the modification is not sufficient to eliminate the appreciable adverse effect on competition and call upon the parties to furnish, within twelve days of the receipt of the said	This would ensure timely approval of the mergers thereby facilitating ease of doing business

	communication, revised modification, if any, to eliminate the appreciable adverse effects on competition: Provided that the Commission shall evaluate such proposal for modification within twelve days from receipt of such proposal: Provided further that the Commission may suo motu propose appropriate modifications to the combination which may be considered by the parties to the combination.".	
	In section 31 of the principal Act,— (a) in the marginal heading, the word "certain" shall be omitted; (b) in sub-section (1), the words "including the combination" shall be omitted; (c) after sub-section (1), the following proviso shall be inserted, namely:— "Provided that if the Commission does not form a prima facie opinion as provided under sub-section (1B) of section 29, the combination shall be deemed to have been approved and no separate order shall be required to be passed."; (d) for sub-sections (3), (4), (5) and (6), the following sub-sections shall be substituted, namely:— "(3) Where the Commission is of the opinion that any appreciable adverse effect on competition that the combination has, or is likely to have, can be eliminated by modification proposed by the parties or the Commission, as the case may be, under sub-section (7) of section 29 or sub-section (2) or sub-section (3) of section 29A, it may approve the combination subject to such modifications as it thinks fit. (4) Where a combination is approved by the Commission under sub-section (3), the parties to the combination	NA

	shall carry out such modification within such period as may be specified by the Commission. (5) Where— (a) the Commission has directed under sub-section (2) that the combination shall not take effect; or (b) the parties to the combination, fail to carry out the modification within such period as may be specified by the Commission under sub-section (4); or (c) the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition which cannot be eliminated by suitable modification to such combination, then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that such combination shall not be given effect to, or be declared void, or frame a scheme to be implemented by the parties to address the appreciable adverse effect on competition, as the case may be. (6) If no order is passed or direction issued by the Commission in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), as the case may be, within a period of one hundred and fifty days from the date of notice given to the Commission under sub-section (2) of section 6, the combination shall be deemed to have been approved by the Commission: Provided that the Commission may, by order, extend the said period of one hundred and fifty days by such further period as it thinks fit, but not exceeding thirty days in case parties to the combination request for additional time to furnish relevant information or remove defects to the notice filed	

	under sub-section (2) of section 6.". (e) sub-sections (7), (8), (9), (10), (11) and (12) shall be omitted	
	In section 32 of the principal Act, for the figures and word "29 and 30", the figures, letter and word "29, 29A and 30" shall be substituted.	NA
	Section 35 of the principal Act shall be numbered as sub-section (1) thereof,— (a) in sub-section (1) as so numbered, for the words "A person or an enterprise", the words "A party" shall be substituted; (b) after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:— "(2) Without prejudice to sub-section (1), a party may call upon experts from the fields of economics, commerce, international trade or from any other discipline to provide an expert opinion in connection with any matter related to a case.".	This would further allow the commission to rely on subject matter expertise in the field of competition
	In section 41 of the principal Act,— (a) for sub-section (3), the following sub-sections shall be substituted, namely:— "(3) Without prejudice to sub-section (2), it shall be the duty of all officers, other employees and agents of a party which are under investigation— (a) to preserve and to produce all information, books, papers, other documents and records of, or relating to, the party which are in their custody or power to the Director General or any person authorised by it in this behalf; and (b) to give all assistance in connection with the investigation to the Director General. (4) The Director General may require any person other than a party referred to in sub-section (3) to furnish such information or produce such books, papers, other documents or records	This will provide further clarity in law in relation to the powers of the DG.

	before it or any person authorised by it in this behalf if furnishing of such information or the production of such books, papers, other documents or records is relevant or necessary for the purposes of its investigation. (5) The Director General may keep in his custody any information, books, papers, other documents or records produced under sub-section (3) or sub-section (4) for a period of one hundred and eighty days and thereafter shall return the same to the person by whom or on whose behalf the information, books, papers, other documents or records were produced: Provided that the information, books, papers, other documents or records may be called for by the Director General if they are needed again for a further period of one hundred and eighty days by an order in writing: Provided further that the certified copies of the information, books, papers, other documents or records, as may be applicable, produced before the Director General may be provided to the party or person on whose behalf the information, books, papers, other documents or records are produced at their own cost. (6) The Director General may examine on oath— (a) any of the officers and other employees and agents of the party being investigated; and (b) with the previous approval of the Commission, any other person, in relation to the affairs of the party being investigated and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally. (7) The examination under sub-section (6) shall be recorded in writing and shall be read over to or by, and	

