PULSE 2024

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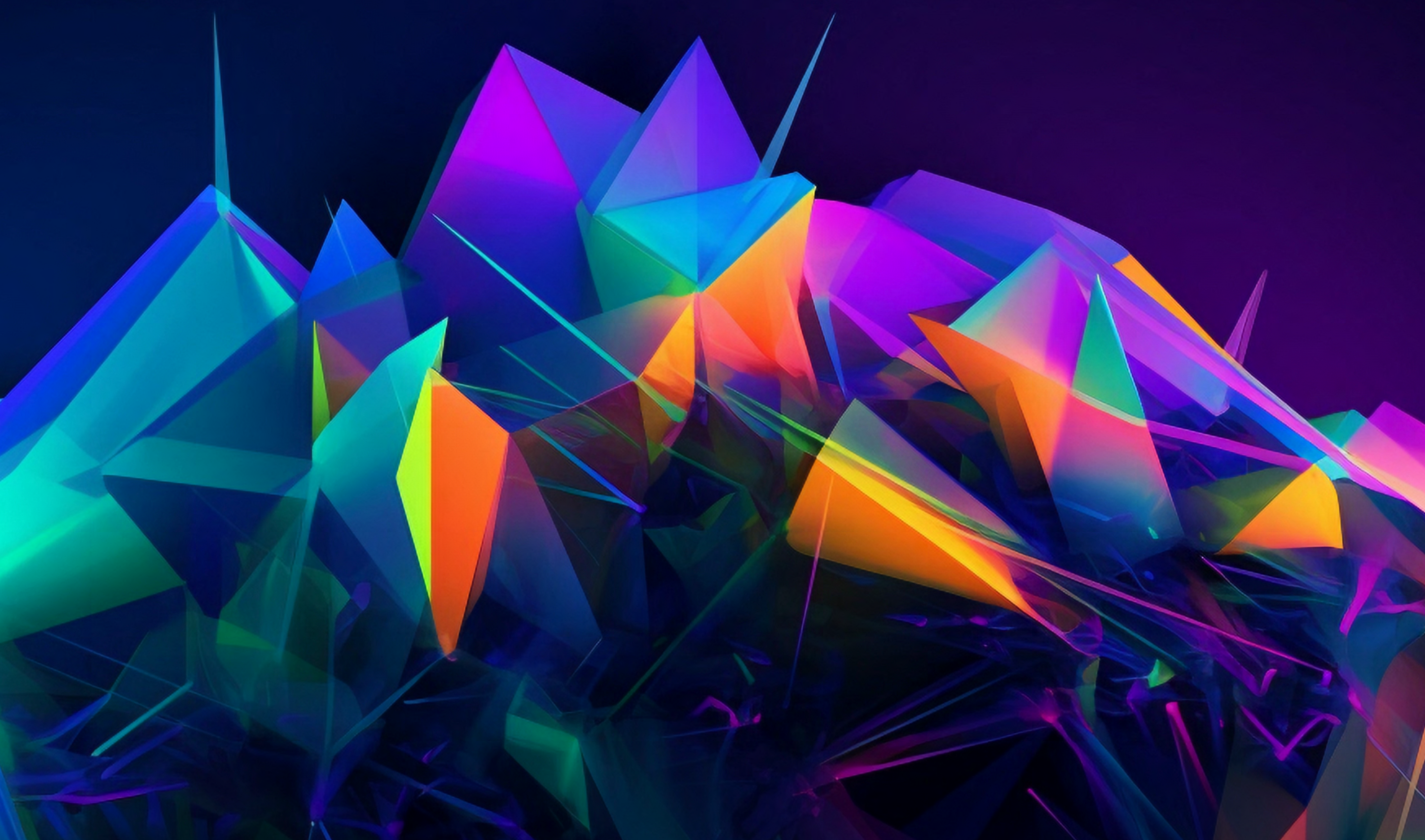


UNDERSTANDING COMMITMENT & SETTLEMENT MECHANISM

under the Indian Competition Act

COMMITMENT & SETTLEMENT MECHANISM

On 05 March 2024, the Government of India, notified and brought into force Sections 48A and 48B of the Competition Act. Section 48A provides for settlement mechanism and Section 48B provides for commitment mechanism. These updates are expected to reduce investigation timelines, provide faster adjudication and timely correction in market distortions. Here are 17 questions that will tell you everything that you need to know about the new settlement and commitment mechanisms under the Indian Competition Act.

What is the key statute governing competition law in India?

The key statute governing competition law in India is Competition Act, 2002, which was amended in April 2023 vide Competition (Amendment) Act, 2023 (“Competition Act”).

The Competition Act provides for penalties with respect to anti-competitive agreements, abuse of dominance and also regulates combinations and mergers having appreciable adverse effect on competition in India.

