



The Dialogue™

INFORM ENGAGE IDEATE

## Preliminary Analysis

# COMPETITION (AMENDMENT) BILL, 2022: KEY CHANGES, EVOLUTION AND ANALYSIS



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## List of Abbreviations

Abbreviations	Meaning
AAEC	Appreciable Adverse Effect on Competition
CLRC	Competition Law Review Committee
CCI	Competition Commission of India
DG	Director General
DHC	Delhi High Court
IPR	Intellectual Property Rights
MoF	Ministry of Finance
MCA	Ministry of Corporate Affairs
MOUs	Memorandum of Undertakings
MRTP	The Monopolies and Restrictive Trade Practices Act
NCLAT	National Company Law Appellate Tribunal
RGM	Relevant Geographic Market
RPM	Relevant Product Market

## Background

This research brief has been formulated with the following objectives:

- i) summarise key amendments proposed by the Competition (Amendment) Bill, 2022 and analyse the same;
- ii) trace the evolution of these changes over the past four years by looking at previous iterations of the Bill and recommendations of experts and;
- iii) provide recommendations on changes that would ensure an efficient and progressive antitrust landscape in the country.

We believe the 2022 Bill is a progressive draft that will equip the Indian antitrust landscape to handle the intricacies of rapidly evolving markets.

### **Authors:**

Saksham Malik, Programme Manager, The Dialogue

Vaishnavi Sharma, Research Assistant, The Dialogue

Aditi Seetha, Research Consultant, The Dialogue

Research Assistance: Anjali Kumari, Research Intern, The Dialogue

### **Editors:**

Kriti Singh, Chief of Staff

### **Designed by:**

Diksha Kumari

# 1. Key Highlights of the Competition (Amendment) Bill, 2022

1. Amendment to the definition of “relevant product market” to include supply-side substitutability, bringing it in line with existing practices in antitrust cases and allowing more accurate delineations.
2. Buyers are not included within the definition of ‘cartel’, as was provided in the 2020 Bill. This could allow buyers with significant monopoly power to escape scrutiny of the CCI.
3. The Bill includes ‘Hub & Spoke’ cartels within the ambit of anti-competitive agreements. This is appreciated since it will keep a check on not only the active participants of such cartels but their facilitators too. Although a cautious ‘rule of reason’ approach should be followed in such cartels.
4. The inclusion of agreements that do not strictly fall into the definition of ‘horizontal’ or ‘vertical’ agreements in Section 3 of the Bill is a welcome move. This would cover commercial arrangements in digital markets which often are multi-sided in nature.
5. The Bill misses the opportunity to include an ‘effects-based test’ to establish harm in cases of abuse of dominant position. Incorporating the same could have provided a realistic economic assessment of allegations.
6. It proposes a deal value threshold of Rs. 2000 crores for transactions to be notified before the CCI, along with a local nexus requirement. While this is a welcome change, guidance on the manner in which the threshold will be implemented would be helpful.

7. The 2020 Bill had proposed the formation of a Governing Board to aid the functioning of the CCI. The 2022 Bill does not propose the formation of this Board.
8. Members of the CCI and the selection committee for the members shall now also include those with 'specialised knowledge and professional experience' of technology. This change will help the CCI equip itself with the expertise required to analyse the constantly evolving world of digital markets.
9. The Bill sets a limitation period of 3 years within which the information can be filed before the CCI. This will make the process more efficient and will reduce the pendency of cases.
10. It also allows the parties to call experts from multiple fields to analyse important questions of international trade and economics which will help the parties and lawyers to prove their stance and help CCI to make correct determinations in those cases.
11. The Bill takes away the casting vote of the Chairperson, in case of equality of votes, for adjudication of cases.
12. The Bill provides for a settlement and commitment mechanism. The inclusion of such a framework is a welcome move, and will enable quicker resolution of antitrust cases. However, wider timelines with respect to filing of both commitment and settlement applications should be granted.

## 2. Preliminary Recommendations

1. Ensure that the 2022 Bill goes through a consultation process, wherein the intricacies of the implementation and enforcement of the Bill is discussed with key stakeholders.
2. Include 'buyers' within the definition of cartel, as provided in the 2020 Bill.
3. Hub & Spoke cartels should not be made per se anti-competitive. Rather, a rule of reason approach should be followed to analyse them.
4. Abuse of dominant position allegations should be subjected to an effects-based test, in order to bring it in line with the ethos of the Act.
5. Extend the IPR defence to abuse of dominant position, as was provided in the 2020 Bill.
6. Provide necessary guidance to ensure that the deal value threshold and local nexus requirements are implemented in a consistent manner.
7. Reconsider the scope of 'control' to include the 'material influence' standard.
8. Ensure effective transparency in the rule making power of the Central Government by providing a formal framework for consultations.
9. Explain the scope of the term 'urgently in public interest', to ensure that the exemptions to public consultations for regulations of the CCI are used sparingly.
10. Consider a wider timeline for offering commitments and settlements by parties in the new framework.



### 3. Introduction

The changes to the Competition Act, 2002<sup>1</sup> (the Act) have been proposed through the Competition (Amendment) Bill, 2022 (the Bill/the 2022 Bill)<sup>2</sup>, the Competition (Amendment) Bill, 2020 (the 2020 Bill)<sup>3</sup> or the report of the Competition Law Review Committee<sup>4</sup> (CLRC Report). Largely, we believe the Bill is a welcome change and will enhance the ease of doing business and protect the interests of consumers. However, there still exists scope of improvement. With the ever-evolving market trends and growth of digital markets, the Act needed to be revamped for facing challenges with respect to new business models. The Act provided an efficient regulatory framework with respect to traditional markets but as the digital marketplace grew substantially in size, the need for amendments to keep up was long overdue.

