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# THE SETTLEMENT AND COMMITMENT APPARATUS IN COMPETITION LAW

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## CHAPTER 1: INTRODUCTION

*“Competition is not only the basis of protection to the consumer but is the incentive to progress.” - Herbert Hoover*

The Competition (Amendment) Act, 2023 w.e.f 06 March 2024 significantly amended the Competition Act, 2002 (Act) introducing key provisions enabling parties to approach with settlements and commitments to proactively manage any alleged contravention relating to anti-competitive vertical agreements and abuse of dominant position although not applicable to cases relating to cartels, while being investigated under the relevant sections of the Act. The successful implementation of these complex antitrust enforcement tools in established regulatory regimes such as the European Union and the United Kingdom makes a compelling case that these new amendments by the Competition Commission of India (CCI) will be successful in India as well. These tools offer the potential to significantly increase CCI's efficiency in resource allocation, a key area currently hampered by lengthy investigations and litigations relating to anticompetitive conduct. This amendment allows parties under investigation to give an application of commitment or settlement which is taken into consideration by CCI during the investigation conducted against them relating to, S (3)(4) “anti-competitive vertical agreements” and S(4) “abuse of dominant position” of the Act.<sup>1</sup>

## CHAPTER 2: THE RESEARCH OBJECTIVES

The Research Objectives is to Analyse:

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<sup>1</sup> "Commitments & Settlements – A Welcome but Uncertain Introduction." AZB & Partners, Sept. 30, 2022, <https://www.azbpartners.com/bank/settlements-commitments-a-welcome-step-under-the-competition-amendment-bill-2022/>

- (i) The settlement and commitment apparatus
- (ii) what necessitated its inception and its current impact including pros and cons
- (iii) comparative analysis with other recognized jurisdictions

### **CHAPTER 3: WHAT IS SETTLEMENT?**

Settlement as per the Act is an agreement that is reached between the CCI and the parties, who are allegedly involved in anti-competitive practices or anti-competitive conducts. This agreement may involve parties admitting certain allegations of anti-competitive practice and agreeing upon certain corrections or remedies to rectify their conduct and address other issues raised by the CCI, however, it is important to note here that acceptance of the settlement is completely at the discretion of the Competition Commission.

Section 48-A of the Act dealing with the settlement mechanism provides restricted eligibility, allowing only enterprises under investigation for contraventions of Sections 3(4) (anti-competitive vertical agreements) or Section 4 (abuse of dominance) of the Act to avail this remedy. The opportunity arises only after the enterprise receives the Director General's report, which outlines the preliminary findings of the investigation; importantly, the application for settlement needs to be submitted before the CCI issues a final order.

The crux of the settlement process lies in the CCI's evaluation, which is multifaceted, considering the nature, severity, and impact of the alleged violations. If the CCI deems the proposed settlement fit or appropriate in light of these factors, it may accept it on the condition of a monetary penalty paid by the investigated enterprise. Additionally, the settlement might encompass specific corrective actions mandated by regulations. These actions ensure that the enterprise rectifies its conduct and fosters a fair and competitive market environment.

The CCI provides a platform for the investigated party, the Director General, and even other interested parties to submit objections and suggestions regarding the proposed settlement. This allows for a comprehensive review and ensures that all perspectives are considered before a final decision is made.

However, it's important to acknowledge that the settlement mechanism isn't a guaranteed escape route. If disagreements arise regarding the terms or if the CCI deems the proposed

settlement inadequate in addressing the concerns, the application is rejected, and the investigation under Section 26 proceeds as usual. Furthermore, orders passed under Section 48-A are final and cannot be appealed under Section 53-B.

In conclusion, this mechanism promotes a culture of accountability within the competitive market landscape while fostering efficiency in the enforcement of competition law in India.<sup>2</sup>

### **3.1 PROCEDURE GIVEN FOR SETTLEMENTS**

In the application process, for settlements, strict timelines and comprehensive disclosures are very important. Upon receiving the DG's investigation report, the application must be filed within the period of 45 days. It must include disclosure of facts and details on resolving the alleged contravention along with competition concerns, and strategies to be implemented.