In terms of the Competition Act, Competition Commission of India (“CCI”) is the regulator and the investigation is conducted by Director General’s (“DG”) office. In other words, DG is the investigative wing of the CCI. DG commences investigation upon receipt of (prima facie) order under section 26(1) of the Competition Act. DG has not been vested with powers to undertake investigations on a suo-moto basis. Upon completion of the investigation, DG submits its investigation report to the CCI along with all the material, evidence and documents as may be collected during the investigation process.

What is the need for commitment and settlement provisions?

The commitment and settlement provisions have been introduced for parties to voluntarily comply with the provisions of the Competition Act – without requiring to face the DG investigation and subsequent imposition of penalties.

The same allows reduction in investigation timelines, faster adjudication and timely correction in market distortions.

When were the commitment and settlement provisions introduced/ enforced?

On 05 March 2024, the Government of India, notified and brought into force Sections 48A and 48B of the Competition Act. Section 48A provides for settlement mechanism and Section 48B provides for commitment mechanism.

CCI vide notification dated 06 March, 2024, notified the Competition Commission of India (Settlement) Regulations, 2024 ("Settlement Regulations") and Competition Commission of India (Commitment) Regulations, 2024 ("Commitment Regulations").

Who gets covered by commitment and settlement provisions?

The commitment and settlement mechanism is available to parties against whom the prima facie order under section 26(1) has been passed for alleged violation of section 3(4) and/or section 4 of the Competition Act. Section 3(4) covers vertical agreements and section 4 covers abuse of dominance. It is worth noting that the commitment and settlement mechanism is not available for any breach of section 3(3) of the Competition Act – covering cartels, horizontal agreements.

When can a party file an application under Commitment Regulations?

Commitment mechanism involves offering of commitments, to the CCI by an enterprise/ party against whom a prima facie order under section 26(1) of the Competition Act has been passed.

An application for commitment has to be filed with 45 days of receipt of CCI's prima facie order under section 26(1) of the Competition Act. However, the same has to be prior to DG submitting the final investigation report.

Also, in terms of the Commitment Regulations, CCI may entertain an application beyond expiry of 45 days, if the applicant files the application within extended period of 30 days and the CCI is satisfied that there had been sufficient cause for not filing the same within the specified period after recording reasons for condoning such delay.

The application for settlement has to be filed along with all the necessary information/ details supported by an affidavit.

Such details shall include name of the party, legal status, registration number of the enterprise etc., along with the details of the findings of the DG investigation report, details of the proposal for settlement, and a full and true disclosure of facts in respect of the alleged contraventions.

The Commitment Regulations also require the applicant to also disclose the details of other competition authorities which have examined or are currently examining the alleged contraventions.

When can a party file an application under Settlement Regulations?

Settlement mechanism involves a settlement proposal made to the CCI by an enterprise who is under investigation/ inquiry by the CCI.

An application for settlement has to be filed with 45 days of receipt of DG's investigation report bythe party. However, the same has to be prior to CCI issuing final order in the matter.

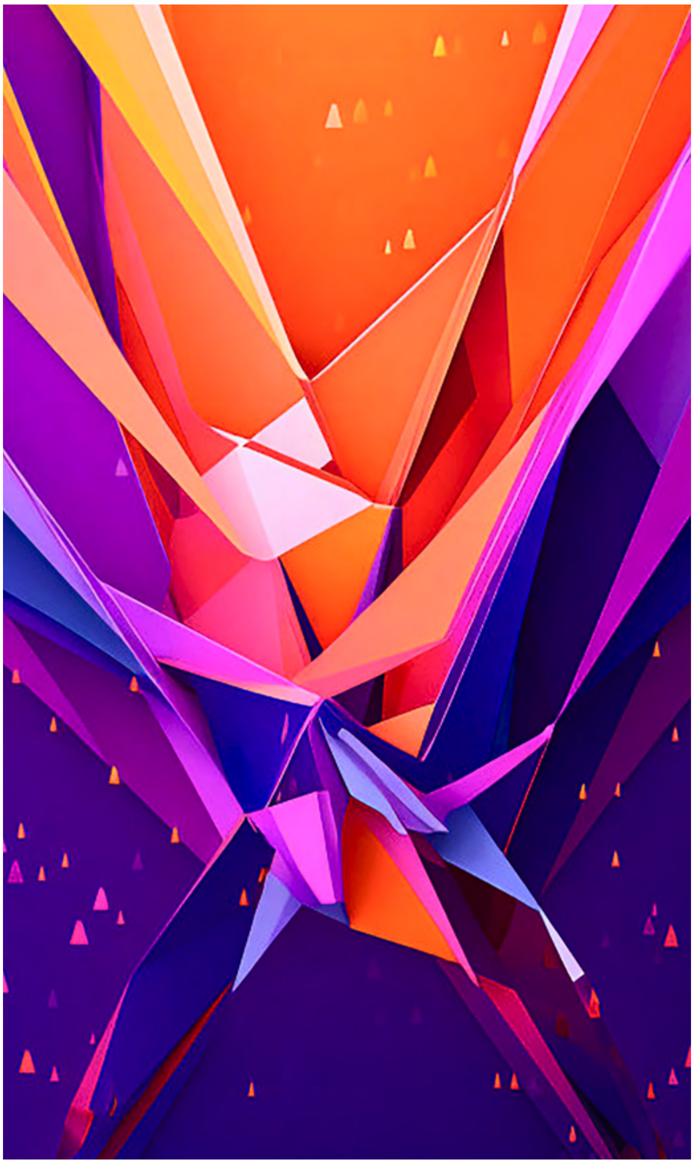
Also, in terms of the Settlement Regulations, CCI may entertain an application beyond expiry of 45 days, if the applicant files the application within extended period of 30 days and the CCI is satisfied that there had been sufficient cause for not filing the same within the specified period after recording reasons for condoning such delay.The application for settlement has to be filed along with all the necessary information/ details supported by an affidavit.