	signed by, the person examined and may thereafter be used in evidence against it. (8) Where in the course of investigation, the Director General has reasonable grounds to believe that information, books, papers, other documents or records of, or relating to, any party or person, may be destroyed, mutilated, altered, falsified or secreted, the Director General may make an application to the Chief Metropolitan Magistrate, Delhi for an order for seizure of such information, books, papers, other documents or records. (9) The Director General may make requisition of the services of any police officer or any officer of the Central Government to assist him for all or any of the purposes specified in sub-section (10) and it shall be the duty of every such officer to comply with such requisition. (10) The Chief Metropolitan Magistrate, Delhi may, after considering the application and hearing from the Director General, by order, authorise the Director General— (a) to enter, with such assistance, as may be required, the place or places where such information, books, papers, other documents or records are kept; (b) to search that place or places in the manner specified in the order; and (c) to seize information, books, papers, other documents or records as it considers necessary for the purpose of the investigation: Provided that certified copies of the seized information, books, papers, other documents or records, as the case may be, may be provided to the party or person from whose place or	

	places such documents have been seized at its cost. (11) The Director General shall keep in his custody such information, books, papers, other documents or records seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the party or person from whose custody or power they were seized and inform the Chief Metropolitan Magistrate, of such return: Provided that the Director General may, before returning such information, books, papers, other documents or records take copies of, or extracts thereof or place identification marks on them or any part thereof. (12) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating to search or seizure made under that Code."; (b) for the Explanation, the following Explanation shall be substituted, namely:— 'Explanation.—For the purposes of this section,— (a) "agent", in relation to any person, means, any one acting or purporting to act for or on behalf of such person, and includes the bankers and legal advisers of, and persons employed as auditors by, such person; (b) "officers", in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate; (c) any reference to officers and other employees or agents shall be construed as a reference to past as well as present officers and other	

	employees or agents, as the case may be.'.	
	In section 42 of the principal Act,— (a) in sub-section (2), for the words, figures and letters "sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine", the words, figures and letters "sections 6, 27, 28, 31, 32, 33, 42A, 43, 43A, 44 and 45 of the Act, he shall be liable to a penalty" shall be substituted; (b) in sub-section (3), for the words, brackets and figure "pay the fine imposed under sub-section (2)", the words, brackets and figure "pay the penalty imposed under sub-section (2)" shall be substituted. 28. In section 42A of the principal Act, for the words and figures "under sections 27", the words and figures "under sections 6, 27" shall be substituted. 29. In section 43 of the principal Act, for the words "shall be punishable with fine", the words "shall be liable to a penalty" shall be substituted. For section 43A of the principal Act, the following section shall be substituted,— "43A. If any person or enterprise fails to give notice to the Commission under sub-section (2) or sub-section (4) of section 6 or contravenes sub-section (2A) of section 6 or submit information pursuant to an inquiry under sub-section (1) of section 20, the Commission may impose on such person or enterprise, a penalty which may extend to one per cent., of the total turnover or assets or the value of transaction referred to in clause (d) of section 5, whichever is higher, of such a combination:	NA

	Provided that in case any person or enterprise has given a notice under sub-section (4) of section 6 and such notice is found to be void ab initio under sub-section (6) of section 6, then a notice under sub-section (2) of section 6 may be given by the acquirer or parties to the combination, as may be applicable, within a period of thirty days of the order of the Commission under sub-section (6) of that section and no action under this section shall be taken by the Commission till the expiry of such period of thirty days.".	
	In section 44 of the principal Act, for the words "rupees one crore", the words "rupees five crore" shall be substituted. In section 45 of the principal Act,— (a) in the marginal heading, for the word "offences", the word "contraventions" shall be substituted; (b) in sub-section (1),— (i) after the words "Without prejudice to the provisions of", the words, brackets and figures "sub-section (6) of section 6 and" shall be inserted; (ii) for the words "punishable with fine", the words "liable to a penalty" shall be substituted.	NA
	For section 46 of the principal Act, the following section shall be substituted, namely:— "46. (1) The Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as may be specified by regulations, than leviable under this Act or the rules or the regulations made under this Act:	NA

	Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 has been received before making of such disclosure: Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who has made the full, true and vital disclosures under this section: Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to co-operate with the Commission till the completion of the proceedings before the Commission: Provided also that the Commission may, if it is satisfied that such producer, seller, distributor, trader or service provider included in the cartel had in the course of proceedings,— (a) not complied with the condition on which the lesser penalty was imposed by the Commission; or (b) had given false evidence; or (c) the disclosure made is not vital, and thereupon such producer, seller, distributor, trader or service provider may be tried for the contravention with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed. (2) The Commission may allow a producer, seller, distributor, trader or service provider included in the cartel, to withdraw its application for lesser penalty under this section, in such manner and within such time as may be specified by regulations. (3) Notwithstanding anything contained in sub-section (2), the Director General and the	

