

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 2

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

The Settlement and Commitment Scheme Under the Competition Amendment Bill, 2022: Analysis and Implications for Competition Law Enforcement and Consumer Protection in E-Commerce

CHAHAK KANOJIA¹ AND MILIND BHASKAR²

ABSTRACT

By policing businesses' anti-competitive behaviour, the field competition law tries to maintain or foster market competition. The Competition Law Review Committee's report recommended the inclusion of the settlement and commitments scheme in the Competition Act, 2002 to help reduce litigations relating to anti-competitive practices and for swifter resolution. Leading to the Competition (Amendment) Bill, 2022 to be passed by the Lok Sabha. The researchers have provided an in-depth study of the settlement and commitment scheme and its way forward by critically analysing it and comparing it with other competition law remedies. Furthermore discussing its role in promoting fair trade practices and protecting consumer interests in the E-commerce sector.

Keywords: *Competition law, Scheme, Prohibited Agreements, Anti-Trust Regimes, Leniency, E-commerce.*

I. INTRODUCTION

The Competition Act, 2002 ("Act") was passed to promote and preserve economic competition, safeguard the interests of consumers, and guarantee market participants' freedom of trade. The formation of the "Competition Commission of India" (CCI), which is tasked with eradicating practices that have an adverse impact on competition and prohibiting cartels, is covered by Section 7 of the Act.

The definition of collusive anti-competition activity is given in Section 1 of the Act, defining a cartel - "an association of producers, sellers, distributors, traders or service providers who, amongst themselves, limit, control or attempt to control the production, dist or price of, or, trade in goods or provision of services."³

Cartelization is considered a civil offence in India, and if the investigation reveals that a cartel entered into an agreement, the CCI is legally empowered to issue all or any of the directives as

¹ Author is a student at Gujarat National Law University, India.

² Author is a student at Gujarat National Law University, India.

³ Competition Act, 2002.

per section 27 of the Act.

The CCI and the DG's (Director General's) resources are under heavy strain due to the recent increase in caseload. As per the Annual Report, the number of appeals were pending at the NCLAT as on March 31, 2021, was 253. This naturally affects the timelines for investigations. As per the data provided to the Parliament by the Ministry of Corporate Affairs (MCA), the CCI has recovered a very insignificant amount compared to the fines imposed on the businesses had paid. Therefore, the need for this scheme.

A. Background of the Competition Amendment Bill, 2022

The Competition (Amendment) Bill, 2022⁴ was introduced by the government in the Lok Sabha on August 5, 2022, and passed on March 30, 2023, to amend various competition law provisions. The bill was submitted to the Parliamentary Standing Committee on Finance. The addition of the settlement and commitment scheme, which will assist in lowering the number of lawsuits involving anti-competitive actions and quicker resolution of cases, is one of the revisions that have been suggested. The bill intends to eliminate litigation, expand the scope of anti-competitive agreements, and speed up mergers and acquisitions (M&A) approvals.

Competition Law Review Committee (CLRC) was constituted on 01.10.2018 to review the existing competition law framework in India and published its [report](#) on 26.07.2019. The Committee in its report have included that it was brought to their attention that in *Tamil Nadu Film Exhibitors Association v. CCI*,⁵ the Madras High Court ruled that parties might reach a compromise or settlement within the terms of the Competition Act, and that CCI may accept such a compromise or settlement. The Court had cited Section 27 as giving CCI broad authority to issue residuary directions. The Committee then pointed out that Section 27 does not explicitly mention a settlement or commitment process within the context of the Competition Act on a plain reading. Yet often, such powers are independently and specifically stipulated in legislation as the settlement and commitment process necessitates substantial and detailed instructions to function in an impartial manner while taking the public interest into consideration.⁶

The settlement and commitments scheme in competition law exists in major jurisdictions such as the European Union, Singapore and the United Kingdom. In India, such regulations concerning settlement already exist in other legislations. The Income Tax Act has established the Income Tax Settlement Commission (Settlement Commission) by Sec 245B, which

⁴ The Competition (Amendment) Bill, 2022.

⁵ 2015 SCC OnLine Mad 7099.

⁶ Ministry of Corporate Affairs, *Report of the Competition Law Review Committee*, (2019), Paras 41-46, <<https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf>>.

regulates the matter as per Income Tax Settlement Commission (Procedure) Rules, 1997.

Also,

The Securities and Exchange Board of India ('SEBI') has an implemented mechanism for settlements through SEBI (Settlement of Administrative and Civil Proceedings) Regulations & SEBI Settlement Regulations which envisage a procedure for the resolution of specific infringement concerning the securities market, by the payment of fees without admitting guilt.