The CLRC emphasised on the need to urgently undertake all the measures to bring the digital markets within the purview of the Act so as to ensure that market players do not create an ‘unwanted irreversible effect’ in the digital marketplace. The relevant stakeholders and public policy ecosystem have also been rooting for bringing about the necessary amendments for filling up the regulatory gaps. There has been a significant shift in the manner in which the market now operates since the CLRC first came up with its report in 2019. With a few more changes to the 2020 Bill, the 2022 Bill is now set to be tabled and discussed in the Lok Sabha (Lower House of the Parliament).

There is a dearth of literature that maps the evolution of changes that have been proposed by the CLRC Report, the 2020 Bill and the 2022 Bill. The Dialogue seeks to fill this gap. This is a preliminary analysis that does not claim to be an exhaustive list or analysis of all changes proposed by the 2022 Bill. However, the paper covers the key amendments that have been suggested by way of the Bill along with analysis and

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<sup>1</sup> The Competition Act, 2002, [https://www.mca.gov.in/Ministry/actsbills/pdf/The\\_competition\\_Act\\_2002.pdf](https://www.mca.gov.in/Ministry/actsbills/pdf/The_competition_Act_2002.pdf)

<sup>2</sup> The Competition (Amendment) Bill, 2022, [https://prsindia.org/files/bills\\_acts/bills\\_parliament/2022/Competition%20\(Amendment\)%20Bill,%202022.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2022/Competition%20(Amendment)%20Bill,%202022.pdf)

<sup>3</sup> The Competition (Amendment) Bill, 2020, [https://www.taxmanagementindia.com/file\\_folder/folder\\_5/Draft\\_Competition\\_Amendment\\_Bill\\_2020.pdf](https://www.taxmanagementindia.com/file_folder/folder_5/Draft_Competition_Amendment_Bill_2020.pdf)

<sup>4</sup> Report of the Competition Law Review Committee, July 2019, <https://www.ies.gov.in/pdfs/Report-Competition-CLRC.pdf>

recommendations. The following chapters will provide a brief evolution of various changes suggested to the Indian competition framework and have been divided into relevant thematic areas. We have also provided a brief analysis of these changes and made recommendations that we hope will be taken into account going forward.

## 4. Definitions

The 2022 Bill re-defines the terms ‘relevant product market’, ‘party’ and ‘enterprise’. These changes brought about by the 2022 Bill in various definition clauses are mostly encouraging. For instance, antitrust lawyers have consistently refined relevant markets on the basis of both demand and supply side substitutability in cases before the CCI. It is encouraging to see its explicit incorporation within the Bill, enabling more accurate delineations of RPM. Further, insertion of definition of ‘party’ and explicit recognition that only ‘economic’ activities of enterprises will be subject to competition law will go a long way in avoiding uncertainty over the scope of the law and stakeholders covered under it. However, excluding associations of buyers from the definition of ‘cartels’, as provided by the 2020 Bill, can result in cartels, where buyers enjoy significant monopsony power, to evade the scrutiny of the CCI. It is important that policymakers revisit their stance on this and consider including buyers within the definition as well.

The table below (as well as those in subsequent chapters) highlights the changes that the 2022 Bill proposes in the ‘Proposed Change’ column. The column also includes the changes that have been recommended on previous occasions, i.e. by the CLRC or the 2020 Bill but do not find a mention in the 2022 Bill. Thereafter, it traces the evolution of these changes through three key documents, i.e., the CLRC Report, the 2020 Bill and the 2022 Bill. The mapping will shed light on the manner in which recognition and treatment of these changes have evolved in recent years, culminating into the latest reiteration of amendments, i.e., the 2022 Bill.

**Table 1. Evolution of changes pertaining to definitions**

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
1.	Include supply-side substitutability within the definition of 'relevant product market'	Recommended the incorporation of the same, to acknowledge suppliers shift from one product to another, resulting in additional criteria that impacts the scope of relevant market. <sup>5</sup>	Proposed a change in the definition of 'relevant product market' in line with the CLRC's recommendation to include products, the production or supply of which are considered 'interchangeable or substitutable by the supplier' <sup>6</sup>	Retained as provided in the 2020 Bill. <sup>7</sup>
2.	Include association of "buyers" within the scope of cartel	Recommended the express recognition of buyer cartels by amending the definition of the term 'cartel'. <sup>8</sup>	Proposed the insertion of the term association of 'buyers' within the definition of the term 'cartel'. <sup>9</sup>	Does not provide association of buyers to be within the definition of cartel.
3.	Define the scope of the term 'consumer'.	Recommended the amendment of the definition of the term	Proposed the inclusion of 'a department of the government' in addition to a person under the	Does not amend the definition of the term.

<sup>5</sup> Pg. 50, Report of Competition Law Review Committee, Ministry of Corporate Affairs, July 2019 (hereinafter CLRC Report).

<sup>6</sup> Clause 2 of the 2020 Bill, adding Section 2(t) to the Act.

<sup>7</sup> Clause 3 of the 2022 Bill, adding Section 2(t) to the Act.

<sup>8</sup> Pg. 47, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>9</sup> Clause 2 of the 2020 Bill, adding Section 2(c) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
		'consumer' to include reference to a department or an agency of the Government. <sup>10</sup>	definition of consumer. <sup>11</sup>	
4.	Define the scope of the term 'party'	Recommended the insertion of the definition for the term in line with the definition provided under the CCI (General Regulations), 2009. <sup>12</sup>	Proposed the insertion of a definition to include a consumer or an enterprise or an information provider, or a consumer association or a trade association, or the governments or statutory authorities, including persons and enterprises against whom proceedings are ongoing before the Commission. <sup>13</sup>	Retained as provided in the 2020 Bill. <sup>14</sup>
5.	Clarification that only economic activities should be investigated.	Recommended the amendment of the term 'enterprise' to expressly clarify that the legal form of an entity or the	Proposed the amendment to the definition of 'enterprise' to include engagement in economic activity, in line with the CLRC's recommendation. <sup>16</sup>	The definition of 'enterprise' now clearly mentions that an entity who is engaged in 'economic activity' would be

<sup>10</sup> Pg. 48, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>11</sup> Clause 2 of the 2020 Bill, adding Section 2(f) to the Act.

