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## **Challenges faced by Competition Law due to COVID-19**

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*Ishika Agarwal*  
*Manipal University, Jaipur*

### **Abstract**

The occurrence of Covid-19 disease has led to tremendous effect on businesses and many other sectors in the world. It has all led to bring the economies to a halt and lead to world to move toward recession. It has also provoked the public health in the living memory it has also led to large scale suffering of human life and also led to large scale loss of human life. There are various sectors like hospitals, tourism, airlines, automobile etc. Which are been greatly affected in dealing sector in essential commodities as health care, telecom and retail etc. Will be benefited immensely during this crisis situation as those industries are flooded by unprecedented demand in the effected. The history has also shown us that there are same basic of the Competition economic has applied during the time of economic recession as during the times of economic expansion. Sound of competition policy is also plays an important in those moments in crisis in order to ensure that this crisis is solved and there is subsequent economic recovery. These also requires the competition authorities to act in order to help the policies response of the government that will help to deal with that crisis in a sustainable manner. Governments are also advice from various competition authorities in order to make sure of those competition principles so that can be respected and help to pave the way in order to recovery. There is always a link between the financial growth and the competition which has been predominant during this recession and therefore there are business that are facing the wrath for the pandemic which are looking for any kind of aid is available in regard to survive. Therefore, there are organisations are not having the competition law on their priority list due to the COVID-19 so if there is any kind of unethical collaboration in this regard the current situation would have brought the adverse effect on the market. The CCI is also responsible for the regulation in regard to anti-competitive practices in India. But the major problem arises that these agencies have to implement competition law strictly and strongly. But on the same time, it needs and forced to give certain kind of relaxation and had to overlook the behaviour of those companies because of the current situation in this article there are listed some problems that are faced by CCI because of the pandemic situation.

### **Introduction**

The COVID-19 epidemic struck the world in many ways, severity and breadth. Globalisation contributed to the rapid spread of this modern-day plague to all corners of the world. Internationally we are dependent on each other by way of growth and welfare, and on many

other platforms. Because of this pandemic situation there are many behavioural tactics that companies may adopt to overcome the negative impact on the economy and will bring an adverse effect on competitive conditions in the market for the supply chain and resultantly, on the end consumers and on the whole world. This the reason why many countries such as European Union (EU), the United Kingdom (UK)<sup>1</sup> the United States of America (US), France and South Africa have already announced that they are keeping a close eye on the behaviour of aspect of these countries in order to save guard against unfair competition. Such an event, combined with the breakdown of market mechanisms for some of the most essential products needed to fight this competition. While speaking about large corporations have shown unfairness in there working around great catastrophes to make profits. The same thing had happened in nearly a century ago, companies engaged in war profiteering in World War I and then again during World War II by monopolizing and controlling strategic businesses such as they increasing the price of arm force items like bullet and by pulling of necessary things would be impossible for businesses to do so in this time and age. It became difficult of new entrepreneurs to tackle new normal because the new enterprise needed to first now the policies and changes brought by competition commission of India.

Business all around the world changed in many ways there are going to be inevitable that the next few months how the enterprise will work manly in certain industries like airlines, entertainment, hotels etc. Will struggle to get back on their feet, essential commodities, pharmaceuticals and healthcare providers will be strained with unprecedented demand. “We are all in this together” is the message resonating across the world in the fight against the pandemic. Some of the business industries will try to charge more price for the products which is going to affect the market in great manner. Thus disease, has left many governments no option but to put certain restrictions by confining them in their home in order to save them. The drastic change due of pandemic has led us in first quarter of 2020 to reconsider some assumptions on which the economic systems were made and rethink them so that they can be implemented and there is no Caso. The lessons learned could help us better anticipation and will help to deal with future as black swans. Competition Commission of India authorities are left with no option other than relaxing the competition law and also putting control over the activities of the enterprises.

