

## The Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024

### Introduction

The Competition (Amendment) Act, 2023 (“Amendment Act”) amended section 64 of the Act and inserted Section 64B into the Act. Sub Section (3) of Section 64B of the Act, as amended, mandates the **Competition Commission of India (“CCI”)** to frame penalty guidelines for contravention of provision of the Act.

In pursuance of this amendment, the CCI has on March 6, 2024, notified the CCI **(Determination of Monetary Penalty) Guidelines, 2024 (“the Penalty Guidelines “).**

The Penalty Guidelines provide the much-awaited clarity in the method of determination of penalties for various contraventions of the Act, including anti-competitive conducts, by enterprises and individuals responsible.

The two most important aspects of the Penalty Guidelines are:

- The introduction of the concept of “relevant turnover” (instead of the “total turnover” as envisaged under Section 27(b) of the Act (except for cartels) and,
- Providing both the aggravating and mitigating factors, which the CCI shall have to take into account while determining penalties.

**Chapter II & III- Methodology for determination of penalty for enterprises for anti-competitive agreements, including cartels and abuse of dominant position under section 27(b) of the Act and Proviso to section 27(b) of the Act.**

1. The maximum penalty that can be imposed by the CCI under Section 27(b) of the Act?

**a. Penalty for Anti-Competitive agreements and Abuse of Dominant Position**

- Subject to the “legal maximum” of not more than 10% of the **average (total) turnover or income** of the last three preceding financial years, now the CCI, after considering the **factors** as prescribed (supra) may impose maximum penalty up to thirty percent (30%) of the “average **relevant** turnover” or average income, as the case may be, for the last three preceding years.

**b. Penalty for cartels**

- In case of cartels, penalty up to Three times (3X) of the profits or 10% of the (total) turnover for each year of the continuance of such cartel, whichever is higher, as already prescribed under the Proviso to Section 27(b) of the Act has been retained.
- no such benefit of “relevant turnover” has been provided in case of cartels.
- For determining the penalty, based on profits, on cartels under the proviso to section 27(b), **profit after tax** shall be considered.

2. What are the “factors” which CCI shall consider in determining value of the penalty to be imposed?

- Nature and gravity of the contravention.
- Nature of the industry or sector affected and its implications on the economy; and /or
- Any other factors deemed to be appropriate by the CCI.

3. What are the aggravating and mitigating factors to be considered by the CCI for determining the percentage of the average relevant turnover for calculating the penalty to be imposed?

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none"> <li>a) Duration of the contravention.</li> <li>b) Duration of Involvement of the enterprise in contravention.</li> <li>c) Role in orchestrating the contravention.</li> <li>d) <b>Coercive or retaliatory measures used on other enterprise to participate in the contravention.</b></li> <li>e) Repeated contravention.</li> </ul>	<ul style="list-style-type: none"> <li>a) Admission of contravention and the stage of such admission.</li> <li>b) Furnishing cogent evidence establishing that contravention was limited.</li> <li>c) Extent of cooperation by the enterprise during DG investigation and/or inquiry proceedings before CCI.</li> <li>d) Voluntary termination of alleged conduct.</li> <li>e) Implementation of <b>competition compliance program.</b></li> </ul>

#### Chapter IV- Methodology for determination of penalty for persons liable under Section 48 of the Act.

1. The maximum penalty that can be imposed by the CCI on individuals found responsible for the anti-competitive conduct of their enterprises under Section 48(1) or 48(3) of the Act.

- Not more than 10% of the **average income** for the last three preceding financial years.

- The “average income” shall be determined from the gross total income as per the Income Tax Returns (ITRs) for the last three preceding financial years filed.
- The gross total income would exclude (a) income from house property; and (b) income from capital gains.
- In case of involvement in cartel, up to the legal maximum of 10% of the total income for each year of the continuance of the cartel, with due regard to the aggravating and mitigating factors (supra) mentioned.

2. What are the aggravating and mitigating factors to be considered by the CCI in determining the percentage of average income for calculating the penalty to be imposed?

Aggravating Factors	Mitigating Factors
<ul style="list-style-type: none"> <li>a) Nature and gravity of contravention by the company for whose conduct such person has been held liable under Section 48 of the Act</li> <li>b) Role, extent, and duration of involvement of such person in the contravening conduct</li> <li>c) Repeated contravention.</li> </ul>	<ul style="list-style-type: none"> <li>a) Extent of cooperation by the person during DG investigations or CCI proceedings</li> <li>b) Furnishing of cogent evidence showing his/her involvement in the contravention was limited</li> <li>c) Any other factor deemed appropriate by the CCI.</li> </ul>

## Chapter V. Methodology for determination of monetary penalty for persons liable under Section 43A of the Act.

1. The maximum penalty can the CCI impose under Section 43A of the Act.

- Same as that provided in Section 43A of the Act, that is, up to one percent (1%) of the total turnover or assets or the value of the transaction, referred to in the clause (d) of Section 5 (deal value), whichever is higher, with due regard to the factors (supra) mentioned,

2. What are the aggravating and mitigating factors to be considered by the CCI in determining the extent of the penalty to be imposed?

<b>Aggravating Factors</b>	<b>Mitigating Factors</b>
a) Consummation or part consummation of combination without giving notice	a) Voluntary filing of notice
b) Violation of the standstill obligations (substantive or procedural) prior to or after filing notice	b) Conduct of the parties including making voluntary disclosures, cooperation during the inquiry, furnishing of all requisite material or documents sought by CCI; and /or
c) Non-furnishing of information during an inquiry under Section 20(1) of the Act	c) Any other factor deemed appropriate by the CCI

## Chapter VI. Methodology for determination of monetary penalty for persons liable under Sections 42,43,44 and 45 of the Act.

1. The maximum penalty can CCI impose under Section 42, 43, 44 and 45 of the Act.

**a. Monetary Penalty for contravention of orders of CCI under Section 42 of the Act:**

- Non-Compliance: INR 1 Lakh each day (during which noncompliance occurs) up to maximum of INR 10 Crores.
- Repeated Non-Compliance: Up to maximum of INR 25 Crores.

**b. Penalty of failure to comply with directions of Commission and Director General under Section 43 of the Act:**

- INR 1 Lakh each day (during which non-compliance Occurs) up to maximum of INR 1 Crores.

**c. Penalty for making false statement or omission to furnish material information under Section 44 of the Act.**

- Not less than INR 50 Lakh but may extend to INR 5 Crores.

**d. Penalty for contraventions in relation to furnishing of information under Section 45 of the Act.**

- Up to maximum of INR 1 Crores.

3. What are the aggravating and mitigating factors to be considered by the CCI in determining the amount of the penalty to be imposed?

Aggravating Factors	Mitigating Factors
a) Nature of misleading information.	a) Extent and reasons for non-compliance or non-cooperation.
b) Knowledge of the person furnishing untrue or incomplete information	b) Any other factor deemed appropriate by the CCI.
c) Repeated Contravention	

## Chapter VII. Residuary Powers of the CCI

- Notwithstanding the above methodology, the CCI may divert from the Penalty Guidelines, considering the peculiar facts and circumstances of a given case.
- In case of divergence from the general methodology for imposition of penalty under Section 27(b), Section 43A and Section 48 of the Act, the reason for such divergence shall be recorded in writing by the CCI.
- The Penalty Guidelines do not apply to voluntary confessions /applications for grant of lesser penalty by members of cartel, which shall continue to be governed by the CCI (Lesser Penalty) Regulations, 2024.

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### **VA COMMENT:**

*The extant Penalty Guidelines have fulfilled the much-awaited demand of the Industry and are one of the outcomes of the Amendment Act, which enabled the CCI to promulgate such guidelines, apart from the Implementing Regulations under the Act.*

*The Penalty Guidelines have been framed, generally based on the jurisprudence evolved over the last over a decade of enforcement of Antitrust provisions of the Act, have now acquired a statutory character and hence are legally binding on the CCI.*

*The inclusion of Competition Compliance Program as a mitigating factor is a welcome step, in sync with the similar law existing in advanced jurisdictions with a matured competition law regime and needs be taken note of by the Corporates to avoid collateral and avoidable damages in the form of huge monetary penalties and ensure better compliances.*

**For any further information / clarification, please feel free to contact / write to:**

Mr. MM Sharma, Advocate

Head - Competition Law - [mmsharma@vaishlaw.com](mailto:mmsharma@vaishlaw.com)



Corporate, Tax and Business Advisory Law Firm

**DELHI**

1st, 9th, 11th Floor, Mohan  
Dev Building, 13, Tolstoy Marg,  
New Delhi, 110001 (India)

+91-11-42492525  
delhi@vaishlaw.com

**MUMBAI**

106, Peninsula Centre,  
Dr. S.S. Rao Road, Parel,  
Mumbai, 400012 (India)

+91 22 42134101  
mumbai@vaishlaw.com

**BENGALURU**

105 -106, Raheja Chambers,  
#12, Museum Road,  
Bengaluru, 560001 (India)

+91 80 40903588/89  
bangalore@vaishlaw.com

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