	Commission shall be entitled to use for the purposes of this Act, any evidence submitted by a producer, seller, distributor, trader or service provider in its application for lesser penalty, except its admission. (4) Where during the course of the investigation, a producer, seller, distributor, trader or service provider who has disclosed a cartel under sub-section (1), makes a full, true and vital disclosure under sub-section (1) with respect to another cartel in which it is alleged to have violated section 3, which enables the Commission to form a prima facie opinion under sub-section (1) of section 26 that there exists another cartel, then the Commission may impose upon such producer, seller, distributor, trader or service provider a lesser penalty as may be specified by regulations, in respect of the cartel already being investigated, without prejudice to the producer, seller, distributor, trader or service provider obtaining lesser penalty under sub-section (1) regarding the newly disclosed cartel.".	
	For section 47 of the principal Act, after the word "penalties", the words "and recovery of legal costs by the Commission" shall be inserted.	NA
	For section 48 of the principal Act, the following sections shall be substituted, namely:— '48. (1) Where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be in contravention of this Act and	NA

	unless otherwise provided in this Act, the Commission may impose such penalty on such persons, as it may deem fit which shall not be more than ten per cent. of the average of the income for the last three preceding financial years: Provided that in case any agreement referred to in sub-section (3) of section 3 has been entered into by a cartel, the Commission may unless otherwise provided in this Act, impose upon such persons referred to in sub-section (1), a penalty of up to ten per cent. of the income for each year of the continuance of such agreement. (2) Nothing contained in sub-section (1) shall render any such person liable to any penalty if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention. (3) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be in contravention of the provisions of this Act and unless otherwise provided in this Act, the Commission may impose such penalty on such persons, as it may deem fit which shall not be more than ten per cent. of the average of the income for the last three preceding financial years:	

	Provided that in case any agreement referred to in sub-section (3) of section 3 has been entered into by a cartel, the Commission may, unless otherwise provided under this Act, impose upon such person a penalty as it may deem fit which shall not exceed ten per cent. of the income for each year of the continuance of such agreement. Explanation.—For the purposes of this section,— (a) "company" means a body corporate and includes a firm or other association of individuals; (b) "director", in relation to a firm, means a partner in the firm; (c) "income", in relation to a person, shall be determined in such manner as may be specified by regulations.'	
	48A. 48A. (1) Any enterprise, against whom any inquiry has been initiated under sub-section (1) of section 26 for contravention of sub-section (4) of section 3 or section 4, may, for settlement of the proceeding initiated for the alleged contraventions, submit an application in writing to the Commission in such form and upon payment of such fee as may be specified by regulations (2) An application under sub-section (1) may be submitted at any time after the receipt of the report of the Director General under sub-section (4) of section 26 but prior to such time before the passing of an order under section 27 or section 28 as may be specified by regulations. (3) The Commission may, after taking into consideration the nature, gravity and impact of the contraventions, agree to the proposal for settlement, on payment of such amount by the applicant or on such other terms and manner of implementation of	It is submitted that the introduction of settlement and commitment scheme is a welcome move as the Competition Act, 2002 is an economic law and the said provisions would allow the Competition Commission of India to make efficient allocation of the resources available with it. The Commission may implement these provisions to invoke behavioural changes in the contravening entities by allowing them to reach a compromise, and at the same time save its own resources which would have been otherwise wasted in conducting detailed investigation. The genesis of such provisions would inform that the Commission may utilize the saved resources to identify more cartels which would be existing in the economy thereby enhancing consumer welfare. The scheme of settlement and commitment is easier said than done. The spirit of such a provision is to provide a form of amnesty to the contravening entities in exchange of the cooperation extended. What, however,

	settlement and monitoring as may be specified by regulations. (4) While considering the proposal for settlement, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any. (5) If the Commission is of the opinion that the settlement offered under sub-section (1) is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the settlement within such time as may be specified by regulations, it shall, by order, reject the settlement application and proceed with its inquiry under section 26. (6) The procedure for conducting the settlement proceedings under this section shall be such as may be specified by regulations. (7) No appeal shall lie under section 53B against any order passed by the Commission under this section. (8) All settlement amounts, realised under this Act shall be credited to the Consolidated Fund of India. 48B. (1) Any enterprise, against whom any inquiry has been initiated under sub-section (1) of section 26 for contravention of sub-section (4) of section 3 or section 4, as the case may be, may submit an application in writing to the Commission, in such form and on payment of such fee as may be specified by regulations, offering commitments in respect of the alleged contraventions stated in the Commission's order under sub-section (1) of section 26. (2) An offer for commitments under sub-section (1) may be submitted at any time after an order under sub-	remains pivotal is the structure of the competition commission and the modus of implementation of the Indian Competition Act, 2002, i.e. public or private or both in India. As far as the structure of the Indian competition commission is concerned, it is known that there is no clear demarcation of the executive and adjudicatory wing. This leaves the settling or committing parties in a lurch as they may have to face a similar set of officers during adjudication, should the proposal to settle or commit fail with the executive wing. It is precisely for this reason that the European Commission, even though has similar provisions, has reserved the right to file an appeal against its decisions. Another dimension to the said scheme is that majority of the cases to the Indian competition commission are being filed by private entities. There is a likelihood that these informant parties may not be satisfied with the terms of settlement and commitment arrived by the respondent entities and the Commission thereby further strengthening the case for a right to appeal. A more detailed analysis of such a scheme published in the form of a research paper is attached with this representation as an Annexure.

