

## ERGO

*Analysing developments impacting business*

### HIGHER PENALTY RECOVERY LIKELY: TOUGH CHANGES TO THE CCI'S MONETARY PENALTY REGULATIONS

14 November 2024

On 7 November 2024, the Competition Commission of India (CCI) released proposed amendments to the Competition Commission of India (Manner of Recovery of Monetary Penalty) Regulations, 2011 (Recovery Regulations) for public comments. The amendments have been proposed with the aim of improving penalty recoveries by the CCI.

While these changes appear to be clarificatory / procedural in nature, a deeper examination suggests that these could increase the risks associated with pursuing cases at the appellate stage, driven by potentially high interests on penalties.

We discuss some of the key changes to the Recovery Regulations and highlight their potential implications below.

#### *Clarity on when a demand notice can be issued by the CCI*

Under the unamended Recovery Regulations, a demand notice (i.e. a notice requiring a penalized enterprise to pay up) could be issued only after the time-window provided in the CCI's order expired. Further, such notice granted an additional 30-day window (calculated from the date of its issuance) to deposit the penalty, failing which, a 1.5% per month interest would apply.

The proposed amendments will allow the CCI to issue a demand notice simultaneously with the penalty order as well as prescribe a discretionary (potentially, shorter) period within which such penalty must be paid, failing which an interest of 1% per month shall apply.

These amendments seem to stem from a recent decision of the Delhi High Court (Court) in *Geep Industries (India) Private Limited & Ors. v Competition Commission of India* (W.P.(C) 10332/2023 & CM APPL. 40030/2023 - order dated 26 April 2024). The CCI argued that interest should accrue on the penalty from the date of its penalty order. However, the Court circumscribed the interest period to commence only after issuance of the demand notice.

#### *Practical ramifications of this amendment*

This amendment will allow the CCI to issue a demand notice simultaneously with its penalty order, arresting a prevalent strategy adopted by penalized enterprises of appealing the CCI's order and obtaining an interim stay on such order, before a demand notice is issued. Crucially, this will also deter routine / frivolous appeals, considering that appeal dismissal could result in significant interest accruals on original penalties. Even otherwise, appellants are likely to pursue their appeals more seriously and expeditiously to account for the eventuality of their appeal dismissals, leading to higher payouts.

Relatedly, this amendment could also provide greater incentive for enterprises to apply for settlements / commitments (in cases involving non-cartel violations) under the newly enforced settlements / commitments regime, as applicable. This is because such settlements / commitments would necessarily ensure a reduction in payable penalties.

#### ***Inclusion of legal heirs within the scope of the Recovery Regulations***

Another proposal under the amendment is the extension of penalty obligations to the legal heirs of persons. This proposal renders greater clarity on the continuation of proceedings, whilst also providing that the liability of such legal heir will be limited to the extent to which the estate of the deceased person is sufficient to discharge the liability.

Any failure by the legal heirs to pay such penalty would result in such legal heirs being classified as "person in default" and appropriate proceedings would commence against them.

#### ***Comment***

With enhanced power in the hands of the CCI, it will be important that the CCI does not lose sight of protecting legal rights while deterring errant enterprises from engaging in anti-competitive activities. For example, while exercising discretion under the amended Recovery Regulations, the CCI must act reasonably and not provide for truncated recovery timelines that violate the period within which a party has a right to appeal.

The proposed amendments to the Recovery Regulations reflect a significant shift towards stricter enforcement and accountability for violations of the Competition Act, 2002 (as amended). While the draft amendments will go through a customary public consultation process, we do not anticipate that the proposed changes to Recovery Regulations will be substantially revised. India Inc. will be well advised to seriously consider consequences of competition law violations more than ever, now that the long appellate life cycle could pose higher payout risks on infringing parties.

- *Pranjal Prateek (Partner); Siddharth Bagul (Senior Associate) and Ritika Ghosh (Associate)*

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)