<sup>12</sup> Pg. 49, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>13</sup> Clause 2 of the 2020 Bill, adding Section 2(kc) to the Act.

<sup>14</sup> Clause 3 of the 2022 Bill, adding Section 2(ka) to the Act.

<sup>16</sup> Clause 2 of the 2020 Bill, adding Section 2(d) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
		way it is financed are not relevant factors; it further recommended that the definition may specifically refer to engagement in economic activities. <sup>15</sup>		considered as an enterprise. <sup>17</sup>

## 5. Anti-Competitive Agreements

Section 3 of the Act prohibits agreements which cause or are likely to cause AAEC within India. It prohibits anti-competitive agreements that are entered between horizontally placed players, i.e., at the same level of the supply chain and vertically placed players, i.e., at different levels of the supply chain. Similar to the 2020 Bill, agreements that do not fall strictly within the scope of horizontal or vertical agreements are proposed by the 2022 Bill to be included within the Act. This has important implications for digital markets where commercial arrangements are often multi-sided. Change of this provision will allow CCI to bring these arrangements within the ambit of Section 3(4) of the Act and investigate the same.

Further, the 2022 Bill follows the 2020 Bill to provide that a horizontal anti-competitive agreement shall be presumed to include not only those entities who are not engaged in identical or similar trade pertaining to the agreement, but also those who '*actively participate in the furtherance of the agreement*', even though they are not a part of the agreement. The provision, therefore, now also includes hub and spoke cartels (H&S),

<sup>15</sup> Pg. 48-49, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>17</sup> Clause 3 of the 2022 Bill, amending Section 2(b) to the Act.

i.e., agreements where market players enter into an agreement to share sensitive information through a vertical common player. We appreciate that Hub & Spokes cartels have been recognised by the Bill, considering their rising prevalence in new markets. However, we believe that it should not be subjected to a *per se* analysis by including it in Section 3(3). Rather, a rule of reason approach that necessitates proving AAEC, should be taken.

**Table 2. Evolution of changes pertaining to anti-competitive agreements**

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
1.	Include Hub & Spokes (H&S) cartels within the scope of anti-competitive agreements.	Recommended the incorporation of the same to expressly cover 'hubs' and impute liability based on the existing rebuttable presumption principle, without including any element of 'knowledge' or 'intention'. <sup>18</sup>	Proposed the insertion of a new proviso in line with the CLRC's recommendation, <sup>19</sup> that parties, though not engaged in identical or similar trade, shall be presumed to be a part of the arrangement if they actively participate in its furtherance.	Retained as provided in the 2020 Bill. <sup>20</sup>
2.	Include agreements that do not strictly fall into the definition of	Recommended the insertion of an express provision to comprehensively cover all kinds of	Proposed the inclusion of a provision so that the scope of Section 3(4) shall include	Retained as provided in the 2020 Bill. <sup>23</sup>

<sup>18</sup> Pg. 62, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>19</sup> Clause 3 of the 2020 Bill, adding Proviso to Section 3 sub-section (3) to the Act.

<sup>20</sup> Clause 4 of the 2022 Bill, adding Proviso to Section 3 sub-section (3) to the Act.

<sup>23</sup> Clause 4 of the 2022 Bill, adding Section 3, sub-section 4 to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
	'horizontal' or 'vertical' agreements.	anti-competitive agreements that may not strictly fall within the categorisation of horizontal or vertical arrangements. <sup>21</sup>	"any other agreement" not restricted to agreements amongst those at different stages. <sup>22</sup>	
3.	Empowers the Commission to allow withdrawal of leniency petition.	Recommended a change to enable withdrawal of leniency applications and specify the time period for this in the Lesser Penalty Regulations. <sup>24</sup>	In line with the CLRC's recommendation, enabled the withdrawal of leniency applications. <sup>25</sup>	Retained as provided in the 2020 Bill. <sup>26</sup>
4.	Recognition of the leniency plus regime	Recommended the incorporation of the regime, which aims at encouraging companies already under investigation under one cartel to report other cartels.	Inserts a new sub-section providing the CCI the power to impose lesser penalty on applicants in the first cartel, without prejudice to the applicant in the	Retained as provided in the 2020 Bill <sup>28</sup> .

<sup>21</sup> Pg. 64, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>22</sup> Clause 3 of the 2020 Bill, amending Section 3(B) to the Act.

<sup>24</sup> Pg. 94, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>25</sup> Pg. 29-30, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>26</sup> Pg. 15-16, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>28</sup> Clause 33 of the 2022 Bill, substituting Section 46 of the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
			newly disclosed cartel <sup>27</sup> .	

## 6. Abuse of Dominant Position

In the context of abuse of dominant position, the 2022 Bill misses the opportunities to make two crucial changes. *Firstly*, Section 4 of the Act currently does not require an establishment of harm as an effect of the alleged abuse to establish contravention of Section 4 of the Act. The Bill does not change this, as was anticipated. An effects based test for abuse of dominance violations would be in line with the objective of the Act, that is to preserve integrity of the market. Punishing conduct that has no adverse impact on competition is contrary to this objective, as has been observed by policy stakeholders<sup>29</sup>.

Secondly, the Bill fails to extend the IPR defence to Section 4 of the Act, as was proposed by the 2020 Bill. Introduction of the IPR defence would have allowed defendants to reasonably exercise their rights without violating the Act but doing away with it can hurt innovation by players. At the same time, the change would have been a move towards harmonisation of the Act, bringing the treatment of Sections 3 and 4 in the context of IPR in line with each other.

**Table 3: Evolution of changes pertaining to abuse of dominant position**

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
1.	Subject abuse of dominant position allegations to an effects test	Analysing the extant decisional practice before the CCI, and noting the international jurisprudence on the same, the	Did not provide for an effects test for the determination of violations.	Did not provide for an effects test for the determination of violations.

<sup>27</sup> Clause 46 of the 2020 Bill, inserting sub-section (3) to Section 46 of the Act.