	section (1) of section 26 has been passed by the Commission but within such time prior to the receipt by the party of the report of the Director General under sub-section (4) of section 26 as may be specified by regulations. (3) The Commission may, after taking into consideration the nature, gravity and impact of the alleged contraventions and effectiveness of the proposed commitments, accept the commitments offered on such terms and the manner of implementation and monitoring as may be specified by regulations. (4) While considering the proposal for commitment, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any. (5) If the Commission is of the opinion that the commitment offered under sub-section (1) is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the commitment, it shall pass an order rejecting the commitment application and proceed with its inquiry under section 26 of the Act. (6) The procedure for commitments offered under this section shall be such as may be specified by regulations. (7) No appeal shall lie under section 53B against any order passed by the Commission under this section. 48C. If an applicant fails to comply with the order passed under section 48A or section 48B or it comes to the notice of the Commission that the applicant has not made full and true	

	disclosure or there has been a material change in the facts, the order passed under section 48A or section 48B, as the case may be, shall stand revoked and withdrawn and such enterprise shall be liable to pay legal costs incurred by the Commission which may extend to rupees one crore and the Commission may restore or initiate the inquiry in respect of which the order under section 48A or section 48B was passed.'.	
	In section 49 of the principal Act, in sub-section (3), after the words "competition advocacy", the words "or culture" shall be inserted. 37. In section 51 of the principal Act, in sub-section (1), after clause (d), the following clause shall be inserted, namely:— "(e) all sums received by the Commission from such other sources as may be decided upon by the Government.".	NA
	Section 53A of the principal Act, in sub-section (1), in clause (a), for the words, brackets and figures "sub-sections (2) and (6) of section 26", the words, brackets, figures and letter "sub-section (6) of section 6, sub-sections (2), (2A), (6) and (9) of section 26", shall be substituted. In section 53B, in sub-section (2), after the proviso, the following proviso shall be inserted, namely:— "Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the Commission, shall be entertained by the Appellate Tribunal unless the appellant has deposited twenty-five per cent. of that amount in the manner as directed by the Appellate Tribunal.".	It would provide further clarity under the law insofar which orders are appealable before the compAT/ NCLAT.
	In section 53N of the principal Act,— (a) in sub-section (1), for the words, brackets, figures and letter "under	NA

	sub-section (2) of section 53Q", the words, brackets, figures and letters "under sub-section (2) of section 53Q or the orders of the Supreme Court in an appeal against the findings of the Appellate Tribunal under section 53T" shall be substituted; (b) in sub-section (2), after the words "findings of the Commission", the words "or Appellate Tribunal or the Supreme Court" shall be inserted; (c) in the Explanation,— (i) in clause (a), after the words, brackets, figures and letter "sub-section (1) of section 53A", the words, figures and letter "or the Supreme Court on appeal under section 53T" shall be inserted; (ii) in clause (b), after the words "or the Appellate Tribunal", the words "or the Supreme Court," shall be inserted. In section 53Q of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:— "(1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable for contempt proceeding under section 53U.".	
	59A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only or imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by the Appellate Tribunal or a court before which such proceeding is pending.	NA
	In section 63 of the principal Act, in sub-section (2),— (i) clause (a) shall be re-lettered as clause (ae) thereof, and before clause (ae) as so re-lettered, the following	NA

	clauses shall be inserted, namely:— "(a) the value of the assets or turnover of the enterprise acquired, taken control of, merged or amalgamated in India under clause (e) of section 5; (ab) the percentage of voting rights higher than twenty-six per cent. under sub-clause (i) of clause (b) of the Explanation to section 5; (ac) the criteria of combinations under sub-section (4) of section 6; (ad) the criteria under sub-section (7) of section 6;"; (ii) after clause (mf), the following clause shall be inserted, namely:— "(mg) the form of the publication of guidelines under sub-section (5) of section 64B;"	
	In section 64 of the principal Act, in sub-section (2),— (i) for clause (c), the following clauses shall be substituted, namely:— "(c) the manner of determination of substantial business operations in India under clause (d) of section 5; (ca) the form and fee for notice for combination under sub-section (4) of section 6; (cb) the time and manner for filing notice of acquisition under clause (a) of section 6A; (cc) the manner and circumstance in which the acquirer may exercise the ownership or beneficial right or interest in shares or convertible securities including voting right and receipt of dividends or any other distributions as an exception under clause (b) of section 6A;"; (ii) after clause (f), the following clauses shall be inserted, namely:— "(fa) other details to be indicated in the show-cause notice under sub-section (9) of section 26; (fb) the manner of determining turnover or income under the Explanation to clause (b) of section 27;	NA

	(fc) the manner in which modification may be proposed by parties to the combination to the Commission under sub-section (2) of section 29A;"; (iii) after clause (g), the following clauses shall be inserted, namely:— "(ga) the lesser penalty to be imposed on producer, seller, distributor, trader or service provider under sub-section (1) of section 46; (gb) the manner and time for withdrawal of application for lesser penalty under sub-section (2) of section 46; (gc) the lesser penalty to be imposed on producer, seller, distributor, trader or service provider under sub-section (4) of section 46; (gd) the manner of determining income under clause (c) of Explanation to section 48; (ge) the form of application and fee under sub-section (1), the time under sub-section (2), the terms and manner of implementations and monitoring under sub-section (3) and the procedure for conducting settlement proceedings under sub-section (6) of section 48A; (gf) the form of application and fee under sub-section (1), the time under sub-section (2), the terms and manner of implementations and monitoring under sub-section (3) and the procedure for commitments offered under sub-section (6) of section 48B; (gg) the other details to be published along with draft regulations and the period for inviting public comments under clause (a) of section 64A;".	
	After section 64 of the principal Act, the following sections shall be inserted, namely:— "64A. The Commission shall ensure transparency while making regulations under section 64, by—	NA

