



Draft CCI Regulations on Settlements & Commitments

a summary
by

axiom5
LAW CHAMBERS



Context	1
Settlement Regulations	2
Commitment Regulations	12

Disclaimer:

This document has been prepared for information purposes only and should not be treated as legal advice. If you have any questions, do reach out to [our team](#) or write to info@axiom5.in for a more detailed discussion.

I. Context

On 23 August 2023, the Competition Commission of India (CCI) issued the draft [Competition Commission of India \(Settlement\) Regulations, 2023 \(Settlement Regulations\)](#) and the draft [Competition Commission of India \(Commitment\) Regulations, 2023 \(Commitment Regulations\)](#), along with accompanying background notes.¹

Comments on the Settlement Regulations and Commitment Regulations may be submitted to the CCI by 13 September 2023 on their [website](#).

We discuss the key features of the Settlement Regulations (in [Section II](#)) and the Commitment Regulations (in [Section III](#)), along with our initial analysis. Defined terms in each Section refer to definitions in the Settlement Regulations and Commitment Regulations, respectively.

¹ The background notes are available here: [Settlement Regulations](#) and [Commitment Regulations](#).

II. Settlement Regulations

1. *Who can submit an application for settlement?*
2. *Is there a process to be followed by Settlement Applicants while applying for a settlement?*
3. *What is the fee to be paid along with a Settlement Application?*
4. *What must a Settlement Application contain?*
5. *When and within what time period can an applicant offer a settlement?*
6. *When can a Settlement Application be deemed to have been withdrawn?*
7. *Are the contents of a Settlement Application considered confidential?*
8. *Can one withdraw a Settlement Application once it has been made? By when?*
9. *What is the process for the CCI to consider a Settlement Application?*
10. *What will happen to the inquiry while the CCI is examining the Settlement Application?*
11. *Will the CCI allow third parties a chance to comment on the proposed settlement offer?*
12. *How can third parties submit their objections or comments?*
13. *Does the settlement process require the Settlement Applicant to pay a penalty?*
14. *What are the factors the CCI must consider when reviewing the terms of a settlement contained in a Settlement Application?*
15. *How will settlement orders be implemented and monitored?*
16. *Can the CCI revoke a settlement order?*
 - a. *What are the consequences of such a revocation?*
 - b. *Will the Settlement Applicant have a chance to seek an oral hearing before the settlement order is revoked?*
17. *Can a Settlement Applicant offer a settlement with respect to only some of the issues contained in the DG Report and not others?*
18. *Will a settlement order amount to a finding of contravention?*
19. *Can a settlement order be appealed?*
20. *Can a settlement order lead to claims of compensation?*
21. *Will the Settlement Application or order have any effect on the ongoing CCI inquiry with respect to the other parties who have not offered a settlement?*
22. *What is the effect of the CCI's final settlement order?*
23. *Can the CCI use the information submitted by a Settlement Applicant offering a settlement against it?*

1. Who can submit an application for settlement?

Any enterprise under scrutiny by the CCI for alleged contraventions of Section 3(4) (anti-competitive vertical restraints) or Section 4 (abuse of dominance) of the Competition Act, 2002 (**Act**) can submit a Settlement Application. *[Reg 2(f)]*

Axiom5 Comment:

- Settlement Applications cannot be made where the alleged contravention is a horizontal anti-competitive agreement, including cartels under Section 3(3) of the Act.
- There is no express provision which permits a Settlement Applicant to submit a Settlement Application through its authorised representative(s).

2. Is there a process to be followed by Settlement Applicants while applying for a settlement?

Yes, the Settlement Regulations prescribe a process to be followed to submit a Settlement Application, accompanied by a fee. *[Reg 3 and Reg 9].*

3. What is the fee to be paid along with a Settlement Application?

The fee is calculated based on the turnover of the Settlement Applicant in the previous financial year: *[Reg 9]*

Turnover	Fee
Up to INR 50 crores (~USD 6 million)	INR 5 lakhs (~USD 6,054)
Between INR 50 crores (~USD 6 million) & INR 500 crores (~USD 61 million)	INR 15 lakhs (~USD 18,163)
Above INR 500 crores (~USD 61 million)	INR 50 lakhs (~USD 0.06 million)

4. What must a Settlement Application contain?

A Settlement Application must include:

- Details of the Director General's (DG) findings in its investigation report (DG Report) in relation to the Settlement Applicant.
 - Full and true disclosure of facts in respect of the alleged contraventions and DG's findings.
 - Details of the settlement proposal including as to how it addresses the alleged contraventions, competition concerns and the manner of implementation and monitoring thereof.
 - Details of ongoing proceedings, and previous findings of contravention, and previous applications for settlement or commitment.
 - Details of nature, gravity and impact of alleged contraventions and duration of the infringement.
 - Summary of:
 - CCI's Section 26(1) order
 - DG Report findings
 - Details of competition concerns
 - Alleged contraventions
 - Settlement proposal and how it addresses competition concerns.
- [Reg 3]*
- Any other information that may assist the CCI in determining the terms of settlement, and settlement amount, based on the factors specified in *Reg 8*.

5. When and within what time period can an applicant offer a settlement?

The Settlement Application must be filed within **45 days** of receipt of the DG Report. The CCI may provide an extension of **another 30 days** from the expiry of the initial 45-day period, if it considers there is sufficient cause, for reasons recorded in writing.

[Reg 3(2)]

Axiom5 Comment:

45 days may be insufficient for parties to review the DG Report, all the underlying evidence and reach a decision to submit a Settlement Application. In complex cases, the DG Report and underlying material can run into thousands of pages, and it can take several weeks for the party under investigation to even secure copies of all the materials.

6. When can a Settlement Application be deemed to have been withdrawn?

Settlement Applicants are granted 10 days (or such other period as the CCI may specify) to remove defects or provide complete information / documents. If these defects are not removed within the specified period, then the CCI may treat a Settlement Application as “withdrawn”. *[Reg 3(3)]*

Axiom5 Comment:

- Rather than a unilateral power to treat Settlement Applications as “withdrawn”, the CCI should provide reasons for the deemed withdrawal, and give the Settlement Applicant an opportunity to provide justifications and/or be heard.
- In addition, allowing the CCI to use the information that was submitted in the Settlement Application *[Reg 12]* will make all Settlement Applicants wary of approaching the CCI.

7. Are the contents of a Settlement Application considered confidential?

There is no express provision which states that the contents of a Settlement Application are considered confidential; instead, we must infer that such information will be kept confidential based on *Reg 5(1)* which requires the CCI to share a “non-confidential summary” for comments from third parties.

Axiom5 Comment:

The CCI should be expressly required to treat the contents of the Settlement Application as confidential. The Settlement Regulations should incorporate a reference to Section 57 of the Act.

8. Can one withdraw a Settlement Application once it has been made? By when?

Yes, a Settlement Applicant may withdraw its Settlement Application at any time prior to the CCI passing its order either approving or rejecting the Settlement Application. *[Reg 3(4)]*

Axiom5 Comment:

The Settlement Applicant is still exposed to the risk of the CCI using the information contained in the Settlement Application to reach a finding against the Settlement Applicant. *[Reg 12]*

9. What is the process for the CCI to consider a Settlement Application?

The CCI must consider a complete Settlement Application within 7 days of its submission.

- If the CCI, on a preliminary basis, is dissatisfied with the settlement proposal, it shall inform the Settlement Applicant of the reasons for its dissatisfaction and require the Settlement Applicant to submit a revised Settlement Application within 15 days of receipt of the CCI's communication. *[Reg 4(2)]*
- Once a Settlement Applicant submits a complete Settlement Application, the inquiry is suspended till the CCI decides on the Settlement Application or for such period that it determines. *[Reg 4(3)]*
- The CCI may invite objections or comments from concerned third parties.
- Once it has considered the Settlement Application (or revised Settlement Application) and all other material on record, the CCI can:
 - approve or reject the Settlement Application and in the latter scenario, proceed with the inquiry.
 - seek a revised Settlement Application, after receiving comments from third parties, within 15 days.
 - The CCI may either approve the revised Settlement Application, or reject it, including if the Settlement Applicant fails to submit a revised Settlement Agreement within the previously specified period of 15 days.

[Reg 4(5) & (6)]
- However, the CCI must grant the Settlement Applicant an opportunity to be heard before it rejects a Settlement Application. *[Reg 4(7)]*

Axiom5 Comment:

The CCI must retain adequate flexibility to extend these timelines particularly in complex cases and markets which require greater understanding and more careful evaluation of the proposals. While the omnibus power for the CCI to extend settlement proceedings beyond 120 days is contained in *Reg 4(9)*, it is purely discretionary and the CCI must in practice be willing to provide such extensions.

10. What will happen to the inquiry while the CCI is examining the Settlement Application?

- Upon the submission of a complete Settlement Application, the inquiry shall be suspended until either the CCI decides on the Settlement Application or for such other time period that the CCI determines. *[Reg 4(3)]*
- However, the Settlement Regulations set an outer limit of **120 days** for completion of the entire settlement proceedings. The CCI, through a reasoned order, may further extend this limit. If the time limit of 120 days or any extended time limit determined by the CCI is breached, the inquiry resumes. *[Reg 4(9)]*

11. Will the CCI allow third parties a chance to comment on the proposed settlement offer?

- Yes, the CCI **must** provide an opportunity to the Settlement Applicant, the DG, or **any other party** to submit their comments / objections / suggestions, if any, within **21 days** to the non-confidential settlement proposal and summary of relevant information shared by the CCI. *[Reg 5(1)]*
- Notably, the opportunity to provide comments is **not open** to the public, unlike in the Commitment Regulations (as defined below).

Axiom5 Comments: The Settlement Regulations are unclear as to the starting point for the 21-day time period.

12. How can third parties submit their objections or comments?

Any party may, through its authorised representatives, submit any objections and / or suggestions, along with a 2-page summary and all the relevant supporting documents. It must also include any information that may assist the CCI in determining the terms of the settlement. *[Reg 5(2)]*

Axiom5 Comments: To pre-empt motivated and unsubstantiated objections, any objections or suggestions should be made on affidavit and made available to the Settlement Applicant.

13. Does the settlement process require the Settlement Applicant to pay a penalty?

Yes, before the CCI issues a settlement order, it shall require the Settlement Applicant to pay a penalty, which is called the “Settlement Amount”. The payment of this Settlement Amount shall be final and must be accepted by the Settlement Applicant within 15 days. *[Reg 4(8)]*

The Settlement Amount is computed by applying a discretionary “settlement discount” of up to 15% on the penalty that the CCI could have imposed for the alleged contravention under Section 27(b) of the Act read along with the relevant mitigation/aggravating circumstances prescribed under the Penalty Guidelines. In determining the “settlement discount” the CCI may consider factors such as the Settlement Applicant’s level of cooperation and nature of disclosure and the settlement proposal. *[Reg 6]*

Axiom5 Comment:

- There is no requirement of a discussion with the Settlement Applicant on the quantum of the Settlement Amount.
- The CCI’s determination of the “settlement discount” is discretionary, and the quantum of discount applied itself may be insufficient to incentivise parties to settle.
- The Penalty Guidelines referred to in the Draft Settlement Regulations are not currently available, so we are unclear how penalties may be calculated.

14. What are the factors the CCI must consider when reviewing the terms of a settlement contained in a Settlement Application?

The CCI, in assessing the “nature, gravity and impact of the alleged contraventions” must have due regard to any or all of the following 7 factors:

- Nature of the conduct, type, duration and extent of the alleged contravention;
- Whether the settlement terms address the alleged contraventions, are easy to implement and monitor;
- Whether the terms of the settlement make the market more contestable;
- Whether the settlement terms result in procedural efficiencies, are self-executing and result in early correction of market distortions;
- Past conduct of the Settlement Applicant [including whether they have

previously contravened the Act, are party to any ongoing investigation or have previously submitted any Settlement Application or Commitment Application (as defined below)];

- Whether the Settlement Applicant has already modified its conduct after the CCI's preliminary order under Section 26(1) of the Act, or taken any other steps to minimise future violations or lapses; and
- Any other factor that the CCI may deem appropriate in the circumstances.

[Reg 8]

15. How will settlement orders be implemented and monitored?

In cases where the CCI considers that the implementation of a settlement order requires monitoring, it may appoint a monitoring agency, which has no conflict of interest and is independent of the Settlement Applicant.

- The monitoring agency must operate based on the CCI's instructions and submit a report on completing each step towards the implementation of the settlement terms.
- The Settlement Applicant bears the cost of the appointment and functioning of the monitoring agency.

[Reg 10]

16. Can the CCI revoke a settlement order?

Yes, the CCI may revoke a settlement order under the following circumstances:

- the Settlement Applicant fails to comply with the terms of the settlement order;
- the CCI becomes aware that the Settlement Applicant has not made full and true disclosure; or
- there has been a material change in facts.

a. What are the consequences of such a revocation?

The settlement is withdrawn and the CCI may restore or initiate the inquiry in respect of which the settlement was offered. *[Section 48C of the Act]*

b. Will the Settlement Applicant have a chance to seek an oral hearing before the settlement order is revoked?

Yes, before the CCI revokes the settlement order, it must initiate proceedings under Section 48C of the Act and provide the Settlement Applicant an opportunity to be heard. *[Reg 11]*

17. Can a Settlement Applicant offer a settlement with respect to only some of the issues contained in the DG Report and not others?

Yes, a Settlement Application can relate to only some of the (alleged) contraventions in the DG Report. However, the inquiry with respect to the remaining (alleged) contraventions shall continue. *[Reg 13]*

Axiom5 Comment:

- Allowing a partial settlement may be beneficial to Settlement Applicants who may wish to offer a settlement in only some out of a larger number of contraventions that the DG Report might have found.
- Even where partial settlements are offered by a Settlement Applicant, the CCI should be empowered to drop alleged contraventions in the DG Report which it might not have otherwise supported and pass a single comprehensive settlement order.

18. Will a settlement order amount to a finding of contravention?

No, the CCI's order approving a settlement offer is not to be construed as a finding of contravention by the CCI against the Settlement Applicant. *[Reg 7(1)]*

19. Can a settlement order be appealed?

No, a settlement order cannot be the subject of an appeal under Section 53B of the Act.

20. Can a settlement order lead to claims of compensation?

Yes. Although a settlement order does not constitute a contravention, it may nevertheless form the basis for an application for compensation before the National Company Law Appellate Tribunal (NCLAT) under the newly introduced Section 53N of the Act.

21. Will the Settlement Application or order have any effect on the ongoing CCI inquiry with respect to the other parties who have not offered a settlement?

No, the inquiry continues against parties who have not offered a settlement. *[Reg 7(2)]*

22. What is the effect of the CCI's final settlement order?

A settlement order is final and binding upon the Settlement Applicant. *[Reg 7(3)]*

Axiom5 Comment:

The settlement order should be made binding on the CCI, subject to the power of revocation under *Reg 11*.

23. Can the CCI use the information submitted by a Settlement Applicant offering a settlement against it?

Yes. The CCI may use the information submitted by the Settlement Applicant against it or the other parties to the inquiry, who are not part of the settlement proceedings. *[Reg 12]*

Axiom5 Comment:

The CCI's ability to use the information submitted by the Settlement Applicant against it or the other parties to the inquiry would dissuade parties from using the settlement mechanism.

III. Commitment Regulations

1. *What types of competition law infringements can a commitment application extend to?*
2. *Is the scope of a Commitment Application limited to addressing the preliminary contraventions identified by the CCI under Section 26(1)?*
3. *Is there a process to be followed while applying for a commitment?*
4. *What is the fee to be paid along with a Commitment Application?*
5. *What must a Commitment Application contain?*
6. *When and within what time period can companies offer a commitment?*
7. *When can a Commitment Application be deemed to have been withdrawn?*
8. *Are the contents of a Commitment Application considered confidential?*
9. *Can a Commitment Application be withdrawn once it is filed? If yes, by when?*
10. *What is the process for the CCI to consider a Commitment Application?*
11. *What will happen to the inquiry being conducted by the DG while the CCI is examining the Commitment Application?*
12. *Will the CCI allow public comments on the contents of a proposed commitment?*
13. *How can third parties submit their objections or comments?*
14. *What are the factors the CCI must consider when reviewing the terms of a commitment contained in a Commitment Application?*
15. *How will the commitment orders be implemented and monitored?*
16. *Can the CCI revoke a commitment order?*
 - a. *What are the consequences of such a revocation?*
 - b. *Will the Commitment Applicant have a chance to seek an oral hearing before the commitment order is revoked?*
17. *Can a Commitment Applicant offer a commitment with respect to only some of the issues contained in the CCI's preliminary order under Section 26(1) of the Act?*
18. *Will a commitment order amount to a finding of contravention?*
19. *Can a commitment order be appealed?*
20. *Can a commitment order lead to claims of compensation?*
21. *Will the Commitment Application or order have any effect on the ongoing CCI inquiry with respect to the other parties who have not offered a commitment?*
22. *What is the effect of the CCI's final commitment order?*
23. *Can the CCI use the information submitted by a Commitment Applicant against it?*

1. What types of competition law infringements can a commitment application extend to?

A commitment application can extend to contraventions under Section 3(4) (vertical restraints) and/or Section 4 (abuse of dominance) of the Act.

Axiom5 Comment:

- Commitment Applications cannot be made where the alleged contravention is a horizontal anti-competitive agreement, including cartels, under Section 3(3) of the Act.
- There is no express provision which permits a Commitment Applicant to submit a Commitment Application through its authorised representative(s).

2. Is the scope of a Commitment Application limited to addressing the preliminary contraventions identified by the CCI under Section 26(1)?

Yes. The Commitment Applicant must identify the alleged contravention in the CCI’s preliminary order under Section 26(1) of the Act and offer commitments to address such alleged contraventions. *[Reg 3(1)(c) & Reg 3(1)(e)]*

3. Is there a process to be followed while applying for a commitment?

Yes, the Commitment Regulations prescribe a process to be followed to submit a Commitment Application, accompanied by a fee. *[Reg 3(1) & Reg 8(1)]*

4. What is the fee to be paid along with a Commitment Application?

The fee is calculated based on the turnover of the Commitment Applicant in the previous financial year *[Reg 8(1)]*:

Turnover	Fee
Up to INR 50 crores (~USD 6 million)	INR 5 lakhs (~USD 6,054)
Between INR 50 crores (~USD 6 million) & INR 500 crores (~USD 61 million)	INR 15 lakhs (~USD 18,163)
Above INR 500 crores (~USD 61 million)	INR 50 lakhs (~USD 0.06 million)

5. What must a Commitment Application contain?

A Commitment Application must include:

- Full and true disclosure of facts in respect of the alleged contraventions of the Act;
- Details of the commitments offered and including how they address the alleged contraventions, and the manner of implementation and monitoring thereof;
- Details of whether the Commitment Applicant, has previously been found to have contravened any provision of the Act; and
- Details of nature, gravity and impact of the alleged contraventions, and the duration of the enterprise's involvement in the alleged contraventions.

[Reg 3]

6. When and within what time period can companies offer a commitment?

- A Commitment Application must be filed within **45 days** of:
 - The CCI passing its preliminary order under Section 26(1) of the Act; or
 - Before the receipt of the DG Report (*whichever is earlier*). *[Reg 3(3)]*
- An additional 30 days may be allowed if the CCI condones the delay. *[proviso to Reg 3(3)]*
- An additional 10-day period is provided to remove defects in the Commitment Application. *[Reg 3(4)]*

Axiom5 Comment:

The timeline for making a Commitment Application has effectively been reduced to 45 days. The DG has rarely, if ever, completes its investigation within 45 days and therefore, by using the term “whichever is earlier”, the CCI reduces the time period within which parties may lodge a Commitment Application to a very narrow window. This might dissuade companies from offering commitments or lead to incomplete and hasty submission of Commitment Applications, which is neither good for the CCI nor Commitment Applicants who will run the risk of their Commitment Application being rejected.

7. When can a Commitment Application be deemed to have been withdrawn?

Commitment Applicants are granted 10 days (or such other period as the CCI may specify) to remove defects or provide complete information / documents. If these defects are not removed, then the CCI may treat a Commitment Application as “withdrawn”. *[Reg 3(4)]*

Axiom5 Comment:

- Rather than a unilateral power to treat the Commitment Application as “withdrawn”, the CCI should provide reasons for the deemed withdrawal, with the Commitment Applicant being provided an opportunity to submit justifications.
- In addition, *Reg 11* allows the CCI to use the information in a withdrawn Commitment Application in its inquiry.