<sup>29</sup> Roundtable Discussion 'Future of India's Competition Law Regime' by The Dialogue, held on March 10, 2022.



Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
	to establish a violation.	Committee recommended that there was no need for a legislative amendment. <sup>30</sup>		
2.	Extend the right to restrict IPR infringement to cases involving abuse of dominant position.	Recommended the incorporation of a new provision to allow for the reasonable exercise of IPR as a defence against allegations of abuse of dominance. <sup>31</sup>	Proposed the insertion of a new provision, in line with the CLRC's recommendation. <sup>32</sup>	Did not propose the extension of IPR defence to Section 4 cases.

## 7. Merger Control

Merger control refers to the process of reviewing proposed transactions under competition law. Sections 5 and 6 of the Act are the primary provisions dealing with the same. The Bill brings a positive change in the mechanism, by proposing a 'deal value' jurisdictional threshold of Rs. 2000 crores. This replaces the 2020 Bill's suggestion of empowering the Centre to notify additional thresholds in 'public interest'. The Dialogue, in the past, had argued for this change, highlighting the uncertainty and lack of transparency that was inherent in the 2020 Bill's suggestion<sup>33</sup>. The Bill also makes the laudatory move of ensuring that a 'local nexus' is present in the transaction that is being notified to the CCI, as recommended by various stakeholders in the past<sup>34</sup>. We welcome the 2022 Bill's proposal and anticipate clear guidelines on the manner in which these thresholds will be implemented.

<sup>30</sup> Pg. 108, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>31</sup> Pg. 115, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>32</sup> Clause 5 of the 2020 Bill, adding Section 4(A) to the Act.

<sup>33</sup> Saksham Malik, Indian Merger Control Thresholds: Effects of Recent Amendments on Digital Markets, KLUWER COMPETITION LAW BLOG, <http://competitionlawblog.kluwercompetitionlaw.com/2022/01/10/indian-merger-control-thresholds-effects-of-recent-amendments-on-digital-markets/>.

<sup>34</sup> Roundtable Discussion 'Future of India's Competition Law Regime' by The Dialogue, held on March 10, 2022.

The Bill also makes important clarifications on the scope of the terms ‘control’ and ‘turnover. While the move is a positive one, the former should not be explained to mean merely ‘material influence’. Material influence has been regarded as the lowest form control by the CCI on previous instances<sup>35</sup>, followed by de jure/de facto control, widening the scope of ‘control’ extensively. Either a higher standard of control or a clearer delineation of ‘material influence’ needs to be provided. The Bill also proposes changes that have the potential to facilitate ease of doing business in India, i.e., explaining the term ‘other agreement’ post which a transaction is to be notified before the CCI and flexibility in the time provided to notify a transaction before the Commission., and reducing the time period between notifying the Commission and the combination coming into effect, from 210 days to 150 days. These moves are likely to be received well by industry stakeholders, seeking to engage in inter and intra group cooperation restructuring in the country.

**Table 4: Evolution of changes to merger control framework**

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
1.	Provide the relevant authority the power to prescribe additional merger control thresholds criteria.	Recommended providing the Central Government with the power to prescribe additional threshold criteria. <sup>36</sup>	Proposed empowering the Central Government to prescribe thresholds in ‘public interest’, after consulting with the CCI. <sup>37</sup>	Removed the provision, in effect not empowering the Central Government to prescribe additional thresholds in public interest.
2.	Introduce a deal value threshold for	Recommended an enabling provision	Did not explicitly include a deal	Introduced the deal value threshold

<sup>35</sup> Ultratech Cement In Re, Competition Commission of India, <https://www.casemine.com/judgement/in/5dd05f4946571b625cae47e7>

<sup>36</sup> Pg. 121, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>37</sup> Clause 6 of the 2020 Bill, adding Section 5(c) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
	merger notification, subject to a local nexus requirement.	that empowers the government to introduce necessary thresholds including a deal-value threshold for merger notification, as well as a local nexus criterion. <sup>38</sup>	value threshold in the merger notification criteria.	criteria while providing that the party to the transaction must have substantial business operations in India. <sup>39</sup>
3.	Clarify the meaning of 'control' within the context of merger control	Recommended the introduction of a 'material influence' standard for determination of 'control' under Section 5. <sup>40</sup>	Proposed an amendment in the definition of 'control', to include the 'material influence' standard. <sup>41</sup>	Retained as provided in the 2020 Bill. <sup>42</sup>
4.	Define the term 'turnover' within the context of merger control	Recommends the exclusion of intra-group sales, indirect taxes, trade discounts, and revenue generated outside India while calculating turnover, including	Proposed the insertion of a definition for 'turnover' in India in line with the CLRC's recommendation. <sup>44</sup>	Retained as provided in the 2020 Bill. <sup>45</sup>

<sup>38</sup> Pg. 133, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>39</sup> Clause 44 of the 2022 Bill, adding Section 64, sub-section (2) to the Act.

<sup>40</sup> Pg. 117, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>41</sup> Pg. 6, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>42</sup> Clause 6 of the 2022 Bill, amending Section 5 Explanation (a) to the Act.

<sup>44</sup> Clause 6 of the 2022 Bill, amending Section 5 Explanation (c) to the Act.

<sup>45</sup> Clause 6 of the 2022 Bill, amending Section 5 Explanation (d) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
		empowering the Central Government to prescribe rules for calculation. <sup>43</sup>		
5.	Provide more flexibility in the time given to notify a transaction.	-	Proposed that instead of filing the notice within 30 days of approval of proposal or execution of agreements, the same has to be filed following the approval of proposal or execution of any agreement. <sup>46</sup>	Retained as provided in the 2020 Bill, and further clarifies that the notice shall be filed before the consummation of the combination. <sup>47</sup>
6.	Clarify the meaning of 'other document' post the execution of which, the transaction is to be notified.	Recommended the insertion of a definition of 'other document' as given in the Combination Regulations, to the Explanation to section 6(2). <sup>48</sup>	Proposed the insertion of a definition for 'other document' to mean, <i>inter alia</i> , a "binding document" conveying an agreement or decision to acquire control, shares,	Retained as provided in the 2020 Bill, however, does away with the word "binding". <sup>50</sup>

<sup>43</sup> Pg. 55, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>46</sup> Clause 7 of the 2020 Bill, amending Section 6(a) to the Act.