	(a) publishing draft regulations along with such other details as may be specified on its website and inviting public comments for a specified period prior to issuing regulations; (b) publishing a general statement of its response to the public comments, not later than the date of notification of the regulations; (c) periodically reviewing such regulations: Provided that if the Commission is of the opinion that certain regulations are required to be made or existing regulations are required to be amended urgently in public interest or the subject matter of the regulation relates solely to the internal functioning of the Commission, it may make regulations or amend the existing regulations, as the case may be, without following the provisions stated in this section recording the reason for doing so.	
	64B. (1) The Commission may publish guidelines on the provisions of this Act or the rules and regulations made thereunder either on a request made by a person or on its own motion. (2) Guidelines issued under sub-section (1) shall not be construed as determination of any question of fact or law by the Commission, its Members or officers and shall not be binding on the Commission, its Members or officers. (3) Without prejudice to anything contained in sub-section (1), the Commission shall publish guidelines as to the appropriate amount of any penalty for any contravention of provision of this Act. (4) While imposing penalty under clause (b) of section 27 or under section 43A or section 48 for any contravention of provision of this Act, the Commission shall consider	NA

	the guidelines under sub-section (3) and provide reasons in case of any divergence from such guidelines. (5) The guidelines under sub-sections (1) and (3) shall be published in such form as may be prescribed.".	

OVERALL COMMENTS

8. It is submitted that the said amendment is welcomed to an extent of incorporating settlement and commitment scheme, deal-value threshold, change in the definition of RPM and reducing the time taken by the competition commission to grant approval for mergers. It is further welcomed to an extent of delineating further law in relation to section 26 of the Act, powers of the DG, allowing parties to call for expert opinion at the competition commission, removing the option of casting vote for the chairperson of the competition commission and expanding the scope of bar on post-retirement jobs of the members of the competition commission.

9. It is submitted that the legislature ought to restrict the scope of discretion available to the government in sofar appointments related to the members of the competition commission and technical members in the appellate tribunal are concerned. The said appointments should be made after paying due consideration if the professionals are formally trained in the field of competition law and economics or have substantial experience in implementation of the same.

10. It is further submitted that the amendments in relation to including hub and spoke agreements through explicit usage of language, proviso to section 3(4) of the Act, revoking right to appeal under the settlement and commitment scheme and introducing time frame for receipt of information under section 19 of the Act are not in line of the aim and objects of the principal Act and decisional practice of the competition commission.

The fellows at the Centre are willing to appear before the Committee in-person and depose on invitation.

IV. COMMITMENT AND SETTLEMENT SCHEME UNDER THE INDIAN COMPETITION LAW: A STEP TOWARDS BETTER ENFORCEMENT OF THE LAW

- Sumit Jain and Pragati Tiwari*

ABSTRACT

This paper makes an attempt to study the commitment and settlement scheme, introduced by the Ministry of Corporate Affairs in the Competition (Amendment) Bill, 2020. The authors in order to dig deeper, have looked into similar schemes known by various other names in the European Union and the United States to analyse the potential successes and limitations in the Indian context. The said scheme, at its genesis, seeks to strengthen the public enforcement agency of nodal competition regulator. In furtherance, the authors have analyzed the 107 violation orders passed by the Competition Commission of India over a period of ten years (May 2009 – December 2018) to assess the applicability of the scheme in the Indian context. As per the results, it was realized that only 14 per cent of the violations found by the Commission were initiated on its own, and rest 86 per cent of the cases were initiated by private parties. The paper also forays into assessing its impact on the faster disposal of cases, and on some of the negotiation tools present in the Indian context of such a scheme. The authors conclude the paper by stating that even though the said scheme is yet to be enforced, experiences abroad and the data compiled for India over ten years would suggest that the road ahead is likely to be rockier than rosy for the Commission. It would be more prudent for Indian lawmakers to first rely on the experience abroad, and relate it with the experiences closer home to formulate a more robust competition law regime.

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I. INTRODUCTION

The Competition Act, 2002 ("Act") was enacted in order to usher in the post-liberalization reforms in India. The said legislation repealed its precursor, the Monopoly and Restrictive Trade Practices Act, 1969, and introduced both substantial and procedural changes to Indian Competition Law. One of the notable departures was that the former statute opined on the Indian economy as a whole, while the latter saw the economy on a piecemeal basis where rules would be determined by the 'Relevant Market ("RM")'.[1] The Act also stripped the Director General's Office of its power of initiating *suo moto* investigation, which a lot of entities believed were grossly misused to witch-hunt businesses,[2] and allowed the nodal regulator to have extraterritorial jurisdiction, among other things.[3] Yet both the legislations seek to regulate the market economy and replicate state intervention in the way industries organize themselves. Both of them seek to detect cartels and scrutinize single-firm conduct.