8. Are the contents of a Commitment Application considered confidential?

There is no express provision which states that the contents of a Commitment Application are considered confidential; instead, we must infer that such information will be confidential based on *Reg 5(1)* which requires the CCI to share a “non-confidential summary” for public consultation.

Axiom5 Comment:

The CCI should be expressly required to treat the contents of the Commitment Application as confidential. The Commitment Regulations should incorporate a reference to Section 57 of the Act.

9. Can a Commitment Application be withdrawn once it is filed? If yes, by when?

Yes, a Commitment Applicant may withdraw its Commitment Application at any time prior to the CCI passing an order either approving or rejecting the Commitment Application. *[Reg 3(5)]*

Axiom5 Comment:

This exposes the Commitment Applicant to the risk of the CCI using the information contained in the Commitment Application to reach a finding against the Commitment Applicant, per *Reg 11*.

10. What is the process for the CCI to consider a Commitment Application?The

CCI must consider a complete Commitment Application within 7 days of its submission.

- If the CCI, on a preliminary basis, is dissatisfied with the Commitment Application, it may direct the Commitment Applicant to submit a revised Commitment Application within 15 days *[Reg 4(2)]*.
 - Once a Commitment Applicant submits a complete Commitment Application, the inquiry is suspended till the CCI decides on the Commitment Application or for any period that it determines *[Reg 4(3)]*.
 - The CCI may invite objections or comments, including from the public in certain cases.
 - Once it has considered the Commitment Application (or revised Commitment Application) and all other material on record, the CCI can:
 - approve or reject the Commitment Application and in the latter scenario proceed with the inquiry; or
 - seek a revised Commitment Application, after public consultation, within 15 days.
 - The CCI may either approve the revised Commitment Application, or reject it, including if the Commitment Applicant fails to submit a revised Commitment Application within the previously specified period of 15 days.
- [Reg 4(5) & (6)]*
- However, the CCI must grant the Commitment Applicant an opportunity to be heard before it rejects a Commitment Application. *[Reg 4(7)]*

Axiom5 Comment:

The CCI must retain adequate flexibility to extend these timelines particularly in complex cases and markets which require greater understanding and more careful evaluation of the proposals. While the omnibus power for the CCI to extend commitment proceedings beyond 90 days is contained in *Reg 4(8)*, it is purely discretionary and the CCI must in practice be willing to provide such extensions.

11. What will happen to the inquiry being conducted by the DG while the CCI is examining the Commitment Application?

Upon the submission of a complete Commitment Application, the inquiry is suspended until either the CCI decides on the Commitment Application or for such other time period that the CCI determines. *[Reg 4(3)]*

However, the Commitment Regulations set an outer limit of **90 days** for completion of the entire commitment proceedings. The CCI, through a reasoned order, may further extend this limit. If the time limit of 90 days or any extended time limit determined by the CCI is breached, the inquiry resumes. *[Reg 4(8)]*

12. Will the CCI allow public comments on the contents of a proposed commitment?

Yes, the CCI **must** provide an opportunity to the Commitment Applicant, the DG, or any other party to submit their comments / objections / suggestions, if any, within **27 days**. *[Reg 5(1)]*

In certain cases, the CCI may invite the public to submit comments, objections and suggestions on the commitment proposal. *[proviso to Reg 5(1)]*

Axiom5 Comment:

The Commitment Regulations are unclear as to the starting point for the 21-day time period.

13. How can third parties submit their objections or comments?

Any party may, through its authorised representatives, submit any objections and / or suggestions, along with a 2-page summary, and all relevant supporting documents. It must also include any information that may assist the CCI in determining the terms of the commitment. *[Reg 5(2)]*

Axiom5 Comment:

To pre-empt motivated and unsubstantiated objections, any objections or suggestions should be made on affidavit and made available to the Commitment Applicant.

14. What are the factors the CCI must consider when reviewing the terms of a commitment contained in a Commitment Application?