<sup>47</sup> Clause 7 of the 2022 Bill, adding (a) (i) in Section 6 sub-section 2 to the Act.

<sup>48</sup> Pg. 169, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>50</sup> Clause 7 of the 2022 Bill, adding (a) (iv) in Section 6 sub-section 2 to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
			voting rights or assets. <sup>49</sup>	
7.	Reduce the time taken for assessment of notified transactions	-	Proposed the amendment of section 6(2A) to reduce the time period between notifying the Commission and the combination coming into effect, from 210 days to 150 days. <sup>51</sup>	Retained as provided in the 2020 Bill <sup>52</sup>
8.	Dissuade parties to a combination from making false submissions.	Recommended the enhancement of penalty, especially in context of Green Channels. <sup>53</sup>	Incorporated in line with the CLRC's recommendation, enhancing the penalty from one crore to five crores. <sup>54</sup>	Retained as provided in the 2020 Bill. <sup>55</sup>

<sup>49</sup> Pg. 8, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>51</sup> Clause 7 of the 2022 Bill, amending (c) in Section 6 sub-section 2 to the Act.

<sup>52</sup> Clause 7 of the 2022 Bill, amending Section 6 to the Act.

<sup>53</sup> Pg. 148, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>54</sup> Clause 39 of the 2020 Bill, amending Section 44 of the Act.

<sup>55</sup> Clause 31 of the 2022 Bill, amending Section 44 of the act.

## 8. Governance Mechanism and Policy Instruments

The most notable absence from the 2022 Bill is the framework for a Governing Board, which was introduced in the 2020 Bill. The Board was given extensive powers and was touted to be a major reform to the governance mechanism of the CCI. However, policy analysts had recommended<sup>56</sup> either removing the Governing Board or introducing safeguards to maintain transparency in its functioning to protect the CCI's independence and accountability. The change to not introduce the Board is an encouraging one. However, it would be prudent to introduce other measures that can mitigate the concerns the Board was expected to tackle, i.e., reducing the CCI's workload and establishing a cohesive mechanism to develop India's competition policy.

The 2022 Bill expands the rule making power of the Central Government and the regulation making power of the CCI by including new mandates. A new provision empowering the CCI to issue guidance documents has also been introduced. While these changes are expected to enable the relevant authorities to comprehensively cover nuances of competition law and policy, they still require measures to ensure transparency. The Bill makes an effort towards this by delineating a public consultation process. The process is limited to the regulation making power of the CCI, allowing the Commission's guidance making and Centre's rule making powers to be exercised with notable opacity. Further, it carves out an exception to follow the public consultation process when the CCI is required to make or amend regulations 'urgently in public interest'. The scope of the term is unclear and empowers the CCI to avoid an extensive public consultation process. The exception needs to be either removed or explained clearly.

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<sup>56</sup> Karan Shelke and Saksham Malik, De jure Independence of the Competition Commission of India, SPRF India, <https://sprf.in/de-jure-independence-of-the-competition-commission-of-india/>.

**Table 5: Evolution of changes to governance and policy making framework**

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
1.	Introduce a Governing Board consisting of CCI members and officials from the Central Government.	Recommended the constitution of a Governing Board with a specific composition <sup>57</sup> , including the Chairperson, whole-time members and part-time members.	Proposed the constitution of a Governing Board in line with the CLRC's recommendations. <sup>58</sup>	Did not provide for the constitution of a Governing Board.
2.	Provide the Governing Board with wide ranging powers	Recommended that the Governing Board shall perform quasi-legislative functions, drive policy decisions and perform a supervisory role, however, it must not be involved in the discharge of the adjudicatory functions of the CCI. <sup>59</sup>	Proposed that the Governing Board shall have wide-ranging powers including making regulations on competition matters and administration of entering into MoUs or arrangements or contracts; taking advocacy measures; and assisting in drafting a National Competition Policy. <sup>60</sup>	Did not provide for the constitution of a Governing Board.

<sup>57</sup> Pg. 20, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>58</sup> Clause 9 of the 2020 Bill, adding Section 1(A) to the Act.

<sup>59</sup> Pg. 21-22, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>60</sup> Clause 19 of the 2020 Bill, adding Section 18(A) sub-section (2)(d) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
3.	Expand the rule-making power of the Central Government	-	Proposed the expansion of the rule-making power of the Central Government by empowering them to create rules on new subjects, including the form of guidelines by the CCI. <sup>61</sup>	Retained the expansion of the rule-making power of the Central Government, to accommodate the new subjects it proposes, including the form of guidelines. <sup>62</sup>
4.	Expand the regulation-making power of the CCI	-	Proposed the expansion of the regulation-making power of the Commission by empowering them to create regulations on new subjects, including the form of guidelines. <sup>63</sup>	Retained the expansion of the regulation-making power of the Commission to accommodate the new subjects it proposes, including the manner of determining substantial business operations in the context of merger control thresholds, manner in which

<sup>61</sup> Clause 56 of the 2020 Bill, amending Section 63 to the Act.

<sup>62</sup> Clause 43 of the 2022 Bill, adding Section 63 to the Act.

<sup>63</sup> Clause 57 of the 2020 Bill, amending Section 64 to the Act.



Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
				parties may propose modifications and manner of withdrawal of leniency applications. <sup>64</sup>
5.	Ensure transparency and accountability in the regulation making power of the CCI	Recommended a formal framework to account for including provisions for public consultation, publishing responses to public comments, and periodic review of such legislations; it also recommended carving exceptions for the same, such as in urgent public interest and internal governance matters. <sup>65</sup>	Provided in line with the recommendations of the CLRC.	Retained as provided in the 2020 Bill. <sup>66</sup>
6.	Publish guidelines on competition	Recommended that in order to foster certainty in	Proposed a mechanism in line with the CLRC's	Retained as provided in the 2020 Bill. <sup>69</sup>

<sup>64</sup> Clause 44 of the 2022 Bill, amending Section 64, Sub-section (2)(i) to the Act.

