

# TT Alert

May 2023

## Key amendments made by the Competition (Amendment) Act 2023

The Competition Act, 2002 ('CA 2002') was enacted to promote and sustain competition in markets, protect the interest of consumers and ensure freedom of trade for the market participants. The Competition (Amendment) Act, 2023 ('CAA 2023') has amended the CA 2002 and provides for combinations based on the value of transaction, time limits have been rationalised for approval of combinations, widened scope of anti-competitive agreements, defining certain terms, etc.

The following are the key amendments made by the CAA 2023:

Sr.No	Particulars	Existing Regulations	Amended Regulations
1	<b>Introduction of deal value threshold test</b>	Earlier, the combinations were required to be notified to the Competition Commission of India ('CCI') only if the parties involved had assets or turnover exceeding a certain threshold; the value of transaction was not considered.	<p>CAA 2023 has widened the scope of S. 5 to introduce an additional threshold basis the value of any transaction, whereby any transaction the net value of which exceeds INR 2000 Crs would require CCI approval if the Target has substantial business operations in India.</p> <p>The term 'value of transaction' would inter alia include every valuable consideration, whether direct or indirect or deferred for any acquisition, merger or amalgamation.</p> <p>Companies having presence in India, undergoing any acquisition exceeding INR 2000 Crs will be now within the purview of CAA 2023.</p>

Sr.No	Particulars	Existing Regulations	Amended Regulations
2	<b>Reduction of time limit for approval of Combinations to 150 days</b>	As per S. 6(2A) of CA 2002, no combination shall come into effect until 210 days have passed from the day on which the notice has been given to the CCI or date of order of the CCI, whichever is earlier.	CAA 2023 changed the limit to 150 days, thereby reducing the overall time limit for approval of the combinations. Thus, the CCI would have a maximum of 150 days from the day of notice to approve the combination or to pass an order.
3	<b>Standstill conditions in case of open offer and acquisition of convertible shares / securities</b>	Under the existing framework, the parties to a notifiable transaction are not permitted to acquire any shares prior to receiving CCI approval.	CAA 2023 has inserted S. 6A and has diluted the existing "standstill obligations" in case of an open offer and acquisition of convertible shares / securities on a stock exchange provided: <ul style="list-style-type: none"> <li>i. the notice of the acquisition is filed with CCI within the prescribed time limit and</li> <li>ii. the acquirer does not exercise any ownership / beneficial rights or interest or receives dividends in such shares / securities till the receipt of approval from the CCI.</li> </ul>
4	<b>Inclusion of certain enterprises to be part of the anti-competitive agreements</b>	As per S. 3(3) of the CA 2002, any agreement entered by an enterprises or persons or associations of persons engaged in identical or similar trade which satisfy certain conditions shall be considered as an anti-competitive agreement and shall be void.	CAA 2023 added a proviso to S. 3(3) and provides that enterprises or persons or associations of persons though not engaged in identical or similar trade shall also be presumed to be part of such anti-competitive agreements, if they participate or intends to participate in furtherance of such agreements.
5	<b>The definition of "Control" is amended</b>	As per S. 5 of CA 2002 "control" includes controlling the affairs or management by- <ul style="list-style-type: none"> <li>i. one or more enterprises or</li> <li>ii. one or more groups</li> </ul> either jointly or singly over another enterprise or group.	CAA 2023 amended the definition and provide as "control" means the ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions by- <ul style="list-style-type: none"> <li>i. one or more enterprises or</li> <li>ii. one or more groups</li> </ul> either jointly or singly, over another group or enterprise.
6	<b>Time limit to disclose details of Combinations</b>	As per S. 6(2) of CA 2002, any person or enterprise, proposing to enter into a combination shall give notice to CCI within 30 days of: <ul style="list-style-type: none"> <li>i. approval of proposal by the Board of Directors ('BOD') or</li> <li>ii. execution of any agreement.</li> </ul>	CAA 2023 removes the 30 days timeline and thereby, allowing enterprise or person to file the notice to CCI after any of following: <ul style="list-style-type: none"> <li>i. approval of proposal by BOD or</li> <li>ii. execution of any agreement</li> </ul> but before consummation of the combination.
7	<b>Introduction of time limit of 3 years to initiate inquiry</b>	S. 19 of CA 2002 provides that the CCI may inquire into any alleged contravention: <ul style="list-style-type: none"> <li>i. on its own motion or</li> <li>ii. on receipt of information from any person, consumer or association</li> <li>iii. reference made by Central Government or State Government or Statutory authority.</li> </ul>	CAA 2023 inserted a proviso whereby the CCI shall not entertain any information or reference unless it is filed within 3 years from the date on which the cause of action has arisen. However, the CCI may entertain the information or reference after expiry of the said period, if it is satisfied that there was a sufficient cause for the delay.

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8	<b>Penalty on basis of global turnover</b>	S. 27(b) of CA 2002 empowers the CCI to impose a penalty of not more than 10% of average turnover for the last 3 preceding financial years upon each of such person or enterprises which are parties to such agreements or abuse.	CAA 2023 has amended S. 27(b) and included income within its ambit. Hence, the penalty can be imposed of not more than 10% of the average turnover or income for last 3 preceding financial years.  Further, it explains that "turnover" means global turnover derived from all the products and services by a person or an enterprise
9	<b>Deemed approval of Combinations</b>	As per S. 31 of CA 2002, where the CCI is of the opinion that any combination is not likely to have an appreciable adverse effect on the competition, it shall by order approve that combination.	CAA 2023 has inserted S. 29(1B) whereby the CCI shall within 30 days of receipt of notice under S. 6(2), form its prima facie opinion, whether the combination is likely to cause adverse effect on competition.  Further a proviso has been inserted in S. 31 to provide that if the CCI does not form a prima facie opinion as per S. 29(1B), the combination shall be deemed to have been approved and no separate order shall be required to be passed.
10	<b>Turnover has been defined</b>	S. 5 of CA 2002 provides for combinations, which require approval from CCI. However, it does not define the term "turnover" pertaining to the combination.	CAA 2023 amended S. 5 and inserted the definition as "turnover" means the turnover certified by the statutory auditor and such turnover in India shall be determined by excluding intra-group sales, indirect taxes, trade discounts and all amounts generated through assets or business from customers outside India.
11	<b>Issue of statement of objections by CCI and offer of modifications</b>	S. 29 of CA 2002 provides for the procedure to be followed while investigating the combination.	CAA 2023 has inserted S. 29A, which provides for the issue of statement of objections by CCI to the parties, identifying appreciable adverse effect on competition. Where the parties consider that such adverse effect can be eliminated, they may submit offer of appropriate modification to combination.
12	<b>Expanding the powers of DG</b>	S. 41 of CA 2002 specifies the duties and powers of the Director General ('DG') to investigate the contravention.	CAA 2023 has amended S. 41 by expanding the powers of the DG for investigating contraventions, such as  i. call for the information, books, papers, records, documents etc. ii. retention of such books, papers, records, document etc. for 180 days. iii. examine on oath any of the officers, employees and agents of the party being investigated. iv. search the place where the documents are kept and seize any relevant documents for the purpose of the investigation.
13	<b>Settlements framework</b>	CA 2002 does not provide for such a framework.	CAA 2023 has inserted S. 48A, S. 48B and provides that any enterprise, against whom any inquiry has been initiated may for the settlement of proceeding initiated for the alleged contraventions submit an application in writing to the CCI in such form and upon payment of such fee as may be specified by the regulations.

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14	<b>Increase in penalty for false statement</b>	S. 44 of the CA 2002 provides for the penalty of INR 50 lakh subject to maximum penalty of INR 1 Crore on the person for making false statement or omission to furnish material information.	CAA 2023 has increased the maximum penalty provided under S. 44 to INR 5 Crore.
15	<b>The definition of term "Party" has been inserted</b>	The term "party" has not been defined in S. 2 of the CA 2002.	<p>CAA 2023 has inserted S. 2(ka) and provides that "party" includes:</p> <ul style="list-style-type: none"> <li>• a consumer or an enterprise</li> <li>• a person</li> <li>• an information provider</li> <li>• a consumer association</li> <li>• a trade association</li> <li>• the Central Government</li> <li>• any State Government</li> <li>• any statutory authority</li> <li>• an enterprise or a person against whom any inquiry or proceeding is instituted and any enterprise or person impleaded by the CCI to join the proceedings.</li> </ul> <p>With the inclusion of this definition, the scope has been widened to cover above within its scenario.</p>
16	<b>The definition of "Relevant product market" is expanded</b>	S. 2(t) of the CA 2002 defines the relevant product market from the consumer perspective and provides that the "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics, prices and intended use.	CAA 2023 broadens the scope by including the perspective of the supplier. The updated definition includes all those products/ services that are interchangeable or substitutable by the consumer as well as production or supply which is regarded as interchangeable or substitutable by the supplier.

## RBSA Comments

Over the last decade, Indian markets have grown significantly and there has been a paradigm shift in the way business function. CAA 2023 intends to foster and preserve market competition, secure market players freedom of trade and protect consumer interest. It attempts to ensure that the high-value transactions do not result in anti-competitive practices. Overall, CAA 2023 is a great step towards establishing a level playing field and fostering fair competition in the market.

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