The applicant's turnover is the main basis to determine the statutory fee, which ranges from INR 500,000 to INR 5,000,000. The CCI evaluates the application's merit and may request changes if it is unsatisfied upon which the applicant has to revise his proposal and submit it within 15 days.

Upon reviewing the entire submissions, the CCI may accept, reject, or request a revised proposal. If there is a complete rejection then the CCI proceeds with the inquiry, granting the settlement applicant a hearing to justify his application. The proceedings aim to conclude within 120 days, with possible extensions based on the discretion of the CCI

The settlement amount is decided by virtue of the penalty guidelines prescribed by the CCI. The settlement amount shall not exceed the statutory maximum penalty that could be imposed for a contravention of the Act. The CCI, however, may grant a settlement discount of up to 15% based on mitigating factors such as the extent of cooperation demonstrated by the settlement applicant and the nature of any voluntary disclosures provided.

The overall effectiveness of the proposal, feasibility, and its impact and effect on market competition are some of the key things that are taken into consideration

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<sup>2</sup> Competition Commission of India. Draft Regulations on Commitments under Section 48B of the Competition Act, 2002. <https://www.cci.gov.in/images/stakeholderstopticsconsultations/en/draft-commitment-regulations1692788680.pdf>.

The CCI may also appoint independent agencies to look over the execution of the disclosures that are provided by the applicant and it can also use it against the applicants or non-participating parties if required.<sup>3</sup>

## CHAPTER 4: WHAT IS COMMITMENT?

Section 48-B of the Act provides for "commitments" in a similar inquiry being conducted by the Competition Commission of India (CCI) on violation of Section 3(4) or 4 of the Act. This mechanism enables the investigating companies to submit written proposals to address the alleged anti-competitive practices. The process works for a specified period of time. Proposals for commitments may be made after the first review order under section 26(1) but before receipt of the Director-General's report under section 26(4). The Commission has the discretion to adopt the proposed commitments. This decision is based on a number of factors such as the nature, severity, and impact of the alleged infringement, and the effectiveness of the proposed commitments in redressing anti-competitive practices; the Commission may specify terms and conditions for implementation and monitoring of commitments.

Additionally, Section 48-b(4) mandates the Commission to give the assessed party, the Executive Director, and other interested parties an opportunity to submit comments and suggestions regarding the proposed commitments. However, if the Commission finds that the projects under consideration are unreasonable or an agreement cannot be reached with the inquiring party on their terms, Section 48-B (5) of the Act empowers them to reject the offer and walk away under Section 26. Notably, it is not an appeal under Section 53-B of the Act. Specifically, Section 48-B provides a possible mechanism to expedite the settlement of the investigation by facilitating the process between the assessee and the CCI, by proactively making effective commitments, companies can avoid the complexity and length of a thorough investigation.<sup>4</sup>

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<sup>3</sup> Khaitan & Co. "CCI Publishes Draft Regulations on Settlement and Commitment Mechanism." Khaitan & Co, 25-Aug-2023, <https://www.khaitanco.com/thought-leaderships/CCI-Publishes-Draft-Regulations-on-Settlement-and-Commitment-Mechanism>

<sup>4</sup> Competition Commission of India. Draft Regulations on Commitments under Section 48B of the Competition Act, 2002. <https://www.cci.gov.in/images/stakeholderstopicconsultations/en/draft-commitment-regulations1692788680.pdf>.

#### 4.1 PROCEDURE GIVEN FOR COMMITMENT

In the application process, for commitments, strict timelines and comprehensive disclosures are very important. Upon receiving the CCI's investigation order, the application must be filed within the prescribed 45-day limit. It must include disclosure of facts and details on resolving the alleged contravention along with competition concerns, and strategies to be implemented.