### **Collaboration between competitors**

In India due to the temporary lockdown has triggered shortages in supply of essential commodities, fast moving consumer good (FMCG), medicines and medical supplies. Due to high demand and limited supply had disturbed the supply chain of all the enterprises. In order to save guard, there position in the market they are thinking of collaborating with their competitors so that to ensure uninterrupted supply in the market as well as make-up for lost business

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<sup>1</sup> <https://www.gov.uk/government/news/cma-launches-covid-19-taskforce>

opportunities and profit maximization. In order to fight this pandemic impact on businesses, there are reasons for which competitors may have try to collaborate in respect of production, distribution and service network to facilitate uninterrupted production and distribution of essential commodities, medicines, medical supplies/equipment, etc. However, it should be not forgotten that such of cooperation or collaboration amongst competitors continues to come under an anti-competitive agreement under the Competition act unless these are exempted by central government through special order. But by looking at the circumstances which is new for every country the countries so the government is left with no choice than to give relaxation to different countries some of ways the countries are giving relaxations is like in United Kingdom government has tried to temporarily relaxed competition laws to help the competitive retailers in order to save guard them by collaborate with other competitors by sharing information with each other , food pulling and fulfilling the demands of foods which become scare at that point of time. Similarly, the regulators of competition of 27 countries in the EU and the EU Competition Commission have also temporarily allowed various suppliers to collaborate with the competitors so that they can come out crisis of Covid-19 but by easing these collaborations they must keep in mind that they should not breach the cartels rules. The federal Commission has also brought some relaxation so that they can overcome this crisis like situation. But since government are giving these relaxations they should not forget the competition law provisions in section 31 of competition act prohibits collaboration amongst the competitors unless such collaboration is for the enhancing the efficiency by way of joint venture. This prohibition will continue to exist except the exemption provided by the Central Government in public interest<sup>2</sup> in light of this pandemic situation and when it comes to anti-competitive agreement between the competitors in respect of the size, economic powers and line of business are irrelevant as such they may vary in their conduct. There might see as an example that in pharmaceutical sector, a huge number of companies has dedicated there resources towards the making of vaccine, test kits and research works such competitors can collaborate as going to increase the efficiency of the research work done by two competitors but in certain situations such an agreement is also not adequate as they can for example, if they lead to a reduction in innovation by removing a viable competitor or they can even by pulling up the stock so that no other competitors can survive by increasing the prices by mass pulling the products. Beside these trade associations will get more importance. In India, there is vast spread information being transferred by reports and media that there is disruption in supply chain in both online and offline modes people are already facing the problem of scarcity in the necessity commodities Here now the question arises about the whilst of the Indian Government has not exempted the application of competition law so far, should Indian government should take help of other jurisdictions and temporarily suspend the working

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<sup>2</sup> In terms of Section 54(a) of the Competition Act, the Central Government through a notification may exempt the application of any provisions of the Competition Act on the ground of public interest. Given the present health emergency situation, a potential interpretation of public interest may include collaboration of R&D for development of vaccines, coordination for solving logistics and supply chain issues, etc.

of competition law as it would enable the companies to collaborate in order to meet the demand of essential commodities like medicines, medical supplies and research equipment and to take research activities for making of Covid-19 vaccine during this challenging time without breach of competition law.

Other measures taken by this cooperation in this pandemic what types of cooperation, in the pandemic scenario, could take place, for what purposes and to what extent,' says Cordiality was stated by this that many types of cooperation were not accepted in normal situations were accepted during this time because it became necessary especially at that point of time so that immediate needs could be satisfied in this pandemic. In order to facilitate cooperation in health sector a block of exemption was given which was not given earlier because it was contrary to the Competition Act.

The European Competition Network which is used to represent the Commission and Member States and national competition authorities stated that they had accepted this situation is going to trigger the needs for companies had to cooperate with each other so as to ensure the supply and fair distribution of scarce products to all consumers. They stated that of any company has any kind of doubt of their compatibility of their cooperation initiatives with European Commission then they should have a talk with them. While the government has allowed relaxations among the industry sector during pandemic but the competition law still exist authorities try to take measures that temporary relaxations should not pave the way for the world.

### **Exploitative pricing**

The disruption which is caused by the pandemic has led to difficulties in the production and distribution of various products and supply of a Number of essential products, which has in some cases led to shortages<sup>3</sup> – which might be because of increased demand and less supply of the product is less due to the confinement measures taken by various government. The changes in supply and demand had led to different enterprise to bring new things in the market and working according to new market demands because of which it is quite possible that those enterprise who are gaining profit will try to get benefit from the pandemic situation they can do this by either forming a cartel and indulging in practice such as fixing price, allocation of customers or limiting or controlling the supply chain or by having control over the supply of the product or by using their dominant position in abuse manner in respect of essential commodities these are generally prohibited practices and are not justified in competition law except during the time of pandemic. There are mainly two types of activities in regard to this context first is regarding the arrangement with competitors and exploitative practices which can be regarded as exploitative

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<sup>3</sup> The Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India have issued a notification controlling the prices of “essential commodities” like masks, sanitisers etc. under the Essential Commodities Act, 1955. Available at: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=200239>.

pricing by this we can see how crisis had led to sudden rise in the price there comes role of competitive authorities in order to address such problem. Secondly companies face disruption in regard to their input which might lead to increase their costs and concomitantly their price as it is natural phenomenon price rises to occur when demand and supply shortage took place in this pandemic time urgent need for face masks, medicine beds ventilator and gloves and various other things increased regardless of these reasons for sudden increase of price during crisis the public and political group of the nation put pressure on competitive authorities to intervene in the matter some agencies were empowered to act directly against the excessive pricing when firms does excessive pricing without any clear justification. Some agencies are empowered to act directly but some have competence to deal with the matter some might not have competence in regard to these things. However, all the agencies have the ability to pursue advocacy in favour of all measures in order to safeguard the consumers and also ensuring the incentive remain in the market where and when needed. The present thing is structured in the way in regard to now when and how these authorities will structure it in this regard and how will they take up the applications. For in case of the Italian competition authority last month began an investigation into rocketing online prices for hygienic masks and sanitizing gels following COVID-19 outbreak, the South African Competition authority is currently investigating 11 firms that sell sanitisers, face masks and gloves who were suspected of hiking prices. Section 3 (4)<sup>4</sup> of the Competition Act prohibits agreements amongst enterprises at different levels of the production chain which cause an AAEC whereas, Section 4 prohibits abusive unilateral conduct by dominant enterprises.

In some jurisdictions, competition agencies are not given power to challenge the rise in prices that are charged by dominant players in the market but other countries competition enforcers are not empowered to challenge high prices charged by dominant player absent collusive or exclusionary practices. On the other hand, in many jurisdictions high prices may be covered by provisions against excessive pricing practices. Application of competition law in case of excessive pricing is itself difficult and during this crisis situation it has become even tougher bringing up these pricing cases in crisis come up with great difficulty. Intervention against price increases can lead to diversion of product to those places there they are not regulated thus allowed to be increase production in order to delay market entry or production increases will going to lower price and bringing up the cases in this crisis situation tend to bring risk if being untimely if it would have been given time than successfully bring such cases At the same time, bringing excessive pricing cases may well be justified, and the best available In order to supply the essential commodities during this pandemic the Competition authorities will act as temporary price Regulators so that when urgent action is needed and price could be determined easily in this natural disaster and this intervention will be short lived.

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<sup>4</sup> <http://www.cci.gov.in>.

Excessive pricing<sup>5</sup> are on high data intensive and unavoidably fact specific and generally operate ex post these are subject to high error risks and generally provide a guidance on how to set lawful price there are generally delay and risk of cases failing to succeed at the traditional way of determining Excessive pricing is also not appropriate even if these authorities are pressured then also they will not succeed in getting effect it must be keep in mind that any intervention in the price will lead reduction incentives to increase production and delay the achievement of lower price is equilibrium and charging exploitative prices might lead to products being diverted to those places where prices are not subject to constraints leading to harm to local consumers In short, the implications of intervening of high price must be send carefully taken into account before competition authorities intervene . There are other mechanisms which they must see like interim measures such measures will be appropriate at the time of urgency in situation where there is possibility that competition is going to hamper high prices and periodic changes can be brought here another alternative that could be used is to take account the role of tools an regulator can play in Addressing exploitative pricing practices for consumers protection and regulations

The Supply and demand shocks provoked by crises can lead to product shortage and there might be price increases that might call for attention by competition authorities they can adopt varieties of measures for product shortages and increased prices but should come in situation of urgency and tend to challenges the inherent by using their enforcement power in current context .Supply and demand shocks provoked by crises can lead to product shortages and price increases that call a number of principles which can be explained by competition authorities in order to determine the exploitative practices in covid 19 there is need by competition authorities to firstly to have an eye on any significant price increases in short term it might include how does price increases in the supply chain as well by way of using interim measures or warnings to stop the conduct quickly or in order even to prevent it taking place where an authorities should use the information so Gathered to bring infringement secondly evaluate the available tools in competition law or other rules which might be problematic practices and should adopt or promote the use such tools as it most likely so addresses them successfully and in timely manner thirdly to pursue carefully analysis of the market and companies behaviour fourthly<sup>6</sup> to coordinate actions with consumer

protection and other agencies on which generally customers rely on after the crisis situation there is need to protect the consumer from unfair pricing practices and using advocacy power in order to highlight the measures for price control including those that might be related to discouraging production and putting an restraint on new companies to enter in the market.

