



Template pursuant to Section 3 (a) of the ICN Framework on Competition Agency Procedures

[Competition Commission of India, India]

The following template is submitted by [**Competition Commission of India, India**] pursuant to Section 3(a) of the ICN Framework on Competition Agency Procedures (“CAP”).

I. Introduction

The Competition Act, 2002, as amended by the Competition (Amendment) Act, 2007, follows the philosophy of modern competition laws. The Act prohibits anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations (acquisition, acquiring of control and M&A), which causes or is likely to cause an appreciable adverse effect on competition within India.

It is the duty of the Commission established under the Competition Act, 2002 to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade in the markets of India. The Commission is also required to give opinion on competition issues on a reference received from a statutory authority established under any law and to undertake competition advocacy, create public awareness and impart training on competition issues.

Further details are available publicly on the link below:

https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf

II. Laws, Regulations, and Policies relevant for the implementation of the CAP

For each CAP Principle below, please explain how your competition law investigation and enforcement procedures meet the Principle. Please highlight important features relevant for the implementation of the CAP and explain limitations, if applicable. Feel free to include links or other references to related materials such as relevant legislation, implementing rules and regulations, and guidelines where helpful and appropriate.

Please update your Template reflecting significant changes as they relate to the CAP, as needed.

b) Non-Discrimination

Each Participant will ensure that its investigation and enforcement policies and Procedural Rules afford Persons of another jurisdiction treatment no less favorable than Persons of its jurisdiction in like circumstances.

Under Competition Law there is no discrimination for persons of another jurisdiction and treatment is no less favourable than for persons of its jurisdiction in like circumstances.

c) Transparency and Predictability

- i. Each Participant will ensure that Competition Laws and regulations that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- ii. Each Participant with the authority to adopt Procedural Rules will have in place such rules applicable to Investigations and Enforcement Proceedings in its jurisdiction.*
- iii. Each Participant will ensure that Procedural Rules that apply to Investigations and Enforcement Proceedings in its jurisdiction are publicly available.*
- iv. Each Participant will follow applicable Procedural Rules in conducting Investigations and in participating in Enforcement Proceedings in its jurisdiction.*
- v. Each Participant is encouraged to have publicly available guidance or other statements, clarifying or explaining its Investigations and Enforcement Proceedings, as appropriate.*

Competition Laws, Rules, Regulations and procedures thereof enforcing competition law in India are available in public domain. They can also be accessed at website of CCI at www.cci.gov.in

d) Investigative Process

- i. Participants will inform any Person that is the subject of an Investigation as soon as practical and legally permissible of that Investigation, according to the status and specific needs (e.g., forensic considerations) of the Investigation. This information will include the legal basis for the Investigation and the conduct or action under Investigation.*
- ii. Participants will provide any Person that has been informed that it is the subject of an Investigation, or that has notified a merger or other transaction or conduct, with reasonable opportunities for meaningful and timely engagement on significant and relevant factual, legal, economic, and procedural issues, according to the status and specific needs of the Investigation.*
- iii. Participants will focus investigative requests on information that they deem may be relevant to the competition issues under review as part of the Investigation. Participants will provide reasonable time for Persons to respond to requests during Investigations, considering the needs to conduct informed Investigations and avoid unnecessary delay.*

The Competition Act, 2002, Rules and Regulations made thereunder contain provisions that follow a transparent, rule of law based investigative process. Details are available publicly on the link below:

https://www.cci.gov.in/sites/default/files/regulation_pdf/cci%20general%20regulations%20as%20amended.pdf

e) Timing of Investigations and Enforcement Proceedings

Each Participant will endeavor to conclude its Investigations and aspects of Enforcement Proceedings under its control within a reasonable time period, taking into account the nature and complexity of the case.

Investigations and Enforcement Proceedings are endeavored to be concluded in a time bound period and is also provided under the Competition Act, 2002 and Regulations made thereunder. Regulations may be accessed on the link below:

https://www.cci.gov.in/sites/default/files/regulation_pdf/cci%20general%20regulations%20as%20amended.pdf

f) Confidentiality

- i. Each Participant will have publicly available rules, policies, or guidance regarding the identification and treatment of confidential information.*
- ii. Each Participant will protect from unlawful disclosure all confidential information obtained or used by the Participant during Investigations and Enforcement Proceedings.*
- iii. Each Participant will take into consideration both the interests of the Persons concerned and of the public in fair, effective, and transparent enforcement regarding the disclosure of confidential information during an Enforcement Proceeding.*

The aspect of Confidentiality is enshrined in the Competition Act, 2002 and Regulations framed thereunder.

