



CCI amends the Competition Commission of India (General) Regulations 2009 to discourage forum shopping and conflict with Sectoral Regulators

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Background:

In an effort to discourage forum shopping and avoid conflict between the proceedings of specific sectoral regulators and itself, the Competition Commission of India (CCI) on November 20, 2019, has made certain amendments to the Competition Commission of India (General) Regulations, 2009 (**General Regulations**). These amendments to the General Regulations have become effective from November 20, 2019.

Key Takeaways:

- a. **Amendment to Contents of Information or reference:** The CCI has amended Regulation 10 of the General Regulations requiring disclosure of details of litigation or pending disputes between an Informant and the parties against whom the information is filed. An Informant while filing an information against another party is now required to include details of any pending disputes with respect to the subject matter of the information, along with the information. The text which has been inserted in Regulation 10, Sub-regulation 2 as Clause (da) reads as under –

(da) Details of litigation or dispute pending between the informant and parties before any court, tribunal, statutory authority or arbitrator in respect of the subject matter of information;

- b. **Amendment to Confidentiality:** The provision concerning confidentiality under Regulation 35(1) has been amended to include a proviso which provides the CCI the power to disclose the identity of an Informant in matters where such disclosure is considered expedient for the purposes of the Competition Act, 2002 (**Act**). The new Sub-regulation (1) of Regulation 35 along with the inserted proviso reads as –

*35. Confidentiality.–(1) The Commission shall maintain confidentiality of the identity of an informant on a request made to it in writing.
Provided that where it is expedient to disclose the identity of the informant for the purposes of the Act, the Commission shall do so after giving an opportunity to the informant of being heard.*

The CCI has also amended the provision under Regulation 35(10) which provides for a party's right to prefer an appeal to the CCI against the decision of the Director General of Investigations (**DG**), rejecting claims of confidentiality over certain documents or parts thereof. Through the amendment, the CCI has inserted a temporal limitation on a party's right to prefer appeal against such rejection of confidential treatment. Any such appeal now must be preferred within 30 days from the receipt of the order of the DG. The amended text of Sub-regulation 10 of Regulation 35 now reads as under –

"In case the Director General has rejected the request of the party made under sub-regulation (2), the party may approach the Commission for a decision regarding confidential treatment within a period not exceeding 30 days from the receipt of the order passed by the Director General.";

- c. **Amendment of Fees to be paid while filing information:** The CCI has amended Regulation 49 of the General Regulations and increased the Information filing fees. While the fee has remained unchanged for an individual or Hindu Undivided Family, it has been increased for all other entities. The changes are –
- Non-Government Organisation, Consumer Association, Co-operative Society and Trust: INR 10,000 (increased from INR 5,000).
 - Firms (including proprietorship, partnership and Limited Liability Partnership) and Company (including one person Company):
 - a. With turnover in the preceding year upto INR 2 Crores: INR 40,000
 - b. With turnover in the preceding year above INR 2 Crores and upto INR 50 Crores: INR 1,00,000

- Any entity not falling in the categories (a), (b), (c) or (d) of Regulation 49(1): INR 5,00,000

Prior to the above amendment firms or companies with turnover not exceeding INR 10 million were required to pay a filing fee of INR 20,000. For firms and companies having turnover above INR 10 million, the filing fee was INR 50,000 as they fell in the repository category of 'cases not covered'.

ELP Comment:

The amendments brought forth in the General Regulation by the CCI appears to avoid the conflict with specific sectoral regulators and also "forum-shopping" by litigants. A few sectoral regulators with whom the jurisdiction of CCI has conflicted in the past are the Telecom Regulatory Authority of India, the Petroleum and Natural Gas Regulatory Commission and Delhi Electricity Regulatory Commission.

*Recently, the Supreme Court in the matter Competition Commission of India v. Bharti Airtel Ltd. & Ors. (C.A. No. 11843 to 11852 of 2018) (**Bharti Airtel Matter**) had an opportunity to rule on one such conflict. The Court's ruling essentially meant that where there are pending disputes before a sectoral regulator (comprising of similar subject matter), such sectoral regulator would first settle the factual aspects of the dispute (facts governed by specific sector and law therein) as the sectoral regulator has the necessary technical expertise to decide upon the factual matters. Once those factual aspects are determined, the CCI may subsequently examine whether those factual matters raise any concerns of competition under the Act.*

*The decision of the Supreme Court was recently followed by the Bombay High Court in the matter of Star India Private Limited and Ors. v. Competition Commission of India and Ors. (W.P. No. 9175 of 2018). The High Court relying over the Supreme Court's decision in the Bharti Airtel Matter, set aside the orders of CCI holding Star India Pvt. Ltd. and Sony Pictures Network India Private Limited prima facie liable for contravention of the Competition Act on the ground of a string of disputes pending between the parties before the Telecom Disputes Settlement and Appellate Tribunal (**TDSAT**).*

The amendment, whereby the CCI has now mandated furnishing of information regarding all pending disputes between the parties can be an attempt by the regulator to cease from engaging in matters which have issues conflicting with pending disputes before sectoral regulators. Additionally, the amendment regarding the disclosure of the identity of the Informant and the hike in the filing fees also seems to be an attempt to discourage filing of frivolous information. Obviously, this also raises cost of litigation for bona fide litigants.

The notification, as published in the Official Gazette, containing these amendments, is available [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.

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