

Webinar on Recent Developments in Competition Law and Challenges during Covid-19

Gandhinagar, July 21, 2020: The webinar was delivered by the renowned Competition Law expert Mr Manas Kumar Chaudhuri. Currently, he is a Partner, Competition Law Practice, Khaitan & Co. He has earlier served as a Civil Judge in the West Bengal State Judicial Services and also as the first Additional Registrar of the Competition Commission of India.

Mr Manas Kumar Chaudhuri focused on two issues of contemporary relevance: Advisory issued by the Competition Commission of India (CCI) for Businesses during COVID-19 and Draft Competition Amendment Bill, 2020.

Mr Chaudhuri said that the competition law aims to promote and sustain competition in markets to protect the interests of consumers and ensure freedom of trade. It, therefore, prohibits practices that hurt the competition. However, COVID-19 is creating havoc with the economy. CCI has, therefore, issued an advisory on 19 April 2020 for the guidance of businesses during COVID-19. The advisory permits companies to coordinate certain activities in a limited way to ensure continued supply and fair distribution of products (e.g. medical and healthcare products such as ventilators, face masks, gloves, vaccines etc. and essential commodities) & services (e.g. logistics, testing etc.) during COVID 19 so long as such coordination does not lead to either price-fixing, limiting or allocation of markets etc. At the same time, CCI has cautioned businesses from taking advantage of the Covid-19 situation and engaging in anti-competitive practices prohibited by law. Thus, CCI has provided a limited – and not a blatant - relaxation to meet the challenges in the wake of COVID-19.

Mr Chaudhuri then dealt with the provisions of the Draft Competition Amendment Bill, 2020. He said that while the draft bill contains many good proposals such as the inclusion of Buyers' cartels, the concept of the deal-value test to trigger combination filings, settlement & commitment procedure, the appointment of a Governing Board, and inclusion of Penalty guidelines in the Act itself, it has some proposals which raise concerns. They include: change in appointing authority of Director General, giving power of a criminal court to Director-General and giving power to Director-General to summon bankers, auditors and legal advisers for deposition on oath.

Commenting on the proposal to include Buyers' Cartels, he said that the 2002 Act does not specifically prohibit Buyers' cartels. The amendment bill proposes to include buyers' cartels within the definition of cartels, thus expanding the scope of the Act to anti-competitive agreements between buyers. A buyers' cartel refers to a group of buyers who agree to fix purchase prices or to

eliminate competition for such purchases or otherwise control supplier conduct. This is a welcome proposal.

Mr Chaudhuri said that Facebook's USD 19 billion (Rs 1,16,000 crore) deal to acquire WhatsApp could not be reviewed by CCI as Facebook and WhatsApp did not breach the prescribed financial thresholds in terms of assets and turnover in India to decide whether a merger deal would require CCI's approval. The amendment bill proposes to give flexibility to CCI to include "Deal-Value Test" in the financial threshold for non-traditional businesses. Post-amendment, such high-value merger deals will not be able to escape the CCI scrutiny.

Mr Chaudhuri said that, at present, Director-General is appointed by the Central Government. The amendment proposes to give the power of appointment of DG to CCI. This amendment may pose a challenge to the functional autonomy of DG.

Another area of concern is the proposal to give DG power to impose criminal sanctions (penalty up to INR 1 Crore and order impr...

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