B. Overview of the Settlement and Commitment Scheme

Antitrust instruments like commitments and settlements are crucial for accelerating market corrections and cutting down on inquiry and adjudication. The new bill introduces sections, Section 48A and 48B, for establishing Settlement and Commitment Mechanisms, encompassing violations of anti-competitive agreements and abuse of dominance at different stages of an inquiry.

The settlement provisions are found in the new section 48A, which states that any enterprise against which an investigation has been launched for alleged violations of Sections 3 or 4 (anticompetitive vertical restraints and abuse of dominance) is permitted to submit a written application to the Commission to settle the proceedings for the alleged infringement upon payment of the fee based on the nature, gravity, and impact of the infringement. Upon receiving the Director General's order but prior to the creation of an order, a settlement application may be made at any time. The Commission must give the affected party, the director general, or any other party a chance to voice their concerns and suggestions before it can evaluate the settlement plan.

The new section 48B contains the provision related to Commitments, the Bill suggests that the CCI be given the authority to end an investigation into vertical restraints that are anti-competitive and abuses of dominance upon the provision of terms and procedures based on the nature, gravity, and impact of the alleged infringement. The parties accused of engaging in anti-competitive behaviour may make undertakings to change their conduct after the CCI has ordered an enquiry but before receiving the Director General Report.

When the application gets accepted, the settlement amount realised would get credited to the Consolidated Fund of India. Furthermore, the CCI has the exclusive ability to cancel the acceptance at any moment, as well as the power to fine the offending party up to Rs. 1 crore and order a new investigation in case it discovers an irregularity and non-disclosure of information. In cases of abuse of dominance and anticompetitive vertical restraint, the CCI may impose fines of up to 10% of the violating company's three-year average relevant turnover.

Additionally, under section 53B of the Competition Act, the CCI's decisions regarding settlement applications are final and cannot be appealed. So, by choosing the settlement option, the entity forfeits its ability to challenge the judgement rendered by CCI in this case.⁷

The Bill also suggests creating a governing body made up of ex-officio and part-time members. By adding ex-officio and part-time members, the CCI will gain an external viewpoint and be given a stronger sense of democratic legitimacy and accountability.

C. Objectives of the study

- To understand the benefits and limitations of the scheme
- To understand the effectiveness of the scheme
- To understand the role of the scheme in promoting fair trading practices

D. Scope of the study

The study aims to analyse the scheme of settlement and commitments introduced under the Competition (Amendment) Bill, 2022 in India by the Competition Law Review committee in its report. The grounds for its inclusion, its benefits and limitation, the procedural aspect and the role of the Competition Commission in implementing it. The manner in which it will protect the interests of the consumers in the e-commerce sector and how it can promote fair trade practice in the markets.

II. SETTLEMENT AND COMMITMENT SCHEME UNDER COMPETITION AMENDMENT BILL, 2022

A. Eligibility criteria for availing of the Scheme

For settlement the application has to be submitted after receipt of the report of the Director General but before the passing of an order under section 27 or section 28 of the Act.

For commitment the application has to be submitted time after an investigation has been initiated but before the DG's investigation report is issued.

B. Procedure for applying for the Scheme

Any enterprise that is the subject of a procedure under subsection (1) of section 26 for violating section 3 or section 4 of the Competition Act of 2002 must make a written request for settlement to the Commission in the prescribed format and upon payment of a fee.

⁷ Yash Arjariya, 'Settlement & Commitments In Indian Competition Regime: Addressing The 'Guilt' Conundrum' (NLU Delhi, December 30, 2022) <<https://www.cbfnludelhi.in/post/settlement-commitments-in-indian-competition-regime-addressing-the-guilt-conundrum>> accessed 25 March 2023.

The Commission will consider the nature, gravity, and impact of the violations before deciding whether to accept the settlement proposal. This would happen following the applicant's payment or in accordance with other terms and conditions for settlement and monitoring. The opposite party will have the chance to voice any concerns or ideas they may have while the commission is reviewing the application.

The Commission is not required to accept every application; if they believe it is inappropriate under the circumstances or if the Commission and the applicant cannot agree on the terms of the settlement, the Commission may reject the application and carry out its investigation in accordance with Section 26.

