

Competition Commission of India issues Advisory for Businesses

April 20, 2020

On April 19, 2020, the Competition Commission of India (CCI), in view of the prevailing circumstances in the country due to the Covid-19 pandemic, issued an advisory for the businesses operating in India. Through this advisory the CCI has recognized and highlighted that the Competition Act, 2002 (**Act**) provides for certain built-in safeguards to protect businesses from sanctions for certain coordinated conduct, provided such arrangements lead to increase in efficiencies. In its advisory, the CCI has noted that to cope with the significant changes in the supply and demand patterns arising from this extraordinary situation, businesses may need to coordinate certain activities by way of:

- Sharing data on stock levels,
- Timings of operations,
- Sharing of distribution network and infrastructure,
- Transport logistics,
- R&D data

To ensure continued supply and fair distribution of products. Further, CCI has recognized the category of products that might necessitate coordination including but not limited to medical and healthcare products such as ventilators, gloves, face masks, vaccines etc. and essential commodities and services such as testing, logistics etc.

The Act prohibits conduct that causes or is likely to cause an appreciable adverse effect on competition (**AAEC**) and presumes that certain concerted actions between competitors cause an AAEC. Upon scrutiny by the CCI, the businesses may find themselves having to defend such coordination undertaken during Covid-19 as being pro-competitive, pro-consumer or having some rationale/justification. The Act recognizes that actions which lead to accrual of benefits to consumers and/ or improve and promote technical improvements in production and supply can have pro-competitive or positive effects in the market. The CCI when assessing AAEC also seeks to balance the negative factors against the positive factors provided in Section 19(3) of the Act to scrutinize the conduct of the companies.

By way of the advisory, the CCI clarified that coordinated conduct which results in increasing efficiencies are protected from retribution within the Act. But the CCI cautioned that only conduct which is **necessary and proportionate** to address the concerns arising out of Covid-19 would be granted favorable consideration and that businesses **must not take advantage** of the current situation to contravene the provisions of the Act.

Unlike regulators in other jurisdictions ([CMA](#) and [ACCC](#)) the CCI through this advisory **does not provide for specific exceptions or allow limited immunity** against enforcement action for coordination in selected sectors, but has rather simply clarified that any coordination if rationalized as efficiency enhancing may be permitted within the auspices of the Act. Notably, the power to exempt the applicability of the Act on a class of enterprises, if necessary, for the security of the state or in public interest rests only with the Central Government (*see Section 54 of the Act*).

The CCI's advisory note can be accessed [here](#).

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com

Note: This update is one amongst a series Business Continuity articles which ELP has instituted in light of COVID-19. To read our other updates please [click here](#).

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