

# Govt tightens grip around tech giants, notifies law to levy penalties based on global revenues

**MORE POWER.** With this, govt has nullified the SC ruling that restricted penalties to revenues earned from infringing goods and services

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Amidst the ongoing legal tussle between tech giant Google and domestic startups over Play Store Billing policy, the Centre has notified a new provision in the recently amended Competition law that would lead to the levy of penalty on a "global turnover" basis for any anti-competitive conduct or abuse of dominant position by enterprises.

Post this move, the Competition Commission of India (CCI) has issued regulations on turnover determination, settlement and commitment, besides penalty guidelines. This proposed regulation on 'turnover' is significant as it would have a bearing on how much penalties would be levied on enterprises for their anti-competitive conduct.

The Ministry of Corporate Affairs (MCA) has also now simultaneously paved the way for the CCI to issue the much-awaited regulations on

commitment and settlement mechanisms.

It has now specified March 6 as the date on which the relevant provisions on "global turnover" and "commitment and settlement" in the Competition (amendment) Act 2023 would come into force.

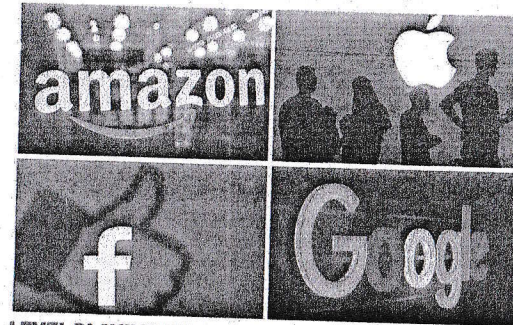
## GLOBAL TURNOVER

The Competition (amendment) Act 2023 had provided that penalties would be levied on 'global turnover basis' and that regulations would specify as to how turnover should be determined.

The introduction of 'global turnover' as a benchmark for the levy of penalties arising from any abuse of a dominant position by enterprises is one of the salient features of the amended law.

The provision was inserted through the Competition (Amendment) Act 2023 without public consultations.

CCI had, in December last year, issued draft regulations for 'turnover determination' and had given time till Janu-



**LEVEL PLAYING FIELD.** India is mulling a Digital Competition Act amid growing concern about the dominance of tech giants

ary 12 this year for public comments. This timeline was subsequently extended to January 25. The proposed regulations pose significance for corporate fines.

In the draft regulations, CCI has now said that indirect taxes, intra group sales and discounts would be excluded from computation of 'turnover'.

By introducing the concept of a 'global turnover' on penalty imposition, the Government had last year effectively

nullified a Supreme Court ruling that restricted the powers of CCI in levying penalties by holding that turnover for calculating penalties can only be taken as relevant turnover, that is, revenues earned from infringing goods or services.

The apex court had in 2017 in the Excel Crop Care case observed that the penalty should be calculated using the 'relevant turnover', namely turnover of tainted products connected to anti-

competitive conduct. Any penalty based on total turnover was deemed disproportionate, according to this SC ruling. Levy of penalties on a 'global turnover' basis could spell big trouble for multinational companies that operate in multiple jurisdictions globally. However, the same is also being seen by experts as strengthening the powers of CCI to deter potential violators of antitrust law.

holder comments. In competition law jurisprudence, "commitment" refers to a process where a company under investigation offers to change its business practices to address the concerns raised by the competition authority. This can lead to the closure of the investigation without a formal finding of infringement.

On the other hand, "settlement" typically involves a negotiated agreement between the competition authority and the company, often resulting in the company admitting to the alleged infringement in exchange for reduced fines or penalties.

Both commitment and settlement aim to resolve competition law concerns efficiently and without the need for a lengthy legal process.

## COMMITMENT ISSUES

The CCI had, in August last year, issued draft regulations on settlement and commitment pursuant to the amendments effected in the Competition Act, 2002.

Two separate draft regulations for Settlement and Commitment had been issued for public and stake-