

Centre for Competition Law and Economics

(A non-profit initiative u/s 8, The Companies Act, 2013)



To

The Secretary
Competition Commission of India
9th Floor, Office Block – 1
Kidwai Nagar (East)
New Delhi - 110023

8th September, 2023

Subject: Comments submitted by CCLE on Draft CCI C&S Regulations, 2023

Dear **Sir/ Ma'am**,

Please find attached the comments submitted by us on the Draft CCI Commitment & Settlement Regulations, 2023.

Please let us know if you have anything to discuss and we will be looking forward to meet you in-person.

Best Regards,

Sumit Jain

Director

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Preliminary comments

It is submitted as follows:

1. Commitment and settlement (C&S) schemes are part of the larger **amnesty framework** available for enforcement of competition law in India.
2. The purpose of such amnesty tools, including C&S, ought to be **economically efficient allocation of resources** and **reduce litigation burden** at the Indian competition authority.
3. The applicability of amnesty tools demonstrate a fine balance between offering a compromise to respondent entities under the CCI's scanner, but at the same time ensure that the remedy undertaken acts as a deterrent enough for other economic enterprises not to indulge in anti-competitive activities.
4. While a commitment proposal ought to address the allegations raised by the CCI at the stage of DG investigation itself, settlement comes into play only at a later stage when the investigation report has already been submitted to the CCI.

Issue-by-issue Comments

Issue	Draft Commitment Regulation	Draft Settlement Regulation	Comment
<i>Timing of filing of application</i>	Application for Commitment Reg. 3(3)	Application for Settlement Reg. 3(2)	As per the current regulations, the respondent entities have to apply for a commitment, or settlement within 45 + 30 days after ordering of the DG investigation and submission of the DG report respectively. Since the purpose of C&S is to make economically efficiently decision making and reduce litigation burden, it is suggested that such time-bar

			for filing of applications may be removed to enhance its scope . The base definition, however, may still be followed, i.e. submission of commitment application after ordering of the DG investigation but before submission of the DG report, and submission of settlement application after the submission of the DG report but before passing of the final order.
Public Comments	<p>Invitation of objections and suggestions on proposal for commitment</p> <p>Reg. 5(1)</p>	<p>Invitation of objections and suggestions on proposal for settlement</p> <p>Reg. 5(1)</p>	<p>As per the current regulations, while the CCI may seek public comments on a commitment proposal being made a respondent entity, no such provision is there for a settlement proposal. It is suggested that parity be maintained between the two schemes when it comes to the provision of seeking public comments. It would be in context to further state that the provision for public comments is all the more important in settlement proceedings as in such cases the DG has already observed a finding of contravention. Since the violations under the Act are <i>in rem</i> in nature, the public has a 'right' of higher magnitude 'to know' the nature of settlement proposal being offered by the respondent.</p>

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<p style="text-align: center;"><i>Finding of Contravention</i></p>	<p>Nature and effect of commitment order</p> <p style="text-align: center;">Reg. 6(1)</p>	<p>Nature and effect of settlement order</p> <p style="text-align: center;">Reg. 7(1)</p>	<p>As per the current regulations, there would not be any finding of contravention in case commitment, or settlement application is accepted. It is humbly submitted that the <i>vires</i> of settlement scheme would be violated - should the CCI not observe a finding of contravention in the case of a settlement. It is, thus, submitted, that the CCI may observe a case of contravention in case settlement application is accepted.</p>
<p style="text-align: center;"><i>Fee for filing of Application</i></p>	<p>Fee under sub-section (1) of section 48B of the Act</p> <p style="text-align: center;">Reg. 8</p>	<p>Fee under sub-section (1) of section 48A of the Act</p> <p style="text-align: center;">Reg. 9</p>	<p>As per the current regulations, a commitment, or settlement applicant has to pay a minimum fee of INR 5,00,000/- for filing of the application. While such a fee may be a minuscule part of the annual turnover of large and multi-national corporations, what is unsaid is that in a lot of Associations-related matters, the Commission invests a lot of resources in investigating the matter, finding a contravention and still imposes a minimal, or no penalty on the respondents depending of various factual circumstances. Given that such Associations have a turnover in lakhs, an enabling provision may be included in the regulations for such entities to commit and settle allegations made against them through an affordable application fee.</p>

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			This would a further step in reducing the litigation burden at the CCI.
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Concluding Comments

The enactment of C&S Draft Regulations may be a welcome move. The stated aim of C&S schemes is economically efficient allocation of resources and reduce litigation burden at the CCI. The purpose of such schemes under the larger competition jurisprudence may be fulfilled when the CCI may remove the applicable time-bar currently made ply for C&S, introduce parity between C&S when it comes to seeking public comments, observe a finding of contravention when it comes to accepting settlement proposals and introduce an enabling provision for Associations to commit/ settle allegations against them by introducing affordable fee.