Such details shall include name of the party, legal status, registration number of the enterprise etc., along with the details of the findings of the DG investigation report, details of the proposal for settlement, and a full and true disclosure of facts in respect of the alleged contraventions.

The Settlement Regulations also require the applicant to also disclose the details of other competition authorities which have examined or are currently examining the alleged contraventions.

What is the fee payable for settlement or commitment application?

The Commitment Regulations and Settlement Regulations require a fee to be paid with each application which is dependent on the total turnover of the enterprise/ party in India in the preceding financial year. The fee to be paid is given below:



Turnover of the Applicant (in the preceding financial year)	**Fee payable to CCI** (non-refundable)
Upto INR 500 million (~USD 6,046,000)	INR 2,50,000 (~USD 3,000)
More than INR 500 million (~USD 6,046,000) and upto INR 5 billion (~USD 60,460,000)	INR 10,00,000 (~USD 12,100)
More than INR 5 billion (~USD 60,460,000)	INR 50,00,000 (~USD 60,500)

What happens to investigation/ inquiry post filing of the commitment or settlement application?

In terms of both Commitment and Settlement Regulations, once the application is received by the CCI, the investigation/ inquiry against the applicant shall stand suspended until CCI's final decision in the said application.

The CCI while adjudicating on an application for commitment or settlement, is also empowered to provide an opportunity to the applicant, the DG, or any other party to submit their comments, objections, or suggestions on whether or not the application should be accepted.

The CCI would then, collectively consider the nature, gravity and impact of the alleged contravention on the market, along with the proposal for settlement or offer of commitment (as the case may be), submitted by the applicant and the comments and objections received with respect to the said application, along with other factors which are deemed to be necessary by the CCI.

After giving due consideration to the commitment or settlement application and other mitigating factors around it, the CCI may either agree to the proposal for settlement or offer of commitment and pass the final order on the settlement/ commitment application.

Can CCI reject the application or revoke and withdraw the order on the application for commitment or settlement?

If the CCI is of the opinion that the proposal for settlement or offer for commitment is not appropriate, it may reject the said application and proceed with the investigation/ inquiry. In the event the CCI is not satisfied with the commitment/ settlement application, it may call upon the applicant to furnish a revised application, within 30 days from receipt of the communication with respect to the unsatisfactory condition of the application. The CCI may reject the commitment/ settlement application if the applicant refuses to receive or respond to the communications sent by the CCI and/ or where the applicant violates in any manner or does not abide by the undertaking and waivers given to CCI. The Settlement Regulations and Commitment Regulations provide grounds which may permit CCI to revoke and withdraw the commitment/ settlement order. In the event the applicant fails to comply with CCI's order accepting settlement/ commitment application OR if the CCI is aware that the applicant has not made a full and true disclosure during the proceedings or there has been a material change in the facts; CCI can revoke/ withdraw the commitment/ settlement order.

Can applicant withdraw the application for commitment or settlement?

The Applicant may withdraw the application for settlement/ commitment at any time prior to the passing of the final order adjudicating the said application by the CCI.

Can CCI use the information/ data as received as part of the settlement/ commitment application – if order in the said application is revoked & withdrawn by the CCI?

In case, CCI revokes and withdraws the order accepting the application for commitment/ settlement, the information and documents submitted by the applicant may be relied upon by the CCI and the DG for any proceedings under the Competition Act.

Can CCI use the information/ data as received as part of the settlement/ commitment application – if said application is rejected by the CCI or withdrawn by the applicant?

If CCI rejects the application for settlement or commitment or if the said application is withdrawn by the applicant; the CCI and the DG may only use the information gathered from the sources, other than the applicant for conducting any proceedings under the Competition Act.