C. Benefits of the Scheme

Benefits

- It will enable out-of-court settlement without necessitating drawn-out legal processes, as CCI will be able to resolve the anti-competitive conduct effectively and the pipeline of cases expected to be addressed by CCI shall also be alleviated.
- Competition authorities can attain the "finality" of commitment decisions more quickly than infringement decisions, which are subject to more party appeals because to the limited and light-touch court review.
- Beyond what agencies can seek through an infringement procedure, commitments may include structural remedies and different proactive and customised behavioural remedies.⁸

Limitations

- The deterrent effects of agency enforcement measures may be lessened if no fines exist.
- A heavy reliance on commitment decisions may cause the traditional ex-post examination of previous behaviour through infringement rulings to give way to an ex-ante regulatory strategy to alter market structures.
- A lack of a finding of infringement would be detrimental to any subsequent private damages claims.
- Due to their focus on attaining procedural economies, commitment processes may lead

⁸ Directorate for Financial and Enterprise Affairs Competition Committee, 'Executive Summary of the Roundtable on Commitment Decisions in Antitrust Cases' (OECD, 19 Dec 2016) <[https://one.oecd.org/document/DAF/COMP/M\(2016\)1/ANN5/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/M(2016)1/ANN5/FINAL/en/pdf)> accessed on 29 March 2023.

some people to worry that the parties' rights to due process and procedural protections may be weakened.

- Because competition authorities may be misled by the observations of competitors of the parties under investigation, a market test in the commitment procedure may not always be successful.

III. ANALYSIS OF THE SETTLEMENT AND COMMITMENT SCHEME UNDER COMPETITION AMENDMENT BILL, 2022

A. Comparison of the Scheme with other Competition Law Remedies

Leniency programmes are essential in helping competition authorities find, look into, and prosecute extreme cartels.⁹ The Committee report suggests that the commitment and settlement scheme overlap with the leniency programme envisaged in Section 46 of the Act.¹⁰ The Lesser Penalty Regulations, 2009, as amended in 2017, govern the Leniency Programme. Less severe penalties are applied under this system to applicants who provide accurate and complete information or proof at the CCI's discretion.

The ways in which parties may take advantage of a decrease in penalty following later revelation of evidence to the CCI are: The first party may profit from a reduced penalty of up to 100%; The second applicant is eligible for a reduced penalty benefit up to a maximum of 50%. The third applicant might receive a 30% decrease.¹¹

Although the Competition Act gives the CCI a structure to handle applications for leniency or lighter penalties, it does not recognise leniency plus. Leniency Plus is a proactive antitrust enforcement tactic that encourages businesses already under investigation for one cartel to disclose other cartels that the competition regulator is unaware of in order to attract leniency petitions.¹² There is no provision for withdrawing lesser penalty petitions under the Competition Act's current framework for lesser penalties. The committee therefore suggested that Section 46 be changed to allow a leniency applicant to withdraw their leniency request, and that the time frame for permitting such a withdrawal be specified in the Lower Penalty Rules.

⁹ Directorate for Financial and Enterprise Affairs Competition Committee, *Leniency for Subsequent Applicants*, (OECD, 2012) <<https://www.oecd.org/competition/Leniencyforsubsequentapplicants2012.pdf>> accessed on 29 March 2023.

¹⁰ *Id.*

¹¹ Rupin Chopra and Vidhi Oberoi, 'Settlement And Commitment Scheme Under Competition Amendment Bill', 2022 (Mondaq, 13 January 2023) <<https://www.mondaq.com/india/cartels-monopolies/1270578/settlement-and-commitment-scheme-under-competition-amendment-bill-2022>> accessed on 27 March 2023.

¹² International Competition Network, 'Anti-Cartel Enforcement Manual' (2016) <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/CWG_ACEMGoodPractices.pdf> accessed 27 March 2023.

Regarding the admission of guilt; the settlement agreement resembles a leniency process; the key distinction is that the application's timeline is different. Only once the investigative report has been submitted and, in the case of CLRC, when the defendant is convinced of the merits of the allegations brought against it, can the settlement procedure be started.

B. Case studies and examples to illustrate the effectiveness of the Scheme

European Union

The EU competition law settlement scheme is more procedural in nature.¹³ They distinguish between the two methods in antitrust actions, providing for both commitment and settlement. In the EU, commitment judgements are normally allowed in all antitrust proceedings, except for cartels,¹⁴ even if a settlement procedure is available for cartels.¹⁵

At least 53% of the Commission's antitrust enforcement actions between 2005 and 2019 (42 of 78) resulted in a remedial commitment rather than finding the examined corporations liable or imposing any fines. Using a simplified "cooperation method," in which examined corporations have been given fine reductions in exchange for admitting responsibility and generally assisting the investigations, the Commission has adopted several antitrust prohibition rulings with fines. Since 2016, this antitrust cooperation approach has been used to resolve more than half of the Commission's antitrust prohibition rulings. This shows how the antitrust cooperation procedure may be appropriate in various situations.¹⁶

The efficiencies that the Commission aimed for when establishing the system have been realised, according on experience gained in settlement cases that have already been resolved. These have been beneficial to both the Commission and the firms equally. Efficiency improvements have been made possible by the reduced amount of drafting necessary and the absence, or extremely low chance, of further litigation before the European Courts.