<sup>65</sup> Pg. 34, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>66</sup> Clause 45 of the 2022 Bill, adding Section 64 (A) to the Act.

<sup>69</sup> Clause 45 of the 2022 Bill, adding Section 64 (B) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
	policy instruments	interpretation and in line with international best practices, the Commission should endeavour to provide non-binding guidance on key issues. <sup>67</sup>	recommendation. It provided, <i>inter alia</i> , that the Commission may publish guidelines on a request made by a person or <i>suo moto</i> ; such guidance shall not be binding; publish guidelines for penalties. <sup>68</sup>	

## 9. The Constitution and Functions of the CCI

The 2022 Bill makes notable changes on the appointment of the DG, restrictions on former CCI officials and international cooperation of the CCI. Notably, the 2022 Bill provides that the members of the CCI, and the selection committee for the members shall now also include those with ‘specialised knowledge and professional experience’ of technology. The change is likely to help the CCI equip itself with the expertise required to analyse the constantly evolving world of digital markets. The move is likely to be followed by similar amendments to the structure of the CCI itself. In June this year, the Chairperson of the CCI revealed that the Commission is planning to set up a Digital Markets Unit to better understand and assess the conduct of e-commerce platforms and other digital economy firms so that any anti-competitive behaviour of new age businesses do not go undetected by the regulatory framework<sup>70</sup>. The manner in which this unit will be placed in the larger framework remains to be seen. In the meantime, however, it is encouraging that the Commission is gradually equipping itself to tackle the emerging challenges of digital markets.

<sup>67</sup> Pg. 36, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>68</sup> Clause 59 of the 2022 Bill, adding Section 64 (B) to the Act.

<sup>70</sup> Gireesh Chandra Prasad, CCI to set up digital market unit to assess big tech behaviour, LIVE MINT, <https://www.livemint.com/news/india/cci-to-set-up-digital-market-unit-to-assess-big-tech-behaviour-11654956627031.html>.

**Table 6: Evolution of changes to constitution and functioning of the CCI**

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
1.	Ensure that professionals with knowledge of technology form part of the CCI	Recommended additional qualifications for the members of the CCI, such as the ability and knowledge in relation to 'administration' and 'technology'. <sup>71</sup>	Proposed the recommendation made by the CLRC (ability and knowledge in relation to 'administration' and 'technology'). <sup>72</sup>	Retained only the additional qualification in relation to technology from the 2020 Bill, and does away with 'administration'. <sup>73</sup>
2.	Expand the restrictions on former CCI members to engage with parties with proceedings before it.	-	Proposed the substitution expansion on the restrictions on employment of CCI members. In addition to the earlier restrictions, it included 'any person who appears or has appeared under section 35' as an entity alongside enterprises <sup>74</sup>	Retained as provided in the 2020 Bill. <sup>76</sup>

<sup>71</sup> Pg. 21, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>72</sup> Clause 9 of the 2022 Bill, amending Section 8, sub-section 1(A) to the Act.

<sup>73</sup> Clause 9 of the 2022 Bill, amending Section 8 sub-section (2) to the Act.

<sup>74</sup> Clause 11 of the 2022 Bill, amending Section 12(b) to the Act.

<sup>76</sup> Clause 11 of the 2022 Bill, amending Section 12 (1) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
			Additionally, it expands it further by providing that former CCI members shall not advise as consultants, on retainers or in any other capacity. <sup>75</sup>	
3.	DG should be appointed by the CCI, not the Central Government	Recommended the formal folding of the office of the DG into the CCI as an 'Investigation Division'. <sup>77</sup>	Proposed that the DG be appointed by the Commission. While this is not exactly as the CLRC recommended, it is broadly in line with it. <sup>78</sup>	Proposed that the DG be appointed by the CCI, with prior approval of the Central Government. <sup>79</sup>
4.	Enhance cooperation in competition law enforcement	-	Proposed that the Governing Board may enter into MoUs or arrangements with departments or statutory authorities of the government. <sup>80</sup>	Proposed that in addition to any foreign agency, the CCI can enter into MoUs or arrangements with departments or statutory authorities of the government. <sup>81</sup>

<sup>75</sup> Clause 11 of the 2022 Bill, amending Section 12(2) to the Act.

<sup>77</sup> Pg. 26, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>78</sup> Pg. 14, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>79</sup> Clause 12 of the 2022 Bill, amending Section 16 sub-section 2 to the Act.

<sup>80</sup> Clause 19 of the 2020 Bill, adding Section 18(A) to the Act.

<sup>81</sup> Clause 13 of the 2022 Bill, amending Section 18 to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
5.	Chairperson or members not to have a second/casting vote	Relying on the DHC decision in the <i>Mahindra</i> case, it recommended that a casting vote for adjudication should not be provided <sup>82</sup> .	Proposed the omission the part of the provision granting a casting vote <sup>83</sup> .	Proposed the incorporation by explicitly omitting the part of the provision granting a casting vote <sup>84</sup> .

## 10. Procedure before the CCI

The Bill makes various changes with the aim of making the procedure before the CCI more efficient and reducing the pendency of cases. Importantly, it prescribes a limitation period of 3 years within which the information shall be filed. Further, the Bill now allows parties to call experts from multiple fields. Antitrust lawyers are often limited in their capacity to analyse important questions of international trade and economics. Hence, economists and additional consulting firms are hired for these purposes. The move would allow parties and antitrust lawyers to ensure that these experts can directly appear before the CCI and provide cogent reasoning for their analysis. The move would also ensure that the CCI is able to make correct determinations in cases, after being provided an analysis from multiple perspectives and experts.

<sup>82</sup> Pg. 38, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>83</sup> Clause 25 of the 2020 Bill, amending Section 22(3) of the Act.