In its pursuit of antitrust policy goals, the Government of India ("GOI") recently released a draft version of the Competition Amendment Bill, 2020 where it has sought to introduce a commitment and settlement scheme to the

[1] Sumit Jain, *Competition Landscape in the Sports Industry: Unravelling CCI's Decisions*, CENTRE FOR BUSINESS AND COMMERCIAL LAWS (May 22, 2020), https://cbcl.nliu.ac.in/competition-law/competition-landscape-in-sports-industry-unravelling-ccis-decisions/.

[2] H. K. Paranjape, *The MRTP Amendment Bill: A Trojan Horse*, 19(17) ECONOMIC AND POLITICAL WEEKLY, 715-29 (1984), www.jstor.org/stable/4373208.

[3] Mihail Danov, *EU Competition Law Enforcement: Is Brussels I Suited to Dealing with All the Challenges?*, 61(1) THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 27-54 (2012), www.jstor.org/stable/41350135.

Act.[4] The GOI has relied on the Competition Law Review Committee's ("CLRC") recommendations to make such a change and seeks to strengthen the enforcement procedure of the Act through the same.[5] The paper seeks to study similar provisions prevalent in other competition jurisdictions of the world (the US and the EU), concerns associated with them, and relate it with the Indian experience of ten years of implementation of the Act. The authors have concluded the paper by pointing out gaps in the current scheme of the amendment, and at the same time suggesting possible recourse for the Indian lawmaker to achieve goals set in the Preamble of the Act.

II. BACKGROUND

Competition law enforcement is perceived to be a complex process worldwide.[6] The said process has to achieve twin objects: A) fulfil the goals established in the national competition policy; B) detect as many cartels and infringements as possible. While the goals of Indian competition policy are largely predictable,[7] there is no empirical data available on how much the Act has fared well in detecting the infringements happening. In fact, maximizing detection itself becomes a goal for the regulators as it is assumed that resources available with them are always scarce, and therefore the net violations would

[4] The Competition (Amendment) Bill, 2020, MINISTRY OF CORPORATE AFFAIRS (Feb. 12, 2020), Govt. of India, https://www.taxmanagementindia.com/file_folder/folder_5/Draft_Competition_Amendment_Bill_2020.pdf.

[5] MINISTRY OF CORPORATE AFFAIRS, REPORT OF THE COMPETITION LAW REVIEW COMMITTEE-2018, 41-46 (2019), Govt. of India, http://www.mca.gov.in/Ministry/pdf/ReportCLRC_14082019.pdf.

[6] B.S. Chauhan, *Indian Competition Law: Global Context*, 54(3) JOURNAL OF THE INDIAN LAW INSTITUTE 315-23 (2012), www.jstor.org/stable/44782475.

[7] Aditya Bhattacharjea, *India's Competition Policy: An Assessment*, 38 ECONOMIC AND POLITICAL WEEKLY 3561-574 (2003), www.jstor.org/stable/4413938.

always succeed the net detections.[8] It is in this pursuit that regulators keep redefining themselves so that they have more resources to implement the law, and at the same time result in faster disposal of cases - an aspect which can be attributed to the first object itself. The commitment and settlement scheme is one such tool incorporated to strengthen enforcement mechanisms prevalent in other competition jurisdictions of the world, and an attempt is being made to introduce it in the Indian context as well.[9]

III. ANALYSIS

Competition law enforcement can broadly be classified under two categories: A) Public enforcement; B) Private enforcement. As argued by Peyer,[10] public enforcement is a safer mode of implementation. The authority, as well as its officers, are public entities, and therefore the presumption is that all of them would be genuinely motivated towards market welfare. In the Indian context, the competition authority is empowered to initiate *suo moto* investigations against enterprises and find a case for infringement for public enforcement.[11] However, as analysed in the latter part of this paper, such a process has remained largely inadequate. Therefore, in order to strengthen the process, the GOI has innovated to introduce a commitment and settlement scheme to the Indian competition law. Section 48A and Section 48B of the Competition Amendment Bill, 2020 govern the settlement and commitment

[8] Kai Hüschelrath & Veith Tobias, *Cartel Detection in Procurement Markets*, 35 MANAGERIAL AND DECISION ECONOMICS 404-22 (2014).
[9] Laurent Warlouzet & Tobias Witschke, *The Difficult Path to an Economic Rule of Law: European Competition Policy, 1950—91*, 21(3) CONTEMPORARY EUROPEAN HISTORY 437-55 (2012), www.jstor.org/stable/23270673.
[10] Sebastian Peyer, *Cartel Members Only—Revisiting Private Antitrust Policy in Europe*, 60(3) THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 627-57 (2011), www.jstor.org/stable/23017023.
[11] The Competition Act, 2002, No.12 of 2003, Acts of Parliament, 2003 (India), § 19.

scheme respectively. Even though the CLRC report places reliance on the EC law while advocating such a scheme,[12] the author has given equal importance to the US antitrust law to make a stronger case for reform.

