

RESPONSE TO THE  
PUBLIC CONSULTATION ON THE  
“COMPETITION COMMISSION OF INDIA  
(COMMITMENT) REGULATIONS AND THE  
COMPETITION COMMISSION OF INDIA  
(SETTLEMENT) REGULATIONS 2023”

---

September 2023 | *Issue No. 109*





**Attribution:** *Response to the Public Consultation on the “Competition Commission of India (Commitment) Regulations and the Competition Commission Of India (Settlement) Regulations 2023”*. Issue No. 109, September 2023, Esya Centre.

**Esya Centre**

B-40 First Floor  
Soami Nagar South,  
New Delhi - 110017, India

**The Esya Centre** is a New Delhi based technology policy think tank. The Centre’s mission is to generate empirical research and inform thought leadership to catalyse new policy constructs for the future. More details can be found at [www.esyacentre.org](http://www.esyacentre.org).

**Layout & Design:** Khalid Jaleel

© 2023 Esya Centre. All rights reserved.

---

## Introduction

The Competition Commission of India (CCI) opened public consultations on two new draft regulations, namely the Competition Commission of India (Commitment) and the Competition Commission of India (Settlement) Regulations 2023 (hereinafter the Draft S&C Regulations), on August 28, 2023. The Esya Centre<sup>1</sup> lauds the CCI for publicly consulting on draft versions of these two important regulations and is pleased to be afforded an opportunity to respond to both.

Our response is divided into two parts. Part I provides a preliminary overview of our response, with Part II delving deeper into specific aspects of the regulations, such as timelines and confidentiality.

## Part I – Preliminary Overview

The Draft S&C Regulations are an important step toward establishing workable procedures and mechanisms for settlements and commitments in abuse of dominance and anti-competitive vertical agreements cases. Enabling parties to settle cases or agree on commitments allows competition concerns to be addressed swiftly, improving contestability and the ease of doing business. Indeed, parties will be tempted to settle cases or agree to commitments as neither process requires an admission of contravention of the Competition Act as a pre-condition.

While the Draft S&C Regulations establish a robust, consultative, and time-bound mechanism, certain aspects of the process require fine-tuning. For instance, the Regulations provide a period of 45 days (further extendable by 30 days) for parties to submit their settlement and commitment applications to the CCI. Not only is the 75-day timeline too short to allow parties to analyse, draft, and vet their applications, but it is also out of sync with the flexible timelines used by competition authorities in the United Kingdom (UK), European Union (EU), and Australia.

Similarly, the regulations empower the CCI to use information a party provides during the settlement or commitment process against it. This provision will likely create a disincentive for parties to participate in

---

1. The Esya Centre is a New Delhi-based technology policy think-tank. Its mission is to generate empirical research and inform thought leadership to catalyse new policy constructs for the future. It simultaneously aims to build domestic institutional capacities for generating ideas that enjoin the triad of people, innovation and value, consequently helping reimagine the public policy discourse in India. More information can be found at: [www.esyacentre.org](http://www.esyacentre.org).

---

settlement and commitment proceedings due to the fear of prosecution based on the information they provide to the CCI.

The Regulations also envision a public consultation process for commitment applications, where considered appropriate by the CCI. Given the confidential nature of information shared during such commitment proceedings, it is questionable if a public consultation is advisable.

Finally, the Regulations must include explicit provisions related to the confidentiality of information parties provide to promote trust and confidence in the settlement and commitment process.

Each submission is detailed further in the following section.

## **Part II – Detailed Response**

### **1. Provide flexible timelines under the Draft S&C Regulations**

Regulation 3(2) of both Draft Regulations provides applicants 45 days to submit their commitment or settlement applications to this CCI. For commitments, applications can be filed within 45 days of the CCI's order u/s 26(i) directing further investigation into the case. Settlement applications can be filed within 45 days of receiving the Director General's Investigation Report. Both periods can be extended by 30 days if the CCI is satisfied that there was sufficient cause for not filing the applications within the 45-day period.

As per the Draft S&C regulations, settlement and commitment applications must spell out the facts of the case, alleged contraventions, details of the settlement/commitment proposal, and mechanisms for ensuring enforcement.<sup>2</sup> However, gathering the relevant data, designing an appropriate settlement/commitment plan, and structuring a monitoring mechanism will likely require more than 75 days for most parties. This is particularly the case for larger organizations where many teams, some across borders, may be involved. Commitments emanate from an understanding of business implications and other knock-on effects which may take time for an organization to process. Ultimately, well-thought out commitments yield better market outcomes, and should be given greater weightage than administrative efficiency. Furthermore, the time required to draft applications will vary considerably based on the nature and complexity of the case in question.

