

COMPETITION COMMISSION OF INDIA UPDATES ITS CONFIDENTIALITY REGIME

1. INTRODUCTION

- 1.1. On May 10, 2024, the Competition Commission of India (“CCI”) notified the CCI (General) Amendment Regulations, 2024¹ (“**Amended Regulation**”). These regulations amend the provisions of the CCI (General) Regulations, 2009² (“**General Regulations**”) in relation to the treatment of confidential information during CCI proceedings. The Amended Regulation traces its basis back to earlier this year when the CCI, on February 26, 2024, had invited comments from the public on the draft amendments to Regulations 35, 37, and 50 of the General Regulations³. Earlier in 2022, the CCI had amended⁴ the General Regulations to introduce the concept of “confidentiality ring” which allowed the parties to access the confidential information/documents of other parties during an investigation. The Amended Regulation seeks to further finetune the CCI’s “confidentiality ring” regime. The key features of the Amended Regulation are set out in detail below:

2. KEY FEATURES OF THE AMENDED REGULATION

A. Requirement of an affidavit

- 2.1. Currently, the parties seeking confidentiality over any information or document, need to self-certify that: (a) the information is not available in the public domain; (b) the information is known only to limited employees, suppliers, distributors and others involved in the party’s business; (c) adequate measures have been taken by the party to guard the secrecy of the information; and (d) the information cannot be acquired or duplicated by others. However, the Amended Regulation has mandated for the parties to self-certify their confidentiality claims through affidavits (instead of a simple undertaking required previously). Moreover, the parties included in the confidentiality ring will be able to access the confidential information on filing of an undertaking in the form of an affidavit within 10 (ten) days from the date of receipt of the order setting up a confidentiality ring, extendable by a further period of 5 (five) days at the discretion of the CCI.

B. Setup of a confidentiality ring

- 2.2. Previously, the CCI had a discretion in the establishment of a confidentiality ring comprising authorized representatives of the parties who can access all the confidential information. However, the Amended Regulation allows the parties to make a request to the CCI for setting up a confidentiality ring. Accordingly, such a request should be made by filing an undertaking in the form of an affidavit and must be made within 10 (ten) days of the receipt of the non-confidential version of the investigation report of the Director General (“**DG Report**”), extendable by a further period of 7 (seven) days at the discretion of the CCI.

¹ Available at: <https://www.cci.gov.in/images/stakeholderstopicconsultations/en/gazette-notification-published-on-10-may-2024-regarding-the-competition-commission-of-india-gene1715398121.pdf>.

² Available at: <https://www.cci.gov.in/images/legalframeworkregulation/en/cci-general-regulations-20091652176202.pdf>.

³ Available at: <https://www.cci.gov.in/images/stakeholderstopicconsultations/en/draft-amendment-to-regulations-35-37-and-50-of-the-competition-commission-of-india-general-reg1708757709.pdf>.

⁴ Available at: <https://www.cci.gov.in/legal-framwork/regulations/12/0>.

C. Procedure regarding inspection of documents and grant of certified copies

- 2.3. The Amended Regulation allows parties included within the confidentiality ring to make an application for inspection⁵ of documents within 7 (seven) days of submission of undertakings. Further, such inspection has now been mandated to be completed by the parties within a period of 21 (twenty-one) days of being allowed, extendable by a further period of 7 (seven) days at the discretion of the Secretary of the CCI. In exceptional circumstances, the reasons which shall be recorded in writing, the CCI may extend the timelines beyond what has been mentioned above.
- 2.4. Within a period of 7 (seven) days thereafter, the parties may make an application for the grant of certified copies which shall be provided to the parties within 14 (fourteen) days upon receipt of the application seeking certified copies.

D. Enhanced inspection fees

- 2.5. The Amended Regulation has increased the inspection charges from INR 1,000 (Indian Rupees One Thousand) per day per case to INR 2,500 (Indian Rupees Two Thousand Five Hundred) per day per case while the charges for supplying certified copies continue to remain at INR 20 (Indian Rupees Twenty) per page.

3. KEY TAKEAWAYS

- 3.1. The notification of the Amended Regulation is a welcome development as it will further bolster the already successful confidentiality regime of the CCI by streamlining the procedure related to submission of confidential information and creation of confidentiality rings which will enable effective and timely disposal of matters. Further, the Amended Regulation has provided a much-needed respite to the parties by specifically allowing them to make a request for setting up a confidentiality ring which will provide them with an opportunity to effectively defend themselves within a specific timeframe.
- 3.2. However, the necessity for introduction of the obligation to self-certify confidentiality claims through affidavits is unclear as it may make the process more onerous for the parties. Nevertheless, it is heartening to see the CCI recognize the internal administrative difficulties of the enterprises and accordingly, extend the timeline for making requests to set up a confidentiality ring from 7 (seven) days to 10 (ten) days from the receipt of the non-confidential version of the DG Report.

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⁵ Regulation 37 of the General Regulations allows a party to any proceeding to make an application for inspection or obtaining copies of the documents or records submitted during proceedings on payment of fee.