<sup>84</sup> Clause 18 of the 2020 Bill, amending Section 22(3) of the Act.

**Table 7: Evolution of changes to procedures to present before the CCI**

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
1.	Prescribe a limitation period for filing an information before the CCI	-	Did not provide for a limitation period for filing an information before the CCI.	Proposed that information shall be filed within 3 years of the cause of action, except with condonation of delay. <sup>85</sup>
2.	Make the process of reference easier.	Recommended the revision of sections 21 and 21A to enable the various sectoral regulators and the Commission to make references to each other, such a reference to be allowed even in the absence of any contradiction or conflict between their respective ambits. <sup>86</sup>	Proposed that statutory authorities may, <i>suo moto</i> , make references to the CCI. <sup>87</sup>	Retained as provided in the 2020 Bill. <sup>88</sup>
3.	Reduce the pendency of	Recommended the revision of section 26 to expressly	Proposed an amendment in line	Retained as provided in the 2020 Bill. <sup>91</sup>

<sup>85</sup> Clause 55 of the 2022 Bill, adding Section 59(A) to the Act.

<sup>86</sup> Pg. 40-41, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>87</sup> Pg. 18, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>88</sup> Clause 17 of the 2022 Bill, amending Section 21(A) to the Act.

<sup>91</sup> Clause 19 of the 2022 Bill, adding Section 26 sub-section (9) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
	cases before CCI	enable the Commission to pass orders for the closure of certain cases wherein the commission has already decided on the matter on the same or substantial facts and issues in its previous orders. <sup>89</sup>	with the CLRC's recommendation. <sup>90</sup>	
4.	Make investigation process more comprehensive	Recommended empowering the Commission to direct a further supplementary investigation by the DG upon receipt of his initial report. <sup>92</sup>	Proposed an amendment in line with the CLRC's recommendation. <sup>93</sup>	Retained as provided in the 2020 Bill. <sup>94</sup>
5.	Make the process of assessing mergers more transparent and comprehensive	Recommended enabling both the Commission and the notifying parties equal opportunities for proposing	Proposed revisions to Sections 29 and 31, in line with the CLRC's recommendation. <sup>96</sup>	Retained as provided in the 2020 Bill. <sup>97</sup>

<sup>89</sup> Pg. 75, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>90</sup> Pg. 19, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>92</sup> Pg. 77, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>93</sup> Pg. 19, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>94</sup> Clause 19 of the 2022 Bill, adding Section 26 sub-section (3B) to the Act.

<sup>96</sup> Clause 22 of the 2022 Bill, adding Section 20 to the Act.

<sup>97</sup> Clause 22 and 23 of the 2022 Bill, adding Section 29(A)(1) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
		<p>remedies at various junctures of the merger assessment process, the final decision lying with the Commission. Further, it, <i>inter alia</i>, proposed empowering the Commission and the parties to propose and negotiate with each other throughout the review process.<sup>95</sup></p>		
6.	Allow the parties to call experts.	<p>Recommended enabling a person, enterprise, or the DG to call upon domain experts from economics, commerce, international trade or any other discipline.<sup>98</sup></p>	<p>Proposed an amendment in line with the CLRC's recommendation to enable a person, enterprise, or the DG to call upon domain experts from economics, commerce, international trade, or any other discipline.<sup>99</sup></p>	<p>Retained the proposed provision from the 2020 Bill that allowed a party to call upon experts, however, excludes enterprise and the DG from it.<sup>100</sup></p>

<sup>95</sup> Pg. 145, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>98</sup> Pg. 90, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>99</sup> Pg. 24, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>100</sup> Clause 25 of the 2022 Bill, adding Section 35(2) to the Act.



## 11. Other significant changes

The Bill prescribes additional criteria for determination of AAEC, RGM and RPM. Notably, it does not include the 2020 Bill's proposal that 'any other criteria' may be prescribed by regulations for determination of these. The change had the potential to cause uncertainty for the industry by providing the Governing Board substantial powers to determine factors important for competition law. Further, The Bill proposes the anticipated inclusion of the commitments and settlements framework in the Act. The Bill permits a party undergoing an investigation by the CCI to move an application for settlement or voluntarily undertake certain commitments. Subject to this, the CCI shall close the investigation if it deems fit, thereby also rendering it the discretion to act upon such matter.

However, there exist certain challenges pertaining to the framework that need to be discussed. The sufficiency of the timeline within which the commitment framework can be operational needs to be discussed. Currently, the provision does not let the opposite party to offer commitments prior to CCI directing an investigation prior to the prima facie order. While certain other jurisdictions allow a wider timeline, some do not have a fixed timeline for commitment discussions. In this context, it needs to be discussed if the timeline provided for the commitment is sufficient and if not, it requires to be changed. In terms of settlements, the mechanism should allow the parties to settle the case *inter-se* before an order by CCI to conduct a DG investigation to the CCI directing an investigation, thereby allowing the informant to withdraw the information filed. As an alternative, the Bill should give the option of settlement to the party at a later stage as well. Further, the requirement of admission of guilt in the settlement and commitment framework needs to be clarified, to ensure that the applicant is aware if the process is with or without prejudice to it.

**Table 8: Evolution of other significant changes**

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
1.	Prescribe additional criteria for determination of AAEC	Recommended that the benefits or harm to consumers should be a relevant factor, and that any additional factor may be further specified by regulations, making the list inclusive. <sup>101</sup>	Proposed an amendment in line with the CLRC's recommendation. <sup>102</sup>	Retained as provided in the 2020 Bill, however, does away with the provision providing for any other additional factors via regulations. <sup>103</sup>
2.	Prescribe additional criteria for determination of RGM	Recommended the incorporation of "characteristics of goods and services" and "costs associated with switching supply / demand to other areas" as additional factors, and that any additional factor may be further specified by regulations, making the list inclusive. <sup>104</sup>	Proposed an amendment in line with the CLRC's recommendation. <sup>105</sup>	Retained as provided in the 2020 Bill, however, does away with providing for any other additional criteria via regulations. <sup>106</sup>
3.	Prescribe additional	Recommended the incorporation of	Proposed an amendment in	Retained as provided in the 2020 Bill,

<sup>101</sup> Pg. 168, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>102</sup> Clause 21 of the 2020 Bill, amending Section 19 to the Act.