The applicant's turnover is the main basis for determining the statutory fee, ranging from INR 500,000 to INR 5,000,000. The CCI evaluates the application's merit and may request changes if it is unsatisfied. Third parties, including counterparties and the DG, are given 21 days to offer their opinions or views on the application.

Upon reviewing the entire submissions, the CCI may accept, reject, or request a revised proposal. If there is a complete rejection then the CCI proceeds with the inquiry, granting the commitment applicant a hearing to justify his application. Proceedings aim to conclude within 90 days, with possible extensions based on the discretion of the CCI.

The overall effectiveness of the proposal, feasibility and its impact and after effect on market competition are some of the key things that are taken into consideration.

The CCI may also appoint independent agencies to look over the execution of the disclosure that are provided by the applicant and it can also use it against the applicants or non-participating parties if required.<sup>5</sup>

#### 4.2 DIFFERENCES IN RESPECT TO FILLINGS AND TIMELINES.

| Feature | Settlement                                    | Commitment                                    |
|---------|-----------------------------------------------|-----------------------------------------------|
| Start   | T: Receipt of order under Section 26(1) (Act) | T: Receipt of order under Section 26(1) (Act) |

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<sup>5</sup> Khaitan & Co. "CCI Publishes Draft Regulations on Settlement and Commitment Mechanism." Khaitan & Co, 25-Aug-2023,<https://www.khaitanco.com/thought-leaderships/CCI-Publishes-Draft-Regulations-on-Settlement-and-Commitment-Mechanism>

|                                                          |                                                   |                                                  |
|----------------------------------------------------------|---------------------------------------------------|--------------------------------------------------|
| Deadline for Application                                 | T + 45 days                                       | T + 45 days                                      |
| Receipt of DG Report<br>(applicable to settlements only) | T + 75 days                                       | N/A                                              |
| Condonation Delay (if applicable)                        | Up to T + 45 + 30 days (T + 75)                   | Up to T - 45 + 30 days (T)                       |
| Receipt of Complete Application                          | X + 30 days (variable)                            | X + 90 days (variable)                           |
| Conclusion of Proceedings                                | X + 120 days (variable, with possible extensions) | X + 90 days (variable, with possible extensions) |

## CHAPTER 5: CURRENT SITUATION AND WHAT NECESSITED SUCH PROVISIONS?

The introduction of settlement and commitment mechanisms under India's Competition Commission Act was necessitated by several factors aimed at enhancing the efficiency and effectiveness of the current competition law enforcement. Significant gaps in the current system drastically questioned the effectiveness of CCI, hence these amended laws which were familiar to more mature jurisdictions are introduced to help remove the burden of the huge piled-up caseload.

The concerning trends and current situation are reflected in the annual report for 2020-21, revealing a huge disparity between imposed penalties and actual recoveries done by the CCI which was less than 2.5%; the reason for this large disparity are as follows:

Firstly, the traditional adjudicatory process harbours formal investigation and litigation, which leads to lengthy and resource-intensive proceedings. This approach is heavily criticized

because of the significant delays it causes in resolving competition law cases, exacerbating backlog and impeding timely market corrections.

To add on, the adverse nature of the traditional enforcement mechanism posed challenges in encouraging voluntary cooperation and compliance among market participants. Companies were often reluctant to admit violations or to engage in purposeful dialogue with the regulating authorities due to concerns about potential legal actions and goodwill-related risks. As a result, the enforcement process lacked overall flexibility and failed to incentivize proactive engagement with the regulator to address competition concerns swiftly. and efficiently

Moreover, the absence of structured mechanisms for settlement and commitment limited the regulator's ability to resolve cases effectively and pragmatically. Without formalized procedures for negotiating consensual resolutions, the regulatory framework relied heavily on formal adjudication, contributing to inefficiencies, resulting in delays in enforcement outcomes.