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<sup>5</sup> OECD (2011), Excessive Prices DAF/COMP(2011)18, OECE, <http://www.oecd.org/competition>

<sup>6</sup> Motta, M. (2020), "Price regulation in times of crisis can be tricky", Daily Maverick, <https://www.dailymaverick.co.za/opinionista/2020-04-22-price-regulation-in-times-of-crisis-can-be-tricky/> (accessed on 22 April 2020).

### **Impact on the merger control regime**

The COVID-19 crisis has shocked the economic working of the society that has its some consequence it creates an Disruptive impact on the financial distress of many firms and which is forcing those firms to exit the market. Competitive authorities which are empowered for control over merger become even more relevant without which it might result in higher market Concentration and market power in several sectors which might lead to price increases and going to harm innovation and productivity which might lead to inequality. The challenges<sup>7</sup> faced by these authorities will be like increasing the level of uncertainty in regard to how will the market will evolve seeing the exercise of crisis in particular which is given in section 2 or government might try to mitigate crisis of their national economies by strategic or promoting merger between private parties under section3 or giving merger remedies which is important tool in order to prevent anti-competitive effects which effect design and implementation section 4 or in order to address urgent mergers involving firms in financial distress or with regard to tractions requiring immediate implementation pending on the merger review as stated in section 6. Some of the authorities have already observed that is going to be no ease in standard of review in regard to merger in current crisis in UK also it was stated that coronavirus pandemic didn't Brought much relaxation to merger but then also there is going to be some impact in the substantive assessment the key principles might remain the same but their implementation may require adjustment seeing into factual cases which result into difficulty by determining uncertain economic event where it is still not much clear about the limit till where the market is changed or it might changes. Social condition must be taken into consideration in regards to this in a previous case of 2008 financial crisis there was a recognition about the fact that competition authorities must use the advocacy to alter the dangers of undermining market process and should ensure merger should be in proportion and necessary to achieve objectives that state might pursue in the cases which might invoke public policy objectives by the authorities the might take the help of policy makers on how the anti competitive risks if merger which might driven with regard to public consideration should be minimised this might result from clearing transactions by use remedies provided for merger the role which was played by the government in this regards is to able to attain the public policy objectives which might no lead to structural, long term and competition problematic's it has been seen Covid-19 had brought rapid change in some sectors with regard to long term impact on them by changing competitive dynamics so these authorities need to review an increasing number of mergers in a concentrated markets or in the markets where exit of less efficient competitors is rapidly accelerated. In this regard the remedies may become an even more important enforcement tool in regard to resolve and to prevent the harmful effects on this process which may result from a merger in this regard allow for the approval for the mergers that might otherwise prohibited by ensure the merger achieves That will overall bring economic benefits in regard to pursue but by eliminating the risks that might arise

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<sup>7</sup> See OECD roundtable on market Concentration, 2018

in competition As in this regard the remedies play a vital role in regard to merger control and their crafting is important to competition authorities carrying out their review Merger remedies are either structural or behavioural remedies government might use both of them adequately .The COVID-19 is used not only to increase the importance of remedies but put a question regard design and implementation. In structural remedies this principle such as regard to investment are preferred because they were considered clear cut and directly going to see the structural changes in the market that might result from the merger and they can be monitored easily the changes were rapid in this remedy particularly in challenging its design and implementation after Covid19 the design in order to determine the scope of assets to be divested which might present additional challenge .Authorities are confronted with an huge number of cases where this remedies are less burdensome where the merging<sup>8</sup> parties fail due to rapid crisis by depreciation of assets or businesses being divested. As in regard to implementation the carrying out of a divestiture by parties in particular search of suitable buyer could take some time which is more than usual. In markets which are affected by crisis structural remedies need not always be opted which might be deteriorating performance of the assets, not able to identify suitable buyers and ineffectiveness to rapid market circumstances. Sometime competitive authorities need to be creative in order to prevent the structural remedies from becoming less practicable in this crisis situation. These authorities need to be more alert as risk of such remedies are not being as Effective as it was during the normal times so they might ready to structural remedies not as effective as merger consumption and reject proposed remedies and prohibition on the merger.

