

## 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

**8<sup>th</sup> January, 2024**

**Subject: Comments submitted by CCLE on Draft Competition Commission of India (Determination of Turnover or Income) Regulations, 2023**

Dear **Sir/ Ma'am**,

Please find attached the comments submitted by us on the Draft Competition Commission of India (Determination of Turnover or Income) Regulations, 2023.

We would be happy to discuss anything on the subject matter and will be looking forward to meeting you in-person.

**Best Regards,**

**Sumit Jain**

**Director**

**Centre for Competition Law and Economics**

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## Issues which ought to be addressed by subordinate legislation

- 1) It is suggested that the purpose of issuing guidelines is to provide detailed assistance to the regulated entities in order to remain compliant with the provisions of the Competition Act, 2002.
- 2) In the case of turnover/ income, it is further suggested that these figures are pivotal for the CCI to undertake any remedial action against the contravening entities. As such, there may be a tendency on the part of the respondent companies to under-report the income through the lacunae present in the law. Thus, the CCI ought to determine this by a procedure which is the least contented, preferably by disclosures/ filings already done by the company as per the official record.
- 3) In the case of **penalty**, it is further suggested that this area may lie at the core of enforcement of the Competition Act, 2002. Any gap in deciding the penalty criteria may result in the Commission being either perceived as too 'eager', or too 'lax' by the public when it comes to penalty imposition. The requirement here may be to provide guidance to the regulated entities on the 'rule' of law, but at the same time ensure enough autonomy for the Commission to take stringent action against erring entities.

## Issues which are currently addressed by the guidelines

- 4) It is suggested that the current guidelines only address the turnover/ income aspect in part.
- 5) The current guidelines do not address the applicable 'penalty criteria'.
- 6) It is a fairly accepted principle under competition law that an entity may have to undertake compliance in **proportion to its size**. For instance, the provision of 'Abuse of dominance' is

- 7) only applicable to dominant entities in the market and enterprises having a fragmented market share may not be covered under this provision. Similarly, merger notifications are to be given only beyond a certain threshold. The fee required to be deposited by an entity to file an information is also graded<sup>1</sup>.
- 8) This principle, however, seems to be **relaxed** in the case of turnover guidelines. One possible criteria in terms of the methodological autonomy given to the companies in disclosing their turnover may be on the basis of: a) public listing on NSE/ BSE; b) 'Limited' company by incorporation; c) disclosed turnover to other statutory regulators/ departments in India under other legislation apart from the Competition Act. The guiding principle here may be graded autonomy, i.e. larger the size, lesser the autonomy. For instance, publicly listed companies may be given the least autonomy, 'limited' company by incorporation the second least and so on and so forth
- 9) The current form of the guidelines may further allow entities to evade compliance as noted by the CCI in its final order dated 20th October, 2022 in case no. 39 of 2018<sup>2</sup>.
- 10) The current guidelines do not shed light on how the '**global turnover**' of the contravening entities may be calculated. This question may be further key as any lack of guidance may result in protracted litigation lasting up to 8-10 years thereby '**balancing**' the '**perceived**' advance made by incorporating this concept in the legislation in the first place.
- 11) The current guidelines do not further shed light on how the '**profit**', as mentioned as a basis of calculating penalty in the Competition Act, may be calculated. This may further allow the entities to evade the scrutiny and cause a delay in passing the final order which may be unwarranted.

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<sup>1</sup> See Regulation 49(1) of the CCI General Regulations, 2009

<sup>2</sup> Para no. 635, page 291 of the order

- 12) The current guidelines do not further shed light on the basis on which the CCI may impose a penalty on an **absolute basis**. For instance, the CCI in the Maruti Suzuki case directly imposed a penalty on an absolute basis without even referring to the financial statement of the company<sup>3</sup>.

### Comments by the Centre

- 13) It is suggested that the enacted guidelines may include **graded autonomy** where the publicly listed companies may be given the least autonomy, 'limited' company by incorporation the second least and so on and so forth when it comes to the method in which they declare their income. This may be in line with serving the objectives of the Act.
- 14) It is further suggested that guidance may be issued on how the CCI may interpret the concept of '**global turnover**'. For reasons stated in this representation above, any gap here may 'balance' the perceived 'advance' made by incorporating this concept in the legislation in the first place.
- 15) It is further suggested that further guidelines may be issued on calculation of **penalty methodology**. Any gap in deciding the penalty criteria may result in the Commission being either perceived as too 'eager', or too 'lax' by the public when it comes to penalty imposition. The Centre seeks to assist the Commission in this endeavour based on the research database.

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<sup>3</sup> Suo Motu Case No. 01 of 2019

S. No.	Issue identified	Comments
1.	<b>Graded autonomy</b>	<ul style="list-style-type: none"> <li>▪ The guiding principle here may be graded autonomy, i.e. larger the size, lesser the autonomy.</li> <li>▪ For instance, publicly listed companies may be given the least autonomy, 'limited' company by incorporation the second least and so on and so forth</li> </ul>
2.	<b>Global turnover</b>	<ul style="list-style-type: none"> <li>▪ The current guidelines do not shed light on how the '<b>global turnover</b>' of the contravening entities may be calculated</li> <li>▪ Lack of guidance may result in protracted litigation lasting up to 8-10 years thereby '<b>balancing</b>' the '<b>perceived</b>' advance</li> </ul>
3.	<b>Penalty methodology</b>	<ul style="list-style-type: none"> <li>▪ Any gap may result in the Commission being either perceived as too 'eager', or too 'lax' by the public when it comes to penalty imposition</li> <li>▪ No guidance available on an absolute basis</li> </ul>