United States

The two federal authorities having the authority to look into non-cartel violations of antitrust law are the Federal Trade Commission (FTC) and the Antitrust Division of the Department of

¹³ H. K. Paranjape, 'The MRTP Amendment Bill: A Trojan Horse', (Economic and Political Weekly, Apr. 28, 1984) <www.jstor.org/stable/4373208> accessed on 27 March 2023.

¹⁴ Council Regulation (EC) No 1/2003 of 16 December 2002.

¹⁵ Regulation 622/2008 of 30 June 2008 amending Regulation (EC) No 773/2004, <http://ec.europa.eu/competition/antitrust/ara_factsheet_en.pdf>.

¹⁶ Jonas Koponen and Ariti Skarpa, 'EU: Settling Antitrust Non-cartel Conduct Matters with the European Commission' (Global Competition Review, 02 February 2021) <<https://globalcompetitionreview.com/guide/the-settlements-guide/first-edition/article/eu-settling-antitrust-non-cartel-conduct-matters-the-european-commission>> accessed on 28 March 2023.

Justice (DOJ).¹⁷ Plea deals and consent orders in the US govern antitrust settlement agreements. The DOJ is clear of the procedural advantages of plea deals, but sees settlements as an additional tool to leniency in promoting cooperation. The US Corporate Leniency Program only grants immunity to the first company to self-report; subsequent companies who want to cooperate must enter a plea agreement.

The US Department of Justice's Antitrust Division has plea deals with 90% of corporate defendants accused of antitrust violations. They are an absolute type of direct settlement where the offending company and the competition authority agree on a penalty rather than subjecting the case to a criminal trial and subsequent appeal.¹⁸ Therefore, the scheme is remarkably effective as 90 per cent of the corporate defendants choose plea deals.

IV. OVERVIEW OF E-COMMERCE IN INDIA

E-commerce in India has been growing rapidly in recent years, driven by increasing internet and smartphone penetration, as well as the government's push towards a digital economy. According to a report by the Internet and Mobile Association of India (IAMAI), India possesses significant unexplored potential in the e-commerce sector. The current market, which is worth US \$65.3 billion, has shown impressive growth rates over the last five years, with a 30 percent increase in 2018 and a 22 percent rise in 2019, although growth slowed during the pandemic. Sales are projected to continue growing at a compound annual growth rate (CAGR) of 14.5 percent until 2024.¹⁹ The e-commerce sector in India is dominated by major players like Amazon, Flipkart, and Snapdeal, among others. These companies operate as online marketplaces, connecting buyers and sellers of various goods and services, ranging from electronics and fashion to food and grocery. E-commerce has also given rise to new business models like hyperlocal delivery, subscription-based services, and peer-to-peer marketplaces.

However, the growth of e-commerce has also brought with it several challenges related to fair trade practices and consumer protection. Some of the key challenges include issues like misleading advertisements, unfair pricing practices, counterfeit products, and inadequate consumer grievance redressal mechanisms. These challenges have led to calls for stricter regulation of the e-commerce sector, including the need for effective competition law

¹⁷ Rich Snyder and Angela Diveley Landry, 'US: Settling Antitrust Non-cartel Conduct Matters with the US DOJ and the FTC' (Global Competition Review, 02 February 2021) <<https://globalcompetitionreview.com/guide/the-settlements-guide/first-edition/article/us-settling-antitrust-non-cartel-conduct-matters-the-us-doj-and-the-ftc>> accessed on 30 March 2023.

¹⁸ Andreas Stephan, 'The Direct Settlement of EC Cartel Cases', (2009) vol. 58, no. 3 pp. 627–54 *The International and Comparative Law Quarterly* < www.jstor.org/stable/25622229> accessed on 20 March 2023.

