

Competition – Legal Milestones in 2019 and a Look Ahead

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1 The Year that Was

In 2019, the Competition Commission of India (CCI) completed ten years of enforcement activity and eight years of merger control regime. It introduced the green channel mechanism for approval of combinations which is a welcome move as it enables deemed approval of transactions on the same day as the filing of the merger notification.

On the leniency front too, the CCI granted a penalty reduction of 100% and 50% to the first and second leniency applicants respectively in its first international cartel case. Another noteworthy precedent was the granting of confidentiality by the CCI to the names of the employees of the leniency applicants in this case.

2 Major Developments in 2019

2.1 Merger control developments

The CCI has consistently laid to rest the industry's concerns of delays to the merger control regime by further improving the average time taken to approve transactions from 23 days in 2018 to 18 days in 2019.

On 15 August 2019, the CCI introduced the 'Green Channel' mechanism, making India the only competition jurisdiction to allow 'near-simultaneous' clearance for certain transactions. Under this mechanism, if the parties do not have any direct or indirect horizontal or vertical overlaps, or are not engaged in complementary markets, their merger notification will be deemed to be approved on the same day as the filing. This is one of

The year 2019 witnessed some significant competition law developments such as the introduction of the green channel notification regime and the decision in the first international cartel case. This update discusses the key highlights of 2019 and a brief overview of what can be expected in 2020.

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the CCI's latest contributions to the ease of doing business in India and has already been used for five transactions (until 31 December 2019).

In another precedent-setting move, the CCI approved the acquisition of L&T's electrical and automation business by Schneider Electric and MacRitchie, subject to a set of behavioural remedies after an in-depth phase II investigation. The acceptance of purely behavioural remedies, without any structural remedies, is a novel and laudable step for the development of the merger control regime in India. With this, the CCI has demonstrated that it does not adopt a 'one-size fits-all' approach and is open to accepting tailored remedy packages that address the perceived competition harm.

One of the initial contentious issues emanating from the implementation of the Insolvency and Bankruptcy Code, 2016 (IBC) was when to approach the CCI, - whether before or after approval of the resolution plan by the committee of creditors (CoC). In 2018, the IBC was amended to provide that in case of a notifiable transaction, CCI approval must be obtained prior to the approval of the resolution plan by the CoC. In December 2019, the National Company Law Appellate Tribunal gave a purposive interpretation to the amendment and held that this requirement of prior approval is directory and not mandatory and it is open for the CoC to approve the resolution plan subject to the approval of the CCI which may be obtained prior to the approval by the adjudicating authority.

2.2 Leniency regime

Detection and busting of cartels remained the CCI's primary enforcement priority in 2019. Over the last few years, the CCI has made amendments to streamline and strengthen leniency regulations.

In 2019, the CCI decided its first international cartel case, in which the cartel participants were based outside India and had filed for leniency in multiple jurisdictions, including India. The CCI examined the appreciable adverse impact on competition in India and granted maximum permissible reduction to both applicants i.e., 100% penalty reduction to the first leniency applicant and 50% penalty reduction to the second leniency applicant. In addition, and for the first time, the CCI granted confidentiality on the names of the employees of the leniency applicants, given the sensitivities involved. This is a commendable move that will provide comfort to prospective applicants for approaching the CCI under the leniency regime.

2.3 Jurisdiction of CCI for investigation of vertical agreements

The power and jurisdiction of the CCI to direct an investigation of an anti-competitive vertical agreement, without examining the impact on competition, was challenged before the Bombay High Court. The Court held that for a vertical agreement, the mandatory jurisdictional pre-requisite for the CCI to order an investigation was to arrive at a *prima facie* finding that the conduct of the parties causes appreciable adverse effect on competition (AAEC). As the CCI had not carried out any assessment of AAEC, the Court set aside the CCI's order that directed investigation against Star India Private Limited and Sony Pictures Network India Private Limited for alleged anti-competitive vertical agreement. The CCI is expected to appeal this order before the Supreme Court, given that it severely impacts their base-line jurisdiction.

3 Looking Ahead

The CCI has done commendable work in the last ten years in shaping the competition law enforcement environment in India.

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In 2018, the government constituted the Competition Law Review Committee to review the existing competition law framework. The Committee submitted its report in August 2019 and based on its recommendations the government is expected to introduce a bill to amend the Competition Act in 2020. The key changes expected are the introduction of additional merger thresholds for certain transactions that do not meet the traditional asset/turnover thresholds. Further, the Committee has also suggested the introduction of settlements and commitments for cases pertaining to abuse of dominance and non-cartel cases.

The next decade will be a test for the CCI as it is expected to deal with the conduct of players engaged in non-traditional markets including digital platforms while balancing consumer welfare and incentivising innovation. The CCI has already begun the process of equipping itself by conducting a market study on e-commerce and more such measures are expected in the near future.

For a round-up of some of the key legal developments across sectors in 2019 and a brief insight on what to expect in 2020, please read our sector-wise updates, which can be accessed at: <https://trilegal.com/knowledge-repository/page/2/?title=milestone>

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