Lesser Penalty Regulations, 2024

Why in news?

The Competition Commission of India notified the 'Lesser Penalty' Regulations, 2024 to introduce the 'Lesser Penalty Plus' regime.

Competition Commission of India
• **Established** - 2003 • **Ministry**- Ministry of Corporate Affairs • **Statutory body**- CCI has been established to enforce the competition law under ***Competition Act 2002***. • **Aim**- To establish a competitive environment in the Indian economy by engaging with all stakeholders, the government, and international jurisdiction • **Raghavan committee**- Based on the recommendations the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) was repealed and replaced by the Competition Act, 2002. • **Competition (Amendment) Act 2009**- The Competition Appellate Tribunal have been established. • **Competition Appellate Tribunal**- It is the judicial body that hears and decides appeals against the orders of the CCI. • **Appellate mechanism**- The government of India replaced Competition Appellate Tribunal (COMPAT) with the National Company Law Appellate Tribunal (NCLAT) in 2017. • **Composition**- CCI consists of a Chairperson and not more than 6 Members. • **Appointment-** It is made by the Central Government.

What is lesser penalty plus regime?

- **Existing provision**- Section 46 of the Competition Act encourage enterprises involved in cartelization to come forward and provide information to CCI.

  Cartelisation is one of the horizontal agreements that shall be presumed to have appreciable adverse effect on competition.

- **Incentive-** The regime goes a step further by incentivizing leniency applicants to disclose information about the existence of other cartels beyond the one they are initially accused of participating in.

Lesser penalty applicant	Lesser penalty plus applicant

The applicant is required to state their role in the cartel, goods or services involved, entities involved, geography covered, date of commencement of the alleged cartel, its present status and the estimated volume of business affected in India by alleged anti-competitive act.	The applicant is required to elaborate if there are any similarities or differences in the conduct, product, service or parties with respect to the first cartel, among other things.

- **Procedure to apply**- Leniency applicants can file for leniency only during the course of the investigation.
- **Assessment of benefits**- It is based on 2 key parameters namely
  - Priority status
  - Significant added value
- **Priority status**- It considers the applicant's position in the queue for leniency, as early disclosure maximizes benefits.
- **Significant added value-** Qualitative assessment of evidence quality, including its ability to strengthen the regulator's case. Directly relevant incriminating evidence carries more weight than indirect evidence.
- **Evaluation of evidence**- The direct relevance of the alleged cartel conduct is given greater weightage than indirect relevance, this would strengthen the case against cartels and enhance the overall effectiveness of leniency programs in uncovering and prosecuting anti-competitive practices.
- **Penalty reduction**-

Priority status-The applicant's position in the Queue	**Reduction in penalty**
First	100%
Second	50%
Third	30%
Additional reduction under lesser penalty plus regime	30% for the first cartel irrespective of the priority status
	100% for the involvement in second reported cartel

What are the benefits of the recent lesser penalty plus regime?

- **Promote fair competition**- It play a crucial role in *uncovering hidden collusion* and promoting fair competition within the business ecosystem.
- **Confidentiality-** The identity of the 'lesser penalty' applicant is kept confidential until the passing of the final order and completion of proceedings.
- **Wider ambit of applicant**- The "applicant" definition is amended in the recent regulation, clarifying that any cartel participants, regardless of whether they are engaged in business activities similar to those of other cartel members, can file a lesser penalty or lesser penalty plus application.
- **Penalty reduction**- The updated regulations grant CCI *wide discretion* to decide penalty reduction for a leniency plus applicant.
- **Qualitative assessment of evidence quality**- The 'lesser penalty plus' regime aims to encourage *timely cartel disclosure* while ensuring the quality of evidence provided.

- **Incentive**- The incentive for self-reporting exits when cartelists believe that the sanctions imposed will be lesser than the gains from collusion.
- **Additional incentives**- It is provided for whistleblowers to *disclose information about multiple cartels*, thereby promoting early reporting and strengthening the competition regulator's ability to combat anti-competitive practices.
- **On par with global regulations**- The regime aligns with similar leniency programs in regions like *US, European Union and Brazil*, which have proven effective in revealing cartels and associated players.
- **Game theory concept**- The regulation emphasize the benefits of being the first to come forward, as leniency offered can extend up to 100%.

References

1. The Hindu- CCI regulation on whistle-blower mechanism
2. CCI- FAQs on lesser penalty plus regime

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