¹⁹ J.P. Morgan, 'Global E-Commerce Trends Report' (J.P. Morgan, n.d.) <https://www.jpmorgan.com/content/dam/jpm/treasury-services/documents/global-e-commerce-trends-report.pdf> (accessed 20 March 2023).

enforcement.²⁰

Against this backdrop, the Competition Amendment Bill 2022 introduced the Settlement and Commitment Scheme as a means to promote fair trade practices and protect consumer interests in the e-commerce sector. The Scheme provides an opportunity for parties under investigation for alleged competition law violations to settle their cases with the Competition Commission of India (CCI) by making commitments to comply with the law. The Scheme also provides for reduced penalties for parties that make such commitments.

A. Challenges in e-commerce

E-commerce has emerged as a popular mode of conducting business transactions in recent years. While it has provided numerous benefits such as convenience, wider reach, and cost-effectiveness, it has also presented several challenges to fair trade practices and consumer protection.²¹ The growth of e-commerce in India has been accompanied by several challenges related to fair trade practices and consumer protection. These challenges include issues related to online frauds, consumer data privacy, counterfeit products, unfair pricing practices, and inadequate dispute resolution mechanisms, among others. This has led to growing concerns about the need to regulate e-commerce activities and ensure a level playing field for all market participants while protecting consumer interests.

1. **Lack of Transparency:** Often, e-commerce companies do not disclose complete and accurate information about the products or services they offer. This can mislead consumers into making uninformed decisions.²² In the e-commerce sector, consumers often face the challenge of lack of transparency in pricing, delivery timelines, and other related aspects. For example, some e-commerce platforms may show different prices for the same product to different users, making it difficult for consumers to make informed choices. Similarly, delivery timelines may not be clearly communicated, resulting in delayed deliveries and inconvenience to consumers.
2. **Quality Concerns:** The rise of e-commerce has also led to an increase in fraudulent activities such as fake reviews, counterfeit products, and phishing scams. Consumers often have concerns about the quality of products sold on e-commerce platforms.²³ Due

²⁰ India Brand Equity Foundation, 'E-commerce Industry in India' (IBEF, n.d.) <https://www.ibef.org/industry/ecommerce> (accessed 20 March 2023).

²¹ Chawla N and Kumar B, "E-Commerce and Consumer Protection in India: The Emerging Trend" (2021) 180 *Journal of Business Ethics* 581

²² J. W. Haefner, 'Cost Transparency: The Net's Real Threat to Prices and Brands' (2000) 78 *Harvard Business Review* 73.

²³ G. Liu, S. Fei, Z. Yan, C.H. Wu, S.B. Tsai and J. Zhang, 'An empirical study on response to online customer reviews and E-commerce sales: from the mobile information system perspective' (2020) *Mobile Information*

to the inability to physically inspect the products before purchasing, consumers may receive products that are not as described or of poor quality. For instance, some e-commerce platforms may allow third-party sellers to sell products on their platform, making it difficult to ascertain the quality of the product being sold.

3. **Privacy and Data Protection:** Consumers are also concerned about the privacy and security of their personal information when shopping online.²⁴ E-commerce platforms collect a lot of personal information from consumers, including their name, address, phone number, and payment details. There is always a risk that this data may be misused or shared with third parties without the consumer's consent. Moreover, e-commerce platforms may also track consumer behaviour and use this data for targeted advertising, which may compromise the privacy of consumers.
4. **Misleading Advertising and Information:** Consumers in the e-commerce sector may face difficulties in obtaining accurate and reliable information about the products they intend to purchase. Some e-commerce platforms may engage in misleading advertising or fail to provide complete and truthful information about the products or services on offer. For example, an e-commerce website may use misleading photographs, exaggerated claims, or incomplete descriptions of products, leading consumers to make uninformed decisions. misleading advertising and information can take various forms in the e-commerce sector. For instance, some e-commerce platforms may use stock images that do not accurately depict the products they are selling. Similarly, product descriptions may be incomplete or misleading, leading to confusion among consumers about the features, functionality, or quality of the products. E-commerce platforms may also use aggressive or misleading marketing techniques, such as pop-up ads or targeted promotions that make false claims or exaggerate the benefits of their products.
5. **Difficulty in Redressal of Grievances:** Consumers in the e-commerce sector may face difficulties in obtaining redressal of grievances due to a lack of effective mechanisms for dispute resolution.²⁵ E-commerce platforms may have complex and opaque procedures for handling consumer complaints, and consumers may find it challenging to navigate these processes. In some cases, e-commerce platforms may fail to respond to consumer complaints or offer unsatisfactory remedies, leading to frustration and

Systems, pp. 1-12.

²⁴ A. D. Miyazaki and A. Fernandez, 'Consumer perceptions of privacy and security risks for online shopping' (2001) 35 *Journal of Consumer Affairs* 27.

