

Kluwer Competition Law Blog

How is Competition Commission of India functioning during the COVID-19 pandemic?

Basu Chandola (Jindal Initiative on Research in IP and Competition (JIRICO)) · Tuesday, April 21st, 2020

The Competition Commission of India (CCI) has been very prompt with adopting various measures to continue its working during this period of pandemic. The CCI has issued several circulars and public notices from time to time to keep people updated about its functioning.[1] The CCI is currently functioning at a reduced capacity and most of its officers are working from home.[2] This article will summarize the position of the CCI as on 20th April 2020.

Filings under Section 3 and Section 4

Sections 3 and 4 of the Competition Act, 2002 ('Act') deal with anti-competitive agreements and abuse of dominance respectively. Per the Notice dated 23rd March, 2020, all filings related to Section 3 and Section 4 of the Act were suspended. Further, vide Notice dated 30th March 2020, all filings or compliances due on or before 14th April 2020 in respect of pending cases were suspended till 14th April, 2020.

The Notice dated 13th April 2020 allowed for the filing of information with respect to the provisions of Section 3 and Section 4 of the Competition Act, 2002 electronically. Further, the Notice dated 20th April 2020, provide for notification of fresh dates for all other compliances up to 02nd May 2020.

Hearings before the Commission

Even before a national lockdown was announced in India on 24th March 2020, the CCI had adjourned the hearing of all cases from 17th March 2020 to 31st March 2020. Further, on 30th March 2020, all the matters listed for hearings upto 14th April, 2020 were adjourned by the CCI. Per the latest Notices dated 13th April 2020 and 20th April

2020, fresh dates are to be notified by the CCI for all the matters listed for hearing up to 03rd May, 2020.

Pre-filing Consultations

All pre-filing consultations were suspended by the CCI vide notice dated 23rd March 2020. These Consultations have been allowed through video conference by the Notice 13th April 2020.

Notification of Combinations

All notifications in relation to combination under Section 6 of the Act were suspended vide the Notice dated 23rd March 2020. The Notice dated 30th March 2020 allowed for electronically filing of combination notices only under the Green Channel (under Regulation 5A of the Combination Regulations). The Notice dated 13th April 2020 allows for the electronic filing of all combination notices with the CCI.

During this period, the CCI has approved several notifications such as the formation of Joint Venture between Adani Green Energy Limited and Total S.A., in solar power generation business in India, approval of acquisition of 100% shareholding of GMR Kamalanga Energy Limited by JSW Energy Limited, approval of proposed acquisition of 80.1% stake by Hitachi Limited in the power grid business of ABB Limited. These approvals were made during CCI's meeting held through video conferencing.

Advisory to Businesses in Time of COVID-19[3]

The CCI on 19th April 2020 issued an advisory to businesses in this time of this pandemic. The CCI has acknowledged that COVID-19 has caused disruptions in supply chains and that information sharing and coordination may be required by businesses to ensure continued supply and fair distribution of products and services. Under Section 3(3) of the Act, coordination amongst competitors is presumed to cause Appreciable Adverse Effect on Competition (AAEC). However, at the time of competition assessment, CCI has to take into due regard, amongst other factors, pro competitive effects such as the accrual of benefits to consumers; improvement in production or distribution of goods or provision of services; and promotion of technical, scientific and economic development by means of production or distribution of goods. Therefore, the Act has in-built safeguards to protect businesses from sanctions for certain coordinated conduct, provided such arrangements result in increasing efficiencies.

The CCI has suggested that it will only consider such businesses which are necessary and proportionate to address concerns arising from COVID-19 and that the businesses

must not take advantage of COVID-19 to contravene any of the provisions of the Act. It is to be noted that the advisory does not provide any exemption from the application of the Act but merely provides that the CCI will consider the circumstances that occurred during COVID-19 while undertaking its assessment.

[1] The Public notices were issued on 17th March 2020, 23rd March 2020, 30th March, 2020, 13th April 2020, 19th April 2020 and 20th April 2020 > and are available at <https://www.cci.gov.in/what-s-new>

[2] Anisha Chand and Soham Banerjee, “India: COVID 19 And Competition: India Perspective” available at <mondaq.com/india/operational-impacts-and-strategy/912772/covid-19-and-competition-india-perspective>

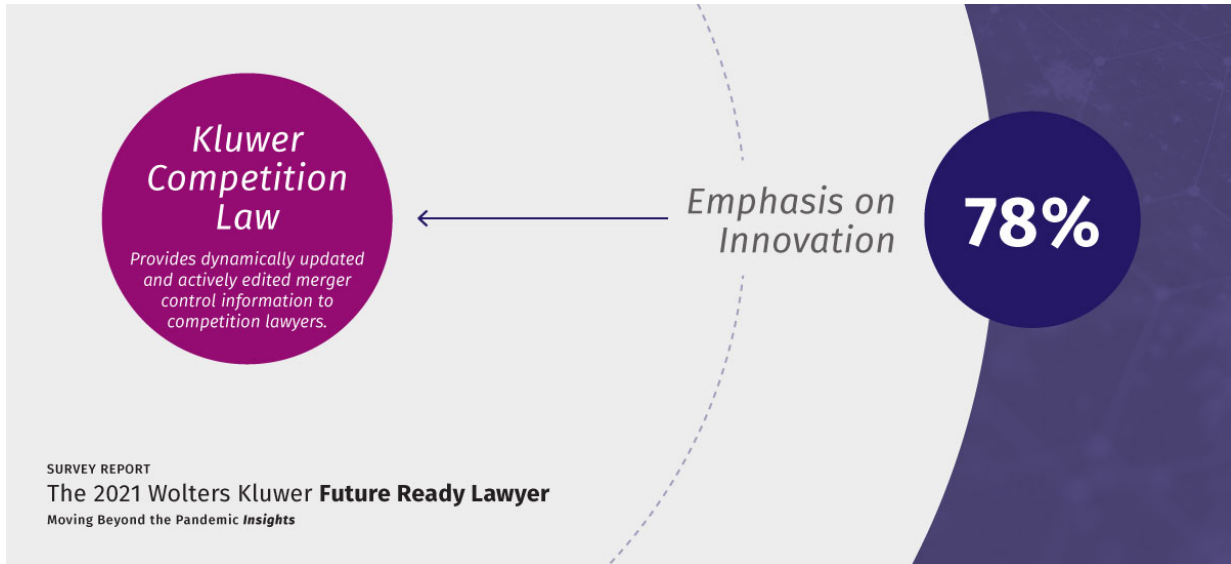
[3] Competition Commission of India, “Advisory to Businesses in Time of COVID-19” available at https://www.cci.gov.in/sites/default/files/whats_newdocument/Advisory.pdf

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