IV. POSITION UNDER THE US LAW

US antitrust settlement agreements are governed by plea bargains and consent decrees.[13] The said process necessarily involves talks with the parties involved, where they can negotiate the exact amount with the authority for the violation.[14] The authority in return grants immunity to the violating parties from future proceedings.[15] One of the most recent case laws implementing such a scheme was in the matter of *US v. Microsoft*.[16] Even though the authorities didn't invoke a monetary fine in this particular case, they passed a slew of measures agreeable to the defendant which compensated for the market harm caused.

One important aspect of the US settlement scheme is that defendants relinquish their right to appeal.[17] This reduces the follow-on litigation for the authorities (thereby allowing them to focus more on other infringements), and at the same time is perceived to be a trade-off for the contravening parties where they are allowed to negotiate the exact fine with the authorities. There

[12]The Competition (Amendment) Bill, 2020, MINISTRY OF CORPORATE AFFAIRS (Feb. 12, 2020), Govt. of India, https://www.taxmanagementindia.com/file_folder/folder_5/Draft_Competition_Amendment_Bill_2020.pdf.
[13] Andreas Stephan, *The Direct Settlement of EC Cartel Cases*, 58(3) THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 627-54 (2009), www.jstor.org/stable/25622229.
[14] Maxwell S. Isenbergh & Seymour J. Rubin, *Antitrust Enforcement Through Consent Decrees*, 53(3) HARVARD LAW REVIEW 386-414 (1940).
[15] Peyer, *supra* note 10.
[16] US v. Microsoft Corp, No. CIV.A.98-1232(CKK), United States District Court, District of Columbia (2002), https://www.leagle.com/decision/2002375231fsupp2d1441362.
[17] Peyer, *supra* note 10.

is also a chance that the entire settlement process fails and, in that case, the executive and the adjudicatory wing of the authority are clearly demarcated.[18] This allows the opting-in parties to repose faith in the authority where they have ample scope for cooperation, and at the same time walk out in case the process doesn't work out. In fact, the success of such a scheme is quite remarkable as 90 per cent of the corporate defendants opt-in for such a measure.[19]

V. POSITION UNDER THE EU LAW

The EU competition law settlement scheme is more procedural in nature.[20] The parties are not allowed to negotiate the exact amount with the Commission, and in return, they reserve their right to appeal. In fact, the amount of penalty imposed is unpredictable even till the last moment when the order is passed.[21] The limitation of such a process is that there is no clear demarcation between the administration and adjudicatory wing of the authority, and therefore once the parties opt-in for a settlement agreement, they either settle the violation with the Commission on its terms or face the same set of officers with whom the negotiation talks failed in adjudication.[22] In all, settlement proceedings are largely perceived to be an administrative process for the Commission where it reduces the number of hearings required to be

[18] *Id.*
[19] Peyer, *supra* note 10.
[20] Paranjape, *supra* note 2.
[21] Per Hellström, Frank Maier-Rigaud & Friedrich Wenzel Bulst, *Remedies in European Antitrust Law*, 76(1) ANTITRUST LAW JOURNAL 43-63 (2009), www.jstor.org/stable/40843701.
[22] Warlouzet & Witschke, *supra* note 9.

conducted to establish a violation, and in case the parties are not satisfied with the outcome, they can file an appeal with the higher authority.[23]

VI. IMPACT ON PRIVATE ENFORCEMENT

The author, in order to understand larger enforcement mechanisms available in the Indian competition law, processed the contravention orders passed by the Commission over a period of ten years (May 20, 2009 to November 6, 2018) available on its website.[24] It was found that out of 107 orders passed, an overwhelming 87 percent of cases were initiated by private entities (93). This suggests that the Indian competition regulator is heavily reliant on private players for enforcement of the law, a position closer to the US antitrust law where private players are entitled to treble damages in case of violation.

The said data raises multiple questions of law on the commitment and settlement scheme. Firstly, the said scheme doesn't talk about the locus of private entities. Even though the evolving jurisprudence around such a tool would suggest that it is invoked in public enforcement cases, overwhelming evidence in the Indian context would suggest that there is a high likelihood that the matter would be initiated by a private entity. This takes the given scheme in somewhat unchartered terrain when compared to the US and the EU where the Indian Commission hits a roadblock while drafting subordinate legislation under the Bill, more so in the context of the right to appeal being explicitly repealed. Any comparison with the US antitrust scheme viz-a-viz repealing the right to appeal would be flawed for a couple of reasons: A)

[23] *Id.*

[24] Competition Commission of India, *Antitrust-Section 27*, GOVT. OF INDIA, https://www.cci.gov.in/orders-commission/102.