With regard to these remedies, it can be argued despite the greater flexibility they have significant limitations than structural remedies because they are difficult to design well and require burdensome by monitoring the competition authorities these remedies must be limited in time so not require monitoring for undefined or long period of time in the future. With regard to all these risks and costs it includes behavioural remedies which might entail which might remain to see whether they might become more frequent in this crisis situation since remedies are more on flexible side and can be Modified with the time in order to adapt to changing market .In this moment a severe crisis such a situation like Covid19 in this authorities can identify a small window of the time used to allow behavioural remedies to give desired effects so impending anti-competitive effects an instance so when behavioural remedies could be taken in such in non-horizontal mergers take place in registered sectors where covid 19 situation has led to slow in the process during pandemic the authorities issued clarification to business on for notification and review on merger. These are those adjustments that are aiming at mitigation the impact of lockdown on control merger review theCovid19<sup>9</sup> situation may increase the pressure on authorities in order to speed up the review of the merger process while the standards of review will remain the same untouched. Some were already under pressure before the crisis but

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<sup>8</sup> <https://www.eccedu.net/en/m-1099-law>

<sup>9</sup> See Background Note for the OECD Roundtable on Public Interest Considerations in Mergers.



pressure had increased after all the crisis, Therefore, a likely increase in the larger number mergers of highly concentrated markets requiring an in-depth assessment Europe when during its crisis exceptional thing occur that results in derogation from standstill obligation may have increased during Covid-19 crisis in this competition authorities are not going to relax the standards for in regard to merger assessment and they continue in order to prevent structural changes that might arise which will harm in long term at the same time of frame they are needed to monitor the market conditions closely which include cooperation with government regulators and entities and tend to insure accurate merger scrutiny in the context of higher uncertainty that might arise during crisis competition authorities should provide the government the general help for in order to minimize anti-competitive risk that might occur from merger and advocate for a transparent in regard to identify the public policy where these authorities to be creative in designing the traditional remedies which has become less practicable or might have not implemented during crisis. These authorities should establish a rigorous review without failing the firm defences applied to consider either substantive or procedural changes are needed and they should circumvent the notification where strict conditions are considered for derogation from standstill obligation.

Since the economic condition changed due to covid 19 so there is a requirement for fast and strong actions to be taken by the government so in order to keep the markets and economy could function in better way. Government intervenes in those markets which is affected due crisis is necessary and quite legitimate but in order to ensures robust growth there is need to restore the competition prevailed in the market for longer term. So, there is need of short-term recovery in order to stimulate the things. The authorities need to consider the trade-off that arise between efficiency and resilience so that economy is prepared earlier only. When we see the supply chain challenges and in order to promote social cohesion and environmental outcomes in order to achieve the policy target and policymakers should assess different alternatives in order to be cost benefits analysis so to select the policy option to minimize restrictions and distortion. All these want a reflection in an policy in order to reallocate resources in certain sector of the economy in the same time need not distort the competition that might arise between them in long way

Restoration of the Competition is important so that there is fast recovery and they are consistent in order to ensure the economic activity. The policy actions of that government and authorities could be considered in regard to help the immediate challenges which might be raised by the crisis whilst great for post pandemic.

#### **Actions taken by the government**

1) Support to be provided to competition policy principles and enforcement – pre crisis era has shown that competition policy and there enforcement plays a major role in strengthening resilience prevailed in the market and plays role in order to support speedy recovery from crisis

of the economy imposing strong competition may play <sup>10</sup>a role in the Government's Responses in regard to economic crisis and government also continue to Support the competition authorities in regard to resources and may call their unique Expertise during and after the situation in order to ensure market are functional and will support economic growth.

2) State must support measure in order to take account of competition principles – government should plan to lower the impact on competition and should avoid it by its market intervention whenever it might be possible to lower it and to give selective aid to those firms are failing might have issue regarding structure before the crisis. Measures must be taken in order to target the specific companies while in period that might be critical it must be designed carefully and should temporarily be closed. If an investment is made which include nationalisation of a firm it must be existed as soon thing arises that might promote competition. They should also appropriately reimburse firms in cases where crisis might occur so it tells us the need to impose new public service obligations on the Governments should cooperate in this regard.