---

2. See Rule 3 of the Draft S&C Regulations.

Most leading jurisdictions adopt flexible timelines, giving parties significant leeway in deciding when to file their applications. For instance, under the UK's Competition Act, 1998, settlement discussions can be initiated before or after the Statement of Objections is issued.<sup>3</sup> Similarly, settlement discussions under EU Council Regulation (EC) No 1/2003 can be started at any time prior to the issuance of a statement of objections.<sup>4</sup> Both jurisdictions do not provide a fixed time, instead allowing applications to be submitted at any time before a certain stage of the process.

NATION	EUROPEAN UNION	UNITED KINGDOM	AUSTRALIA
Timeline for Settlement Application	Anytime prior to the issuance of the statement of objections	Either before or after the issuance of the statement of objections	No fixed timelines for enforceable undertaking <sup>5</sup>
Timeline for Commitment Application	Any date prior: a) to the issuance of a preliminary assessment b) the issuance of the statement of objections <sup>6</sup>	Any time before a decision on infringement is made <sup>7</sup>	No fixed timelines for enforceable undertakings

Hence, the final regulations for settlement and commitment should do away with fixed timelines for the submission of settlement and commitment applications. Instead, the regulations should provide that settlement applications may be submitted any time after the DG's investigation report but before the finalization of the CCI's order. Earlier filing of settlement

3. Rule 9, The Competition Act 1998 (Competition and Markets Authority's Rules) Order 2014, [https://www.legislation.gov.uk/uksi/2014/458/made#:~:text=\(9\)%20Where%20the%20CMA%20has,1\)%20and%20\(2\).](https://www.legislation.gov.uk/uksi/2014/458/made#:~:text=(9)%20Where%20the%20CMA%20has,1)%20and%20(2).)

4. Point 2.1, Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC0702\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC0702(01))

5. Section 87B Guidelines on the use of Enforceable Undertakings, <https://www.accc.gov.au/system/files/Guide%20to%20Section%2087B.pdf>

6. Article 2 EC Regulation 773/2004, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R0773>

7. Section 31A(i) Competition Act 1998, <https://www.legislation.gov.uk/ukpga/1998/41/contents>

---

applications can be incentivized by offering a greater penalty discount. For instance, the maximum penalty discount for submitting settlement applications before the statement of objections is 20% in the UK, whereas the maximum discount for post-statement of objections filing is only 10%.<sup>8</sup> Similarly, commitment applications should be allowed at any point after the CCI's prime-facie order u/s 26(1) but before the DG's investigation report is filed.

## **2. Omit Regulation 12, which empowers the CCI to use information provided by the applicant against it**

Regulation 12 of both Draft Regulations empowers the CCI to use information an applicant provides during the settlement and commitment proceedings against it. In other words, any records, documentary evidence, and data an applicant provides can be used by the CCI if the settlement/commitment process fails or in other inquiries against the applicant. This provision may deter parties from opting for the settlement and commitment process due to the possibility of self-incrimination.

Hence, the draft regulations should omit Regulation 12. Additionally, safeguards should be introduced to ensure that data obtained by teams within the CCI handling settlement and commitments is not shared with teams handling other enforcement actions. For instance, Guidance on Investigation under the UK Competition Act states that information provided by parties as part of settlement discussion will not be provided to the Case Decision Group.<sup>9</sup> This Group is responsible for determining whether the standards for legal infringement of competition law have been met in a certain case.

## **3. Reconsider public consultations on commitment applications**

The Draft Regulation requires the CCI to invite objections and suggestions on commitment and settlement proposals from the party concerned, the DG, and other parties.<sup>10</sup> It is also empowered to invite public comments on the

---

8. Para 14.30, Guidance on the CMA's investigation procedures in Competition Act 1998 cases, <https://www.gov.uk/government/publications/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases>

9. Para 14.23, Guidance on the CMA's investigation procedures in Competition Act 1998 cases, <https://www.gov.uk/government/publications/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases>

10. See Regulation 5(i) of the Draft S&C Regulations.

---

proposal by publishing a “non-confidential summary containing prima facie opinion of the Commission expressed in the order issued under sub-section (i) of section 26 of the Act along with details of the competition concerns, alleged contraventions, commitments offered by the Commitment Applicant and any other detail as deemed fit” on its website.<sup>11</sup>

While there is little doubt that decisions in competition cases have ramifications for the larger public, it remains unclear whether holding public consultations on commitment proposals will benefit the overall process. Indeed, unlike settlement proposals, commitment proposals are submitted before the DG’s report investigation report is filed. At this stage, there is only a prima facie determination of violations. Moreover, opening up the consultation process may also result in third parties submitting motivated and ill-informed comments, which can delay the robust and time-bound nature of commitment proceedings. Finally, publishing the commitment application and other documents provided by the applicant on the CCI’s website broadens the scope for their confidential information being misappropriated and misused.