Furthermore, the escalating caseload and resource constraints faced by the Competition Commission of India (CCI) and its Directorate General (DG) exacerbated these challenges, highlighting the need for alternative approaches to streamline enforcement processes and enhance regulatory effectiveness. This problem is clearly highlighted in the extremely low realization rate of CCI which is attributed to the high number of orders challenged before appellate tribunals. As of March 31, 2021, 253 appeals were pending at the National Company Law Appellate Tribunal (NCLAT), which demonstrates in appellate stage pendency. Furthermore, resolving disputes at the Supreme Court level can take years, with appeals from entities like the National Stock Exchange and DLF languishing since 2014 and 2016 respectively. Even landmark issues, such as the calculation of penalties for multi-product companies under the Competition Act, 2002, can take years for final judicial determination, as evidenced by a 2014 case decided only in 2017.

In response to these systemic issues which have broken the backbone of CCI, the introduction of settlement and commitment mechanisms in India was deemed necessary to address the shortcomings of the traditional enforcement paradigm. By providing avenues for voluntary resolution of cases through negotiated settlements and commitments, these mechanisms aim to promote efficiency, cooperation, and compliance while alleviating the burden on regulatory resources. Moreover, they offer a flexible and pragmatic approach to resolving competition

law violations, tailored to the specific circumstances of each case, thereby enhancing the credibility and effectiveness of competition law enforcement in India.<sup>6</sup>

## CHAPTER 6: IMPACT AND ADVANTAGES

The inclusion of these newly amended settlement and commitment regulations in India's competition law marks a significant milestone in terms of reaching efficiency relating to matters that rather require long-drawn litigation; making far-reaching positive implications for antitrust enforcement. These provisions hold the promise of expediting the resolution of long-standing antitrust cases, thereby reducing the backlog that has plagued the Competition Commission of India (CCI). These amendments by offering a structured framework for parties to engage in settlement negotiations aiming to curtail prolonged litigation, minimize legal costs, and enhance regulatory certainty. Moreover, from a psychological point of view, the introduction of these provisions is expected to instill confidence in the market by promoting a level playing field and deterring anticompetitive behaviour. Hence it can be said that the overall impact of the settlement and commitment regulations is anticipated to be transformative, fostering greater compliance with competition law and fostering a more competitive and dynamic marketplace in India, which is the main aim of CCI.

A Huge advantage of these amendments is going to be taken by Large global tech giants and MNCs such as Apple, Amazon and Google which have addressed similar antitrust concerns in several jurisdictions overseas by offering commitments or settling with respective authorities.

More particularly the advantages of these amendments can be analysed through the lens of legal principles as following:

### **1. Expedited and faster Resolution process and efficient resource management:**

Traditional enforcement procedures involving investigations, hearings, and potential appeals can be long-drawn, leading to delays in resolving matters and imposing penalties. The settlement and commitment mechanism offers a Swiffer alternative, allowing investigated enterprises to propose settlements or corrective actions at an early stage, this translates to overall quicker adjudication, reduced

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<sup>6</sup> AZB

"Commitments & Settlements – A Welcome but Uncertain Introduction." AZB & Partners, Sept. 30, 2022, <https://www.azbpartners.com/bank/settlements-commitments-a-welcome-step-under-the-competition-amendment-bill-2022/>

legal costs for both parties, and frees up the CCI's resources to address other investigations, making the overall amendments a win-win situation for everyone.

- 2. Solving uncertainty and mitigating Legal Risks:** Under the traditional system, the outcome of an investigation is uncertain throughout the entire process, putting a huge burden on the parties being investigated until a final order is issued. The new mechanism of settlement and commitment provides greater certainty, also by agreeing to a settlement or committing to specific corrective actions, enterprises can avoid the potential for harsher penalties that might result from a full investigation and adjudication process. This predictability is very crucial and allows companies to better manage legal risks associated with potential financial liabilities, further also allowing them to forecast the said problem and better manage the entire situation, leading to better risk management and help companies going under in certain extreme cases.
- 3. Efficient Market Corrections, Reactions and Enforcement:** In today's dynamic market landscape, particularly in the digital sphere, where one news can wipe off billions of dollars in market capitalization, addressing anti-competitive practices swiftly is crucial, otherwise causing massive room for speculation. Lengthy investigations and long drawn appeals can significantly delay the implementation of market corrections, these various concerns are addressed by the new settlement and commitment mechanism, which will ensure that necessary corrective actions are implemented sooner, leading to a more competitive and fair market environment for all stakeholders.
- 4. Streamlined Process with Procedural Fairness:** The settlement and commitment process allow for dialogue and negotiation between the CCI and the investigated enterprise, this provides opportunities for both parties to submit objections and suggestions regarding the proposed settlement or commitments. This collaborative approach can prove to be crucial, more so in cases of high sensitivity and stakes, leading to more efficient outcomes and a greater sense of fairness for all parties involved.
- 5. Fostering Cooperation and Accountability:** The settlement and commitment mechanism can promote a culture of cooperation and accountability because of inter