3) Limiting the protection measures and keeping market open- governments should limit their interventions in the matters related to state which might unnecessarily distort the playing area and need to take advice of authorities. Whenever we plan market interventions governments in this regard must first ascertain the measure that are necessary and proportionate in regard to address as market failure arise in market by crisis. They must be sure that measures of support which might be adopted must be transparent and not permanent. So, in order to conclude this governments should have alternative in order to entail the negative effects in regard to competition.

4) Remove the government intervene in regard to the medium to long term process – policies can be used in order to providing information to the market mechanism in regard to restore the position after the crisis while they avoid the damage by planning there exist support measures must be limited in the manner that they are reasonable and government should not support as soon as conditions allow. Not letting them to continue we need to give some incentive in this regard as soon condition of market become proper and so that after all this we can promote competition governments should take help of competition authorities in regard to exist strategies as this is complex and careful consideration is must needed to in order to balance the flexibility with certainly.

### **Due to crisis what all actions take in regard to competition authorities**

Firstly, there is need not to soften the enforcement or advocacy as we know competition plays a fundamental role in regard to play in ensuring the functionality of market in order to promote the economic recovery. There should be no suspension in regard to principles or policies and objectives of law enforcement as we need to be realistic while taking things into account in this

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<sup>10</sup> [www.oecd.org/competition](http://www.oecd.org/competition)

condition. Since we know pandemic arise so there was emergent need for taking decisions in emergency which needed to have a flexibility in their Procedures and to carry rapid diligent of these behavioural cases.

Secondly to prioritize the advocacy and enforcement actions in regard to measure that are effective in order to deal with this crisis situation as the enforcement and advocacy need the working of authorities which should be priorities for working of the various sector of the economy which has suffered due to Covid-19 these authorities should bring up the new ideas in order to speed up the recovery of the economy these authorities need to take actions they should put focus Firstly on enhancing the incentive machinery for the markets in order that they can quickly respond during the crises and secondly limiting the market response so as to prolong the crisis effect and lower down the recovery of the economy authorities should also have a medium of communication which is transparent regarding to adjustments of priority sectors and instruments.

Thirdly they should help Government to not implement state interventions as these authorities continue to champion principles in regard to safeguard the level of playing field and in regard to avoid the market distortions by helping the government design in regard to public responses to these crises may be based wherever possible in a clear and general and principles which might be applicable to all these firms in regard to economy or region and mechanism is needed to restore the crisis. For economy to recover there is need that the market competition should be present.

Fourthly, there is need to monitor the rapid increase of price this also involve in it taking enforcement action regarding the anti-competitive rise in price as we know the interim measures or letters to do this conduct fast when appropriate needed and authorities also needed to coordinate closely with these agencies or might rely on protect powers to protect consumer from unfair practices. Authorities are advised to use their advocacy in order to determine hike in price.

Fifthly to ensure lawful competition between the competitors this might include both the guidance to how to deal with crisis as well as fast case guidance to the businessman it is also important in order to consider the efficiency in regard to arrangements between competitors and more of for the development of health producers.

Sixthly to take close look at the merger and specially to rescue mergers in this regard anti-competitive merger are generating a long-lasting impact in regard to market which should be prohibited in the time during crisis. Companies financial distress might be cured by evaluating the financial distress in regard to efficiencies must be seen so ghat competition is also improved. Every transaction that occurs must be scrutinize carefully so that they must be rescue merger in regard to avoid the anti-competitive mergers in regard to long lasting negative imposes on market place.

But recognising the position of the firm in distress may lead to rapidly Deteriorate during the investigation which result in causing inefficient Liquidations and these authorities must adopt the changes in order to ensure a speedier review of merger involving the failing of firms.

Seventh to minimise the use of exceptions for policy regarding public in regard to considerations of merger control.

There must be not much considerations given to other public policy it must be related to circumstances which are Exceptional which might be made in transparent manner and in case where there are no restrictive alternatives arise the same use of public policy objectives. If this power to anti-competitive merger in regard to public interest considerations are given to differently bodies then these bodies must actively promote when available the use of measures that might help to achieve the public interest objective that might decrease the competition.

