

CCI brings draft Leniency Plus rules for cartels

These norms incentivise firms under investigation to report other cartels

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The Competition Commission of India (CCI) has invited stakeholder comments for its Leniency Plus regulations, which incentivise companies already under investigation for one cartel to report other cartels.

Under Leniency Plus, a cartel member cooperating with the CCI for leniency can disclose another cartel in an unrelated market during the original leniency proceedings, in exchange for an additional reduction in penalty.

The CCI has said that it may grant an additional reduction in monetary penalty up to 30 per cent of the penalty imposed with regard to the first cartel besides reduction in penalty up to 100 per cent to a cartel member for a newly-disclosed cartel.

According to the proposed regulations, the CCI will have the discretion to decide the reduction in penalty based upon the quality of information and stage at which the applicant comes forward. It will also depend on whether the commission already possesses any evidence and overall facts and circumstances of the case.

The applicants for this process, according to the draft regulations, refer to a company or an individual, who is or was a member of a cartel. These include an enterprise as well as associations of an enterprise or persons, who participate or intend to participate in furtherance of a cartel.

“This is an important development since, traditionally, only horizontal anti-competitive agreements between businesses engaged in identical or similar trade would be captured under the ambit of a cartel. The Amendment Act provided a statutory basis to fix liability on facilitators of cartels and the draft regulations take that to a logical end,” said Nitika Dwivedi, partner, Shardul Amarchand Mangaldas & Co.

The Leniency Plus regime was introduced in the new

ABOUT THE RULE

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- Traditionally, only horizontal agreements between businesses engaged in identical or similar trade were under the ambit of a cartel
- The Leniency Plus model is recognised in countries such as the UK, US, Singapore, and Brazil

Competition (Amendment) Act, 2023, although several provisions of the Act are yet to be notified.

The current Act already contains a leniency provision.

The Leniency Plus model, which provides the regulator with inside information about cartels, is recognised in countries such as the UK, US, Singapore and Brazil.

The regulations also mention the priority status of each applicant for the reduction in penalty amount.

If the applicant is the first to make a vital disclosure, then he is eligible for up to 100 per cent reduction in penalty. Thereafter, the second and third applicants are eligible for up to 50 and 30 per cent reduction, respectively.

Regulators opt for such “leniency” arrangements due to the secret nature of cartels, where it is very difficult to get evidence. It is considered to be a pragmatic approach to tackle cartels, which are regarded as the most egregious violation of competition law.

“In competition law, engagement in multiple cartels is considered ‘recidivism’, which means repeat offender. Such cases are dealt with severely. But given how difficult cartels are to investigate, this is a pragmatic approach,” an official said.