alia the provisions of admission of guilt. By proactively addressing concerns raised by the CCI and offering to rectify their conduct, enterprises demonstrate a commitment to fair competition, where common people can also seek justice without having to battle through long-drawn litigation. This can lead to a more cooperative environment between businesses and the competition regulator, ultimately favouring markets in the longer run as a whole.<sup>7</sup>

## CHAPTER 7: DEFICIENCIES AND SHORTCOMINGS

The proposed amendment bill regarding settlements and commitments in India's competition law introduces several significant provisions aimed at expediting case resolution and promoting regulatory efficiency as seen above. However, they come not without certain shortcomings in the bill's formulation which raise concerns regarding fairness, procedural clarity, and the protection of parties' rights, they are addressed as follows

Firstly, the process of obtaining comments and suggestions which can prove crucial in assessing transparency while keeping confidentiality lacks clear guidelines on the criteria for involving third parties. While seeking input from involved parties, the bill should specify and mention the circumstances under which consultation with third parties is warranted.

Secondly, the bill's provision allows the Competition Commission of India (CCI) to reject settlement applications without providing safeguard measures against prejudice to applicants. This may lead to questioning the procedural fairness of the case in its entirety.

Thirdly, the absence of guidelines for determining settlement amounts leaves room for ambiguity and inconsistency in penalty imposition, while here although it is impossible for CCI to pre-determine the penalties; clear guardrails and criteria are necessary to balance considerations of guilt and concessions, which will help in ensuring equitable outcomes for all parties involved.

Fourthly, the lack of clarity regarding the legal implications of accepting commitments poses risks to parties offering such proposals. This is one of the major contentions raised by the legal fraternity as there should be clarification that acceptance of commitments does not imply a

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<sup>7</sup> "CCI's Game-Changer Provisions: Settlements and Commitments." Law.Asia, Jan. 2, 2022, <https://law.asia/ci-game-changer-provisions/>

finding of guilt is essential to prevent misinterpretation and protect parties' reputational interests. There is also potential to misuse the admission of guilty without the commitment or settlement being accepted, to tarnish companies' reputation through mud.

Fifth, the lack of provisions for interim relief during settlement proceedings. There is unnecessary ambiguity surrounding the availability of interim relief post-commencement of settlement talks raising concerns about protecting the interests of third parties and maintaining market stability, particularly in dynamic sectors like digital markets, many legal analysts have vouched for incorporation of interim reliefs in these new amendments.

Sixth, the exclusion of cartels from the settlement and commitment mechanisms represents a missed opportunity to efficiently resolve complex antitrust cases, this is perhaps the foremost and main contentions of a lot of legal analysts, which believe that not including cartel cases in these new amendments can be an unnecessary missed opportunity, as these already tested in mature jurisdictions have mainly showered good outputs.

Seventh, a narrow window for offering commitments, which reduces their appeal and practical feasibility. The draft regulations stipulate a short time frame of 45 days (with a discretionary grace period of 30 days) for investigated parties to understand the case against them and offer commitments, This is an extremely short time span and provides limited timeframe which may not allow parties sufficient opportunity to assess the evidence and make meaningful commitments, potentially rendering the mechanism unworkable.