²⁵ *Ibid.*, 3.

dissatisfaction among consumers. Difficulty in redressal of grievances is a significant challenge faced by consumers in the e-commerce sector. E-commerce platforms may have complex and opaque procedures for handling consumer complaints, which can be difficult to navigate for consumers. Moreover, some e-commerce platforms may be unresponsive to consumer complaints or offer unsatisfactory remedies, leading to a lack of trust among consumers. This lack of trust can further exacerbate the problem, as consumers may be reluctant to shop online or use e-commerce platforms in the future.

B. How the Settlement and Commitment Scheme can address these challenges

The Settlement and Commitment Scheme can be an effective tool to address the challenges faced by fair trade practices and consumer protection in the e-commerce sector. By enabling businesses to settle disputes more easily, this mechanism can help to reduce the burden on the legal system and expedite the resolution of cases. This can result in significant time and cost savings for both parties involved in the dispute.

One of the key benefits of the Scheme is that it provides flexibility in the approach to resolving disputes. It allows parties to agree on a mutually acceptable settlement, which can include measures to promote fair competition and consumer protection. This can help to ensure that consumers are not exploited by dominant players in the market and that there is a level playing field for all businesses. By promoting fair competition, the Scheme can also help to drive innovation and growth in the e-commerce sector.

In addition to providing a faster and more efficient means of resolving disputes, the Settlement and Commitment Scheme can also help to mitigate reputational damage for businesses. In cases where businesses are accused of engaging in anti-competitive practices or violating consumer protection laws, the mere existence of an investigation can have a negative impact on their reputation. By choosing to settle the dispute through the Scheme, businesses can avoid the potential damage to their reputation that may result from a prolonged investigation.

Moreover, the Scheme can also be beneficial for the Competition Commission of India (CCI). As the number of disputes referred to the CCI for investigation continues to increase, the Scheme can help to reduce the burden on the agency by enabling disputes to be settled more efficiently.²⁶ This can allow the CCI to focus its resources on more complex cases that require a greater level of investigation and analysis.

For example let's Suppose there is an e-commerce company that dominates the market by

²⁶ Competition Law Review Committee, Report (Government of India, Ministry of Corporate Affairs 2019) <https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf> accessed 19 March 2023.

engaging in anti-competitive practices such as predatory pricing and exclusive agreements with suppliers. As a result, other small players in the market are struggling to compete and ultimately shutting down their businesses, leading to a lack of choice for consumers.

Under the Settlement and Commitment Scheme, the Competition Commission of India can initiate an investigation into the e-commerce company's business practices and offer them the option to settle the matter through a commitment mechanism. The company can agree to cease their anti-competitive practices and offer remedial measures, such as opening up their platform to other players and offering competitive prices.

In this scenario, the Settlement and Commitment Scheme provides a timely and effective solution to address the issue of unfair competition, allowing other players to operate in the market and giving consumers more options to choose from. Additionally, the commitment mechanism incentivizes the company to comply with fair trade practices in the future, as they would risk facing penalties and reputational damage for non-compliance.

Thus, the Settlement and Commitment Scheme can prove to be an important tool in promoting fair trade practices and protecting consumer interests in the e-commerce sector.

Overall, the Settlement and Commitment Scheme can be an effective means of addressing the challenges faced by fair trade practices and consumer protection in the e-commerce sector.²⁷ By providing a faster and more efficient means of resolving disputes, promoting fair competition, and mitigating reputational damage, the Scheme can help to support the growth and development of the e-commerce industry in India while protecting the interests of consumers.

V. CONCLUSION

The Settlement and Commitment Scheme under the Competition Amendment Bill, 2022 has the potential to revolutionize the way competition law enforcement is conducted in India. The Scheme provides an effective mechanism for resolving competition law violations and promoting fair trade practices and protecting consumer interests in the e-commerce sector. The Settlement and Commitment Scheme under the Competition Amendment Bill, 2022 is a step forward in the direction of promoting fair trade practices and protecting consumer interests in India. The Scheme enables enterprises to avoid lengthy and costly investigations and settle antitrust disputes with the Competition Commission of India (CCI) through commitment mechanisms. This allows for quick resolution of matters, providing relief to companies and also

²⁷ Bhushan, A. "Govt agrees to allow settlement scheme for cartels in competition bill" (Business Standard, 29 January 2020) https://www.business-standard.com/article/economy-policy/govt-agrees-to-allow-settlement-scheme-for-cartels-in-competition-bill-123012900480_1.html accessed 19 March 2023

freeing up scarce resources of the CCI, which can then focus on more complex and important cases.