The CCI, in assessing the “nature, gravity, impact of the alleged contraventions” have due regard to any or all the following 7 factors:

- Nature of the conduct, type, duration and extent of the alleged contravention;
- Whether the terms of the commitment address the alleged contraventions, are easy to implement and monitor;
- Whether the terms of the commitment make the market more contestable;
- Whether the terms of the commitment result in procedural efficiencies, are self-executing and result in early correction of market distortions;
- Past conduct of the Commitment Applicant (including whether they have previously contravened the Act, are party to any ongoing investigation or have previously submitted any Settlement or Commitment Application);
- Whether the Commitment Applicant has already modified its conduct after the CCI’s preliminary order under Section 26(1) of the Act, or taken any other steps to minimise future violations or lapses; and
- Any other factor that the CCI may deem appropriate in the circumstances.

[Reg 7]

15. How will the commitment orders be implemented and monitored?

In cases where the CCI considers that the implementation of a commitment order requires monitoring, it may appoint a monitoring agency, which has no conflict of interest and is independent of the Commitment Applicant.

- The monitoring agency must operate based on the CCI’s instructions and submit a report on completing each step towards the implementation of the commitment terms.
- The Commitment Applicant bears the cost of the appointment and functioning of the monitoring agency.

[Reg 9]

16. Can the CCI revoke a commitment order?

Yes, the CCI can revoke a commitment order under the following circumstances:

- the Commitment Applicant fails to comply with the terms of the commitment order;
- the CCI becomes aware that the Commitment Applicant has not made full

- and true disclosure; or
- there has been a material change in facts.

a. What are the consequences of such a revocation?

The settlement is withdrawn and the CCI may restore or initiate the inquiry in respect of which the commitment was offered. *[Section 48C of the Act]*

b. Will the Commitment Applicant have a chance to seek an oral hearing before the commitment order is revoked?

Yes, before the CCI revokes the commitment order, it must initiate proceedings under Section 48C of the Act and provide the Commitment Applicant an opportunity to be heard. *[Reg 10]*

17. Can a Commitment Applicant offer a commitment with respect to only some of the issues contained in the CCI’s preliminary order under Section 26(1) of the Act?

Yes, a Commitment Application can relate to only some of the (alleged) contraventions recorded in the order passed under Section 26(1) of the Act. However, the inquiry with respect to the remaining (alleged) contraventions shall continue. *[Reg 12]*

Axiom5 Comment:

- Allowing a “partial commitment” will benefit Commitment Applicants who may choose to offer commitments to selectively address some, but not all, alleged contraventions.
- Even where partial commitments are offered by a Commitment Applicant, the CCI should be empowered to drop alleged contraventions which do not, in its view, require further investigation and pass a single commitment order.

18. Will a commitment order amount to a finding of contravention?

No, the CCI’s order approving a commitment is not to be construed as a finding of contravention by the CCI against the Commitment Applicant. *[Reg 6(1)]*

19. Can a commitment order be appealed?

No, a commitment order cannot be the subject of an appeal under Section 53B of the Act.

20. Can a commitment order lead to claims of compensation?

No, since the commitment order is not a “contravention” of the Competition Act, persons who are affected by the order, cannot file a claim for compensation before the NCLAT under the newly amended provisions of Section 53N of the Act.

21. Will the Commitment Application or order have any effect on the ongoing CCI inquiry with respect to the other parties who have not offered a commitment?

No, the inquiry continues against parties who have not offered a commitment. *[Reg 6(2)]*

22. What is the effect of the CCI’s final commitment order?

A commitment order is final and binding upon the Commitment Applicant. *[Reg 6(3)]*

Axiom5 Comment:

Under *Reg 6(3)*, the commitment order ought to be final and binding on the CCI as well as the Commitment Applicant, subject to the CCI’s power of revocation under *Reg 10*.

23. Can the CCI use the information submitted by a Commitment Applicant against it?

Yes. The CCI may use the information submitted by the Commitment Applicant against it or the other parties to the inquiry, who are not part of the commitment proceedings. *[Reg 11]*

Axiom5 Comment:

The CCI's ability to use the information submitted by the Commitment Applicant against it or the other parties to the inquiry would dissuade parties from using the commitment mechanism.