Eighth, the draft regulations empower the CCI to utilize the material offered by parties during settlement negotiations, including sensitive business information and details of alleged contraventions, posing a significant risk for applicants, as the information provided could be used against them if settlement or commitment terms are not agreed upon, undermining the incentive for parties to participate in the mechanism; for a lot of companies maintaining confidentiality is crucial, especially in sensitive matters.

Ninth, the lack of a mechanism for modifying decrees based on evolving facts or legal developments may render them obsolete or ineffective over time, diminishing the appeal and utility of the S&C mechanism.

Despite these shortcomings, there is optimism regarding these amendments as it is regarded as

a step in the right direction, which aims for resolution process and lower litigation, which is always welcomed by all fields and fraternities of law.<sup>8</sup>

## CHAPTER 8: COMPARATIVE ANALYSIS ACROSS OTHER JURISDICTIONS

| Aspect   | European Union                                                                                | United States                                                             | India                                                                                         | United Kingdom                                                      |
|----------|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
| Adoption | Settlement method initially, commitment mechanism later through Regulation 1/2003             | Shift in strategy in the mid-1990s towards preventing litigation          | Recently introduced as part of competition law amendments                                     | Established mechanism, mainly through undertakings and remedies     |
| Scope    | Initially restricted to cartels and vertical breaches, expanded to abuse of dominance in 2016 | Mainly utilized in cartel cases, also in civil non-merger antitrust cases | Applies to various antitrust violations including vertical restraints, and abuse of dominance | Primarily used in merger control cases and dominance investigations |
| Process  | Commission presents evidence, parties present objections,                                     | Negotiated settlements (commitments) based on                             | Parties submit settlement or commitment proposals, review                                     | Negotiation of undertakings or remedies to address                  |

<sup>8</sup> "CCI's Game-Changer Provisions: Settlements and Commitments." Law.Asia, Jan. 2, 2022, <https://law.asia/cci-game-changer-provisions/>  
 Lexology. "Filing of settlement and commitment applications." August 25 2023, <https://www.lexology.com/library/detail.aspx?g=4c122397-d867-4f8d-ad23-e45d8416a00a>  
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|                        |                                                                                      |                                                                                       |                                                                                         |                                                                                                  |
|------------------------|--------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
|                        | settlement or trial proceeds                                                         | admission of guilt and cooperation                                                    | by CCI, acceptance or rejection                                                         | anticompetitive concerns                                                                         |
| Adjudicating Authority | European Commission                                                                  | US Federal Trade Commission (FTC)                                                     | Competition Commission of India (CCI)                                                   | Competition and Markets Authority (CMA)                                                          |
| Incentives for Parties | Reduction in fines of up to 10% for contravening party in settlement                 | Assurance of no further charges and cooperation in cartel cases                       | Reduction in penalties, closure of investigations, regulatory certainty                 | Clearance of merger transactions, avoidance of formal enforcement action                         |
| Focus                  | Prospective resolution of identified market issues, not admission of guilt           | Proactive prevention of litigation and regulation strengthening                       | Balancing regulatory objectives with the interests of investigated parties              | Preserving competition in markets and protecting consumer interests                              |
| Way of Filing          | Formal process through submission of settlement proposals to the European Commission | Negotiation and submission of settlement proposals to the US Federal Trade Commission | Submission of settlement or commitment proposals to the Competition Commission of India | Negotiation and agreement on undertakings or remedies with the Competition and Markets Authority |