Defendants in the US are allowed to negotiate the exact amount of settlement with the authority; B) Case is initiated by the authority itself.[25] Another important bearing of such an analysis would be that while the EU passes detailed settlement orders thereby allowing private entities to calculate damages caused, the US consent decrees contain very little details of the case in order to close the matter.[26]

If the Indian law is more inspired by the EU, private entities would still be able to calculate damages caused, and therefore would levy the appeal process under other economic laws, if not the Act. The CLRC report pays more reliance on the EU and therefore repealing the right to appeal of the parties appears to be even more unsubstantiated, even though it is introduced in the context of faster disposal of cases. The right to appeal is reserved in the EU under EC Article 230. The following questions cast serious doubts on the efficacy of the scheme itself given that – A) the Commission does not clearly demarcate its administrative and adjudicatory wing; b) the right to appeal is already repealed. The parties are less likely to opt-in for such a scheme as once they opt-in, they may be forced to settle the violation even on unfavourable terms with the Commission.

VII. IMPACT ON FASTER DISPOSAL OF CASES

As dealt with above, the GOI has repealed the right to appeal under the context of faster disposal of cases. It needs to be kept in mind that as per the evidence available from other jurisdictions, the said scheme can only be

[25] Milton Katz, *The Consent Decree in Antitrust Administration*, 53(3) HARVARD LAW REVIEW 415-47 (1940).
[26] Competition Commission of India, *Antitrust-Section 27*, GOVT. OF INDIA, https://www.cci.gov.in/orders-commission/102.

implemented in public enforcement cases. Therefore, as stated above, since only 13 percent of violations are through public enforcement, therefore the said scheme, at best, would have only an incremental effect on the process. Given that the current form of the scheme puts defendants in a patchy spot, they are less likely to go for the scheme in the first place. A holistic reading of the Act would suggest that it is more convenient for the parties to keep delaying the matter and in case a violation is found, levy the appeal process. The Indian competition authority at maximum can impose a fine of three times the profit earned during the time of anti-competitive conduct, or ten percent of the average turnover for the last three preceding financial years (whichever is higher).[27] The defendants can compensate for such a fine by earning equivalent profit during the time of contravention as the investigation process is quite lengthy. Unlike the US, the Indian regulator cannot go for criminal prosecution of the individuals under the Act.[28]

VIII. OVERLAP WITH THE LENIENCY SCHEME

The Committee report suggests that the commitment and settlement scheme overlap with the leniency programme envisaged in Section 46 of the Act.[29] This claim has some merit. Both the schemes are tools of negotiation for the Commission to incentivize cooperation from the contravening parties - where the former saves time and resources expended in investigating the infringements, and the latter gets potential concession on the fine imposed.

[27] The Competition Act, 2002, No.12 of 2003, Acts of Parliament, 2003 (India), § 27.
[28] Peter Whelan, *Resisting the Long Arm of Criminal Antitrust Laws: Norris v the United States*, 72(2) THE MODERN LAW REVIEW 272-83 (2009), www.jstor.org/stable/20533242.
[29] The Competition (Amendment) Bill, 2020, MINISTRY OF CORPORATE AFFAIRS (Feb. 12, 2020), GOVT. OF INDIA, https://www.taxmanagementindia.com/file_folder/folder_5/Draft_Competition_Amendment_Bill_2020.pdf.

There are few technical differences though, between the schemes. The leniency programme is more in line with the commitment scheme (than the settlement) given that the time for submission of the applications is the same, i.e., before the submission of the investigation report. The difference is that while the defendant admits contravention in case of leniency application; it is not the case in a commitment scheme. More so, the right to appeal is reserved in leniency decisions where the commitment scheme explicitly repeals the same.[30]

The settlement agreement looks like a leniency process in terms of admission of guilt, however, the fundamental difference is that the timing of application differs. The settlement process can only be initiated once the investigation report has been submitted and in terms of CLRC - where the defendant is convinced with the strength of the case made against it. Therefore, the same looks quite administrative in nature as in the case of the EU.

IX. CONCLUSION

The GOI has introduced the commitment and settlement scheme in order to strengthen enforcement mechanisms in the Act. The said scheme is envisaged to be one step towards faster disposal of cases and freeing up scarce resources of the Commission. It may also result in better detection of cartels. However, as analyzed above, the plausibility of such a scheme remains rather grim. Repealing the right to appeal of the defendants casts serious doubts on the efficacy of such a scheme, more so when it is inspired by the EU law. The administrative and adjudicatory wing of the Indian Competition Commission are not demarcated which may further discourage the parties to opt-in for a

[30] The Competition Act, 2002, No.12 of 2003, Acts of Parliament, 2003 (India), § 53(B).

scheme. The US model may provide some respite; however, the parties are not allowed to negotiate the exact fine.

The amended sections in their current form provide scope for the parties to be locked-in, once they file for a settlement agreement with the Commission. The scheme is yet to see the light of the day and the experiences in the US, EU, and data compiled for implementation of the law over ten years in the Indian context would suggest that the road ahead is rockier than rosy for the Indian regulator. The Commission may opt for sub-ordinate legislation as present in the current form of the scheme, however the same cannot bypass the original text of the statute. It would be more prudent for the Indian legislator to rely on the experience abroad, and relate it with the experiences home as seen in the last few years. This would allow the formation of a more robust competition enforcement regime fulfilling goals envisaged in the Preamble of the Act.