<sup>103</sup> Clause 14 of the 2022 Bill, amending Section 19 to the Act.

<sup>104</sup> Pg. 71, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>105</sup> Clause 21 of the 2020 Bill, adding Section 19 (f) to the Act.

<sup>106</sup> Clause 14 of the 2022 Bill, amending Section 19 (i) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
	criteria for determination of RPM	'switching costs' and 'categories of customers' as additional factors, and that any additional factor may be further specified by regulations, making the list inclusive. <sup>107</sup>	line with the CLRC's recommendation, alongside amending 19(7)(a) to include the nature of services. <sup>108</sup>	however, does away with providing for any other additional criteria via regulations. <sup>109</sup>
4.	Introduce a settlement mechanism.	Recommended a comprehensive settlement mechanism that, <i>inter alia</i> , enables the Commission to accept settlements from parties and pass settlement orders; the procedure and other particulars are to be provided for by regulations. <sup>110</sup>	Proposed an amendment in line with the CLRC's recommendation. <sup>111</sup>	Retained the mechanism as provided in the 2020 Bill, and additionally enables the parties and DG to submit their objections and suggestions in the process. <sup>112</sup>
5.	Introduce a commitment mechanism	Recommended a comprehensive mechanism that, <i>inter alia</i> , enables the CCI	Proposed an amendment in line with the CLRC's	Retained the mechanism as provided in the 2020 Bill, and additionally

<sup>107</sup> Pg. 72, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>108</sup> Pg. 17, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>109</sup> Pg. 17, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>110</sup> Pg. 43-44, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>111</sup> Pg. 38, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>112</sup> Clause 35 of the 2022 Bill, adding Section 48 (A)(1) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
		to accept commitments and to pass orders subject to certain criteria; the procedure and other particulars are to be provided for by regulations. <sup>113</sup>	recommendation. <sup>114</sup>	enables the parties and DG to submit their objections and suggestions. <sup>115</sup>
6.	Expand the scope of competition advocacy	Recommended the incorporation of a reference to competition 'culture'.	Proposed an amendment in line with the CLRC's recommendation, providing the CCI shall take suitable measures for promotion of competition advocacy and 'culture'. <sup>116</sup>	Retained as provided in the 2020 Bill. <sup>117</sup>
7.	Increase the sources of funding of the CCI	-	Proposed to include all sums received by the Commission from other sources as	Retained as provided in the 2020 Bill. <sup>118</sup>

<sup>113</sup> Pg. 173-174, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>114</sup> Pg. 32-34, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>115</sup> Clause 35 of the 2022 Bill, adding Section 48 (A)(4) to the Act.

<sup>116</sup> Pg. 32, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>117</sup> Clause 36 of the 2022 Bill, adding Section 49, sub-section (3) to the Act.

<sup>118</sup> Clause 37 of the 2022 Bill, adding Section 51 (e) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
			decided by the Government.	
8.	Dissuade delays in furnishing penalties	-	Proposed that no appeal shall be entertained by the NCLAT unless twenty five percent (or as prescribed) of the amount is paid. <sup>119</sup>	Retained as provided in the 2020 Bill. <sup>120</sup>
9.	Expand the right of parties to claim compensation	Recommended the amendment to allow parties to apply for compensation from orders of the SC arising from an appeal of NCLAT. <sup>121</sup>	Proposed an amendment in line with the CLRC's recommendation. <sup>122</sup>	Retained as provided in the 2020 Bill. <sup>123</sup>
10.	Dissuade parties from not complying with orders of the court	-	No material amendment proposed. It retains the original provision which allowed the imposition of penalties on parties in cases	Proposed an amendment to initiate contempt proceedings in case of non-compliance with NCLAT's orders, in case where such compliance is without

<sup>119</sup> Pg. 34, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>120</sup> Clause 39 of the 2022 Bill adding, proviso in Section 53 (B) to the Act.

<sup>121</sup> Pg. 95, CLRC Report, Ministry of Corporate Affairs, July 2019.

<sup>122</sup> Clause 50 of the 2022 Bill, adding in Section 53 (N) to the Act.

<sup>123</sup> Clause 40 of the 2022 Bill, adding Section 53 N, Sub-section 2, (b) to the Act.

Sr. No.	Proposed Change	CLRC Report	2020 Bill	2022 Bill
			of non-compliance. <sup>124</sup>	any reasonable ground. <sup>125</sup>
11.	Ensure that relevant forums are able to compound offences	-	Proposed the insertion of a new provision, to provide that any offence punishable under this act (except ones with imprisonment and/or fine) may be compounded by the NCLAT, or any court before which the proceeding is pending. <sup>126</sup>	Retained as provided in the 2020 Bill. <sup>127</sup>

The 2022 Bill is an important step towards ensuring a progressive and future ready antitrust landscape for the country. Importantly, it fixes various infirmities of the 2020 Bill, especially in the context of the governance framework and prescribing criteria for AAEC, RGM and RPM. However, there are certain areas in which the Bill has the potential to improve.

<sup>124</sup> Clause 51 of the 2020 Bill, adding Section 53(Q) to the Act.

<sup>125</sup> Clause 41 of the 2022 Bill, amending Section 53(Q)(1) to the Act.

<sup>126</sup> Clause 14 of the 2020 Bill, adding Section 19 to the Act.

<sup>127</sup> Clause 42 of the 2022 Bill, adding Section 59(A) to the Act.

To that end, we recommend a consultative process to discuss enforcement of the Bill, inclusion of buyer cartels, effects based approach to abuse of dominant position and hub and spoke cartels, necessary guidance and clarity on certain terms as well as wider timelines for commitments and settlements.



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