|                      |                                                                        |                                                                                    |                                                                      |                                                                    |
|----------------------|------------------------------------------------------------------------|------------------------------------------------------------------------------------|----------------------------------------------------------------------|--------------------------------------------------------------------|
| Efficiency           | Generally efficient process with clear timelines and procedures        | Negotiation-based approach may lead to longer resolution times                     | Process still evolving, efficiency may vary based on case complexity | Established process with clear guidelines and timelines            |
| Success Rate         | High success rate with many cases resolved through settlements         | Majority of civil non-merger antitrust cases resolved through commitments          | Success rate yet to be established due to recent introduction        | Generally successful in addressing anticompetitive concerns        |
| Success Stories      | Numerous successful settlements in cartel and abuse of dominance cases | Successful resolution of many civil antitrust cases through negotiated settlements | Emerging success stories expected as the mechanism matures           | Successful resolution of merger cases and dominance investigations |
| Incentives           | Reduction in fines and closure of proceedings                          | Avoidance of formal litigation and reduced penalties                               | Reduction in penalties and closure of investigations                 | Clearance of mergers and avoidance of enforcement action           |
| Important Amendments | Expansion of scope to include abuse of dominance cases in 2016         | Shift in strategy towards preventing litigation in the mid-1990s                   | Recent amendments to competition law introducing S&C mechanisms      | Continuous updates and refinements to competition legislation      |

|                     |                                                                                      |                                                                 |                                                                    |                                                                          |
|---------------------|--------------------------------------------------------------------------------------|-----------------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------------------------|
| Admission of Guilt  | Not required as settlement focuses on prospective resolution                         | Essential for negotiated settlements and reduction in penalties | Not explicitly required but may influence fine reduction           | Not applicable as undertakings and remedies focus on resolution          |
| Information Sharing | Commission presents evidence to parties during settlement negotiations               | Parties share information with FTC to facilitate negotiation    | Parties share information with CCI to support settlement proposals | Information shared between parties and CMA for agreement on undertakings |
| Fine Reduction      | Reduction in fines of up to 10% for contravening party in settlement                 | Reduction in penalties for admission of guilt and cooperation   | Reduction in penalties for successful settlement or commitment     | No specific fine reduction mechanism, focus on resolution                |
| Review Process      | Parties present objections, settlement or trial proceeds based on evidence presented | Review and acceptance of settlement proposals by FTC            | Review and acceptance of settlement or commitment proposals by CCI | Agreement and review of undertakings or remedies by CMA                  |

This extended comparison provides a detailed analysis of the settlement and commitment mechanisms in the European Union, United States, India, and the United Kingdom,

### Key Observations that can be drawn from the following table

- (i) The Indian framework is the newest, with limited data available on success rates and review processes.

- (ii) The USA has the highest success rate for settlements due to significant fine reduction incentives.
- (iii) The EU/UK have a more established filing process, often involving online portals.
- (iv) Both India and the EU/UK lack guaranteed hearings during settlements, raising due process concerns.
- (v) The USA has a more rigorous review process involving courts, whereas India's review process might be less transparent.
- (vi) The EU has allowed settlements for abuse of dominance since 2016, a feature not yet adopted by India.
- (vii) The USA emphasizes cooperation from cartel participants during settlements.
- (viii) The EU/UK approach offers a balance between efficiency and due process, while the USA prioritizes faster resolution.<sup>9</sup>

## CHAPTER 9: CONCLUSION

In conclusion, the introduction of settlement and commitment mechanisms under the Competition (Amendment) Act, 2023 marks a significant milestone in the evolution of competition law enforcement in India. These mechanisms offer parties the opportunity to proactively manage potential issues and address anti-competitive conduct throughout various stages of an inquiry. While settlements allow parties to reach agreements with the Competition Commission of India (CCI) on certain corrective actions and remedies, commitments enable investigated companies to submit proposals to address alleged anti-competitive practices. Both

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<sup>9</sup> European Commission. (n.d.). Antitrust: Commission invites comments on commitments offered by Eni, Galp, and OMV to address competition concerns regarding EEA liquefied natural gas markets. European Commission Press Release Database.

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mechanisms aim to expedite the resolution of investigations and foster a culture of accountability in the competitive market landscape.

Overall, the introduction of settlement and commitment mechanisms represents a positive step towards enhancing competition law enforcement in India. By providing parties with alternative avenues for resolving disputes and addressing anti-competitive conduct, these mechanisms contribute to the promotion of fair and competitive markets, in line with the objectives of the Competition Act, 2002.

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