The eligibility criteria for availing the Scheme include the requirement that the company must have made a full and true disclosure of all material facts and must have cooperated with the Competition Commission of India (CCI) during the investigation process. The company must also agree to cease and desist from the anti-competitive practices and undertake to implement measures to prevent the recurrence of such practices.

The procedure for applying for the Scheme involves the submission of a written application to the CCI, which must be accompanied by a proposal for settlement or commitments to be made by the company. The CCI will then examine the proposal and may call for further information or clarification from the company. If the CCI is satisfied with the proposal, it may approve the settlement or commitments and close the case.

However, the Scheme is not without limitations. One of the concerns is the eligibility criteria for availing the Scheme. Enterprises with a history of anti-competitive practices or repeat offenders may not be eligible to participate, limiting the reach of the Scheme. Moreover, the benefits of the Scheme may be limited to only those cases where the alleged violations are not egregious and can be resolved through commitments. To minimize legal battles and provide a simpler approach for resolving conflicts, a settlement process is being implemented in accordance with the Act. Nevertheless, this would solely be applicable in scenarios concerning the abuse of dominance and the formation of anti-competitive agreements among parties within the supply chain. Cases involving serious violations of competition law may still require a full-fledged investigation and adjudication.

Another limitation is the lack of clarity around the procedure for applying for the Scheme. The Amendment Bill does not provide detailed guidelines on how to apply for the Scheme, leaving it to the discretion of the CCI. This may lead to uncertainty among enterprises about how to avail the Scheme and whether they meet the eligibility criteria.

Furthermore, the Scheme may not be suitable for all types of antitrust disputes. Some cases may require more extensive investigation and adjudication, and a commitment mechanism may not be sufficient to address the concerns. In such cases, the CCI should have the flexibility to choose the appropriate remedy, including imposing penalties and other corrective measures.

Despite these limitations, the Scheme can have a significant impact on competition law enforcement in India. It can encourage enterprises to comply with competition law, avoid anti-competitive practices and ensure fair trade practices. It can also reduce the burden on the CCI,

freeing up its resources to focus on more complex cases.

The Scheme can also have a positive impact on the e-commerce sector, which has been a focus area for the CCI in recent years. E-commerce platforms have been accused of engaging in anti-competitive practices, including preferential treatment of certain sellers, deep discounting, and exclusivity agreements. The Scheme can provide a mechanism for resolving such disputes quickly and efficiently, promoting fair trade practices and protecting consumer interests.

In conclusion, the Settlement and Commitment Scheme under the Competition Amendment Bill, 2022 is a positive step towards promoting fair competition practices in India. It provides a mechanism for quick resolution of antitrust disputes and reduces the burden on the CCI. However, the Scheme should be implemented with caution, keeping in mind its limitations and potential impact on competition law enforcement. The CCI should have the necessary discretion and flexibility to choose the appropriate remedy for each case, ensuring that consumer interests are protected, and fair trade practices are promoted.

VI. REFERENCES

1. Andreas Stephan, 'The Direct Settlement of EC Cartel Cases', (2009) vol. 58, no. 3 pp. 627–54 *The International and Comparative Law Quarterly* <www.jstor.org/stable/25622229> accessed on 20 March 2023.
2. 'Bhushan, A. "Govt agrees to allow settlement scheme for cartels in competition bill"' (Business Standard, 29 January 2020) https://www.business-standard.com/article/economy-policy/govt-agrees-to-allow-settlement-scheme-for-cartels-in-competition-bill-123012900480_1.html
3. A. D. Miyazaki and A. Fernandez, 'Consumer perceptions of privacy and security risks for online shopping' (2001) 35 *Journal of Consumer Affairs* 27.
4. Andreas Stephan, 'The Direct Settlement of EC Cartel Cases', (2009) vol. 58, no. 3 pp. 627–54 *The International and Comparative Law Quarterly* <www.jstor.org/stable/25622229> accessed on 20 March 2023.
5. Chawla N and Kumar B, "E-Commerce and Consumer Protection in India: The Emerging Trend" (2021) 180 *Journal of Business Ethics* 581
6. Competition Law Review Committee, Report (Government of India, Ministry of Corporate Affairs 2019) <https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf> accessed 19 March 2023.
7. Council Regulation (EC) No 1/2003 of 16 December 2002.
8. Directorate for Financial and Enterprise Affairs Competition Committee, 'Executive Summary of the Roundtable on Commitment Decisions in Antitrust Cases' (OECD, 19 Dec, 2016) <[https://one.oecd.org/document/DAF/COMP/M\(2016\)1/ANN5/FINAL/en/pdf](https://one.oecd.org/document/DAF/COMP/M(2016)1/ANN5/FINAL/en/pdf)> accessed on 29 March 2023.
9. Directorate for Financial and Enterprise Affairs Competition Committee, Leniency for Subsequent Applicants, (OECD, 2012) <<https://www.oecd.org/competition/Leniencyforsubsequentapplicants2012.pdf>> accessed on 29 March 2023.
10. G. Liu, S. Fei, Z. Yan, C.H. Wu, S.B. Tsai and J. Zhang, 'An empirical study on response to online customer reviews and E-commerce sales: from the mobile information system perspective' (2020) *Mobile Information Systems*, pp. 1-12.
11. H. K. Paranjape, 'The MRTP Amendment Bill: A Trojan Horse', (Economic and