Please see Section 57 of the Competition Act, 2002 and Regulation 35 of the CCI (General) Regulations, 2009.

Further details are available publicly on the link below:

https://www.cci.gov.in/sites/default/files/regulation_pdf/cci%20general%20regulations%20as%20amended.pdf

g) Conflicts of Interest

Officials, including decision makers, of the Participants will be objective and impartial and will not have material personal or financial conflicts of interest in the Investigations and Enforcement Proceedings in which they participate or oversee. Each Participant is encouraged to have rules, policies, or guidelines regarding the identification and prevention or handling of such conflicts.

Decision makers and officials are required by the law not to have material, personal or financial conflicts of interest in the Investigations and Enforcement Proceedings, in which they participate or oversee. Please see Chapter III of the Competition Act, 2002 in particular.

Chairperson and Members of the Competition Commission take an oath of office and Secrecy under the Competition Commission of India (Oath of Office and of Secrecy for Chairperson

and other Members) Rules, 2003. Separate guidelines may not be required in view of the oath of office and Secrecy as per Chapter III of the Competition Act.

Further details are available publicly on the link below:

https://www.cci.gov.in/sites/default/files/rules_pdf/R2.pdf

h) Notice and Opportunity to Defend

- i. Each Participant will provide Persons subject to an Enforcement Proceeding timely notice of the alleged violations or claims against them, if not otherwise notified by another governmental entity. To allow for the preparation of an adequate defense, parties should be informed of facts and relevant legal and economic reasoning relied upon by the Participant to support such allegations or claims.*
- ii. Each Participant will provide Persons subject to a contested Enforcement Proceeding with reasonable and timely access to the information related to the matter in the Participant's possession that is necessary to prepare an adequate defense, in accordance with the requirements of applicable administrative, civil, or criminal procedures and subject to applicable legal exceptions.*
- iii. Each Participant will provide Persons subject to an Administrative Proceeding with reasonable opportunities to defend, including the opportunity to be heard and to present, respond to, and challenge evidence.*

The Competition Act, 2002 and Regulations thereunder contains provisions for notice and opportunity to defend to the parties. Please See Section 36 of the Competition Act, 2002 and Rules of Regulation made there under at:

https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf

i) Representation by Counsel and Privilege

- i. No Participant will deny, without due cause, the request of a Person to be represented by qualified legal counsel of its choosing.*
- ii. Each Participant will provide a Person a reasonable opportunity to present views regarding substantive and procedural issues via counsel in accordance with applicable law. Notwithstanding the foregoing, Persons may be required to provide direct evidence.*
- iii. Each Participant will recognize applicable privileges in accordance with legal norms in its jurisdiction governing legal privileges, including privileges for lawful confidential communications between Persons and their legal counsel relating to the solicitation or*

rendering of legal advice. Each Participant is encouraged to have rules, policies, or guidelines on the treatment of privileged information.

A Person may appear before the Competition Commission of India himself/herself or through a counsel of his/her choice as provided. Parties are accorded before the Competition Commission of India, a reasonable opportunity to present their views. The principle of natural justice including the rule of *audi alteram partem* “no one should be condemned unheard” is followed. Please see Section 35 of the Competition Act, 2002 in particular at

https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf

Section 36 (2) (e) may be perused in context of treatment of privileged information in the Competition Act, 2002.

j) Decisions in Writing

- i. Each Participant in charge of issuing decisions or orders will issue in writing its final decisions or orders in which it finds a violation of, or imposes a prohibition, remedy, or sanction under applicable Competition Laws. Such final decisions or orders will set out the findings of fact and conclusions of law on which they are based, as well as describe any remedies or sanctions. Each Participant will ensure that all final decisions are publicly available, subject to confidentiality rules and applicable legal exceptions.*
- ii. Each Participant will ensure that all commitments it accepts to resolve competition concerns are in writing. Subject to confidentiality rules and applicable legal exceptions, each Participant will (i) make public the commitments it accepts, and (1) describe the basis for the competition concerns or (2) reference public materials in which those concerns are expressed, or (ii) provide a summary explanation of the commitments and the reasons for them.*

All the decisions of Competition Commission of India are in writing.

k) Independent Review

No Participant will impose on a Person a prohibition, remedy, or sanction in a contested Enforcement Proceeding for violation of applicable Competition Laws unless there is an opportunity for the Person to seek review by an independent, impartial adjudicative body (e.g. court, tribunal, or appellate body).

The decisions of the Competition Commission of India are appealable before the National Company Law Appellate Tribunal and before the Hon`ble Supreme Court of India. This is explicitly provided in the Competition Act, 2002. Please see Chapter VIIIA of the Competition Act for reference at

https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf