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Analysing developments impacting business

RECENT NOTIFICATIONS INCREASE SCOPE OF CCI'S ENQUIRY

12 December 2022 The Ministry of Finance, Government of India (MoF) has issued two back-to-back notifications introducing a legal framework for the flow of information from the Enforcement Directorate to the Competition Commission of India (CCI) and authorising the CCI to scrutinise anti-profiteering measures.

Notification dated 22 November 2022

The MoF has issued a notification on 22 November 2022 under Section 66(1)(ii) of the Prevention of Money-Laundering Act, 2002 (as amended) (PMLA) amending earlier notifications and including the CCI in the list of agencies with whom the Director of Enforcement (Director) may share information.

The current law, *inter alia*, provides for the disclosure of information that is received by the Director to agencies / bodies which are notified in the Official Gazette. Further, based on information available with it, if the Director is of the opinion that a certain law is contravened, the Director may share such information with the relevant agency for necessary action.

The original notification previously named 10 agencies to whom the Director may furnish information for performing their respective functions. The latest amendment empowers the Director to share information with 15 additional agencies / bodies including the CCI.

Notifications dated 23 November 2022

The MoF has also issued a notification on 23 November 2022 under Section 171(2) of the Central Goods and Service Tax Act, 2017 (CGST Act), which authorises the Central Government to constitute or empower an authority to examine anti-profiteering measures. The CCI has accordingly been empowered based on the recommendations of the Goods and Services Tax Council. The CCI now has the additional mandate to examine whether an entity has passed on a tax reduction or benefit by implementing a commensurate reduction in the price of its goods or services. This notification has come into force on 1 December 2022.

In a separate notification of the same date, certain rules of Central Goods and Service Tax Rules, 2017 have been appropriately omitted / amended to bring them in line with the CCI becoming the authority to check anti-profiteering from 1 December 2022.

Comment

Recent notifications indicate the Central Government's intent to amend various central statutes and regulations to increase the CCI's role as a statutory authority and enhance inter-agency cooperation.

The notification dated 22 November 2022 provides legislative backing for seamless information flow from the Enforcement Directorate to the CCI (and other agencies). Hence, an entity being investigated by the Enforcement Directorate may be prone to enquiries under multiple statutes if any indication of corresponding contraventions is found by the Director. With the Enforcement Directorate becoming another source of information for possible contraventions of the Competition Act, 2002 (Competition Act) we may witness a surge in enquiries by the CCI.

Similarly, with the notification of 23 November 2022, the CCI has been granted an additional responsibility independent of the Competition Act. It will have to be seen how this mandate impacts the CCI's functioning.

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