Can a party file application offering partial commitments? If yes, can CCI proceed with investigation/ inquiry against other alleged contraventions (not part of commitment application)?

A party may offer commitment with respect to part of allegations under prima facie order under section 26(1) of the Competition Act.

If the application is made in respect of some of the contraventions noted by the CCI in its order passed under section 26(1) the Competition Act, then inquiry qua remaining contraventions mentioned therein shall continue

Can applicant for settlement or commitment seek confidentiality on data/ information supplied as part of the application or during the proceedings?

Applicant may seek confidentiality on data/ information as may be supplied by it and the same shall be in accordance with the regulations governing confidentiality under the Competition Commission of India (General) Regulations, 2009, read with section 57 of the Competition Act.

What is the manner of determining the settlement amount?

In order to determine the settlement amount, the CCI would compute base amount which could extend up to maximum amount of penalty that would otherwise have been leviable under section 27(b) of the Act i.e. 10% of the global turnover; which shall also be read with CCI's penalty guidelines.

Further, the CCI shall apply a settlement discount of 15% to the base amount as may be computed by the CCI.

Can the final order on settlement or commitment application construe a finding of contravention by the applicant?

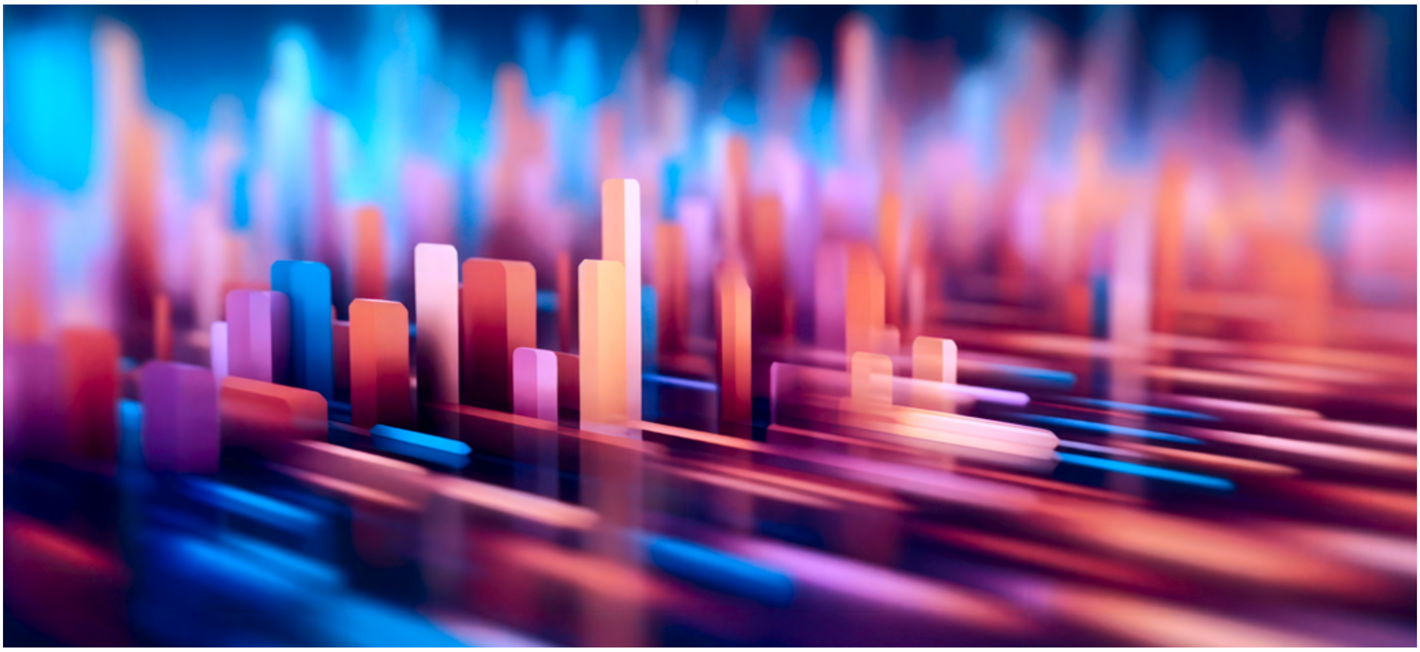
CCI's order agreeing to the proposal for settlement or offer of commitment shall not be construed as a finding of contravention by the CCI against the applicant.

Is there a time period for conclusion of proceedings under the Settlement Regulations?

As per the Settlement Regulations, the entire settlement proceedings shall be concluded within 180 working days of the receipt of the application, which may be extended, if deemed appropriate by the CCI.

Is there a time period for conclusion of proceedings under the Commitment Regulations?

In terms of Commitment Regulations, the entire commitment proceedings shall be concluded within 130 working days of the receipt of the application, which may be extended, if deemed appropriate by the CCI.



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