Notably, consultations on commitments in the UK and EU are limited to interested third parties only. The UK’s Competition and Markets Authority (CMA) consults only those parties likely to be affected by the commitments under the Competition Act, 1998.<sup>12</sup> The proposed Digital Markets, Competition and Consumers Bill also requires the CMA to publish a notice before accepting a commitment and consider any representations relating to that commitment. However, it is unclear if such a notice is to be published publicly and whether representations from the public can be entertained.<sup>13</sup> Similarly, the European Commission invites comments on commitments only from interested third parties. It also retains the discretion to invite comments from other parties that may be potentially concerned by the outcome of the commitments but does not seek public comments.<sup>14</sup>

---

11. See Proviso to s. 5(i) of the Draft Commitment Regulations

12. Para 10.23, Guidance on the CMA’s investigation procedures in Competition Act 1998 cases, <https://www.gov.uk/government/publications/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases>

13. Schedule 1, Digital Markets, Competition and Consumers Bill 2023, <https://publications.parliament.uk/pa/bills/cbill/58-03/0350/220350.pdf>

14. Article 27(4), Regulation (EC) No. 1/2003, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0001>

---

In light of the above, it would be prudent to remove the discretionary power of the CCI to invite public comments on a commitment proposal. This would also help ensure parity between the Draft Settlement and Commitment Regulations.

#### **4. Expressly provide for the protection of confidential information**

Settlement and commitment applications invariably contain confidential information pertaining to the applicant or other interested parties. Ensuring such information is protected from misuse and appropriation is critical to building confidence in the settlement and commitment process. Moreover, settlement and commitment proceedings can also require confidential information to be shared between different applicants in the same case. Hence, it is vital that the Draft Regulations spell out how confidential information will be handled.

Currently, both regulations only make a passing reference to the sharing of non-confidential summaries of the CCI's prima facie opinion, the DG's investigations, and other files submitted by the applicant. It is unclear if the confidentiality regime under Regulation 35 of the Competition Commission of India (General) Regulation, 2009 applies ipso facto to commitment and settlement proceedings.<sup>15</sup> An explicit declaration that the above-stated confidentiality regime will also govern the proceedings under the Draft Regulations would help allay concerns associated with the sharing of confidential information and incentivize parties to opt for settlement and commitments.

Indeed, the CMA's Guidance on Investigation clearly spells out that a statement of facts issued during commitment proceedings and the statement of objections issued during commitment or settlement proceedings will be subject to confidentiality redactions.<sup>16</sup> Where sharing confidential information with other interested parties is necessary, the CMA will explore

---

15. <https://www.cci.gov.in/images/legalframeworkregulation/en/cci-general-regulations-20091652176202.pdf>

16. Guidance on the CMA's investigation procedures in Competition Act 1998 cases, <https://www.gov.uk/government/publications/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases>



---

using confidentiality rings to ensure that information is not misappropriated.<sup>17</sup> The EU's settlement procedure ensures the confidentiality of documents provided during settlement discussions by only making submissions available to interested parties who commit not to make any copy by mechanical or electronic means of information provided to them.<sup>18</sup>

Confidentiality is also maintained when competition authorities publish decisions accepting commitments or settlements. For instance, all settlements agreed to by the Australian Competition and Consumer Commission are published on its website, but aspects of the agreements that contain sensitive business information are redacted.<sup>19</sup> Similarly, the publication of a commitment decision by the EC must have regard to the legitimate interests of undertakings in their business secrets.<sup>20</sup>

---

17. Para 11.2, Guidance on the CMA's investigation procedures in Competition Act 1998 cases <https://www.gov.uk/government/publications/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases/guidance-on-the-cmas-investigation-procedures-in-competition-act-1998-cases>

18. Point 35, Commission Notice on the conduct of settlement procedures in view of the adoption of Decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC0702\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC0702(01))

19. Section 87B Guidelines on the use of Enforceable Undertakings, <https://www.accc.gov.au/system/files/Guide%20to%20Section%2087B.pdf>

20. Article 27(4), Regulation (EC) No. 1/2003, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0001>

B-40 First Floor  
Soami Nagar South  
New Delhi - 110017  
[contact@esyacentre.org](mailto:contact@esyacentre.org)  
[www.esyacentre.org](http://www.esyacentre.org)