- Political Weekly, Apr. 28, 1984) <www.jstor.org/stable/4373208> accessed on 27 March 2023.
12. India Brand Equity Foundation, 'E-commerce Industry in India' (IBEF, n.d.) <https://www.ibef.org/industry/ecommerce> (accessed 20 March 2023)
 13. International Competition Network, 'Anti-Cartel Enforcement Manual' (2016) <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/05/CWG_ACEMGoodPractices.pdf> accessed 27 March 2023.
 14. J. W. Haefner, 'Cost Transparency: The Net's Real Threat to Prices and Brands' (2000) 78 Harvard Business Review 73.
 15. J.P. Morgan, 'Global E-Commerce Trends Report' (J.P. Morgan, n.d.) <https://www.jpmorgan.com/content/dam/jpm/treasury-services/documents/global-e-commerce-trends-report.pdf> (accessed 20 March 2023).
 16. Jonas Koponen and Ariti Skarpa, 'EU: Settling Antitrust Non-cartel Conduct Matters with the European Commission' (Global Competition Review, 02 February 2021) <<https://globalcompetitionreview.com/guide/the-settlements-guide/first-edition/article/eu-settling-antitrust-non-cartel-conduct-matters-the-european-commission>> accessed on 28 March 2023.
 17. Jonas Koponen and Ariti Skarpa, 'EU: Settling Antitrust Non-cartel Conduct Matters with the European Commission' (Global Competition Review, 02 February 2021) <<https://globalcompetitionreview.com/guide/the-settlements-guide/first-edition/article/eu-settling-antitrust-non-cartel-conduct-matters-the-european-commission>> accessed on 28 March 2023.
 18. Ministry of Corporate Affairs, *Report of the Competition Law Review Committee*, (2019), Paras 41-46, <<https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf>>.
 19. Regulation 622/2008 of 30 June 2008 amending Regulation (EC) No 773/2004, <http://ec.europa.eu/competition/antitrust/ara_factsheet_en.pdf>.
 20. Regulation 622/2008 of 30 June 2008 amending Regulation (EC) No 773/2004, <http://ec.europa.eu/competition/antitrust/ara_factsheet_en.pdf>.
 21. Rich Snyder and Angela Diveley Landry, 'US: Settling Antitrust Non-cartel Conduct Matters with the US DOJ and the FTC' (Global Competition Review ,02 February 2021)<<https://globalcompetitionreview.com/guide/the-settlements-guide/first-edition/article/us-settling-antitrust-non-cartel-conduct-matters-the-us-doj-and-the-ftc>>

accessed on 30 March 2023.

22. Rich Snyder and Angela Diveley Landry, 'US: Settling Antitrust Non-cartel Conduct Matters with the US DOJ and the FTC' (Global Competition Review ,02 February 2021) <<https://globalcompetitionreview.com/guide/the-settlements-guide/first-edition/article/us-settling-antitrust-non-cartel-conduct-matters-the-us-doj-and-the-ftc>> accessed on 30 March 2023.
23. Rupin Chopra and Vidhi Oberoi, 'Settlement And Commitment Scheme Under Competition Amendment Bill', 2022 (Mondaq, 13 January 2023) <<https://www.mondaq.com/india/cartels-monopolies/1270578/settlement-and-commitment-scheme-under-competition-amendment-bill-2022>> accessed on 27 March 2023.
24. Yash Arjariya, 'Settlement & Commitments In Indian Competition Regime: Addressing The 'Guilt' Conundrum' (NLU Delhi, December 30, 2022) <<https://www.cbflnludelh i.in/post/settlement-commitments-in-indian-competition-regime-addressing-the-guilt-conundrum>> accessed 25 March 2023.