Lastly there is need to look for procedural flexibility which might give the measures by limiting the movement of people and in order to adjust the crisis related priorities these authorities need to explore the flexibility in regard to procedure any such use of flexibility and adjusted procedures should be accurate to due process of the rights given.

### **Measures adopted by antitrust authorities by other jurisdictions**

UK Government's produce an order on 1<sup>st</sup> may,2020 giving temporarily relaxation on the application of UK competition law in to certain Cooperation of dairy sector by providing them dairy produce or to the dairy logistic service during the pandemic. The order was temporarily excluding on the application regarding the Chapter 1 which provide for prohibition in the UK government 1998 for anti-competitive arrangement as a result the dairy produce supplies the service provider were able to collaborate for example collected and shared the information regarding limited matters in regard to surplus quantities and regarding level of stock in order to address the chain of supply which might be caused by Covid-19 but this order did expired on 2 august,2020.The groceries were also temporarily relaxed in regard to application of the Chapter 1 where it is prohibited in that sector in regard to allow UK retailers in order to cooperate in meeting the requirements regarding Covid-19 pandemic. This might also allow retailers to have sharing of data and cooperation to keep open the shop and they used to take delivery vans for each other. Additionally, the competition and market authorities has also issued in regard to statement for offering reassurance which they stated that the CMA has not wanted in order to take up the competition law enforcement actions in regard to cooperation between business or rationing in regard to the products to the limit it is necessary in order to protect the consumer it can be explained by way of example like if you ensure security of supplies. But the CMA has given that it is not going to tolerate the businesses which are unscrupulous which is going to exploit the crisis in regard to cover for non-essential collusion it might include exchange of information in regard to long term pricing or business where it is not necessary to meet up the needs of current circumstances. At the same the CMA has made it clear that it is going to keep

the vigilant and going to seek the more<sup>11</sup> powers which are legal on an emergent basis in order to tackle the competition law that infringe the companies by corona pandemic.

In the European Commission in this regard, it was announced there on May 4,2020 the decision in order to allow certain types of cooperation in the sectors like milk and milk products, live plants and flowers and also include vegetables like potatoes provide a wide range of Support in the food industry during this pandemic situation. They also adopted measures in order to enable the farmers' association and producer organizations and other participants of the market in order to enter the agreement and to take up a common decision in regard to cope up with the severe decrease in demand which is caused by Covid-19.

In Australian<sup>12</sup> Competition and commissions for consumers has also granted a number of interim authorisation to organize in particular industries which allow them to cooperate during this pandemic of coronavirus this authorisations which is interim has been granted so far in order to include those permitting: first of all the market people must coordinates with each other to in order to maintain the supply of grocery, second, shopping centres owners were also to coordinate with each other so that they develop a rent relief measures in regard to small and medium tenants, banks needed to coordinate in order to provide the supplemental relief regarding packages for individuals and businesses, gas and electricity providers needed to coordinate so as to ensure there is a stable energy and integrity of wholesale market, medicines wholesalers were also to coordinate in order to ensure that there distribution of essential medicines and products related to pharmaceutical, airline is also to coordinate in order to develop flight schedules for regional flights that are routed and lastly , to provide private health insurers in order to coordinate in returning the excess of profit in order to members and on extended cover to the certain other procedures.

As the way forward we come to know that pandemic it exists and continues and the restrictions which were putted in regard to form if health advisories are still needed to be followed further, many economic sectors which includes airlines, tourism and hotel industry etc are been adversely impacted during this course of next months but there might be few sectors that are needed in order to cooperate so as to ensure the seamless delivery of those products and services which are essential. Airline industry has been also hit back to a great extent due to this pandemic it might wish to allocate the routes and regions and area in order to survive. The cost of air tickets also been greatly affected most important the companies which are pharmaceutical companies which they may collaborate and corporate in order they can develop the vaccine. These industries when make the vaccine ready they might also coordinate in order these companies may further plan for partnership in regard to packaging and storage solutions. These logistic companies may if they wish will cooperate and coordinate and will allocate the territory in order

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<sup>11</sup> [www.barandbench.com](http://www.barandbench.com)

<sup>12</sup> Competition commission of India (CCI)

to meet the varied locations that will be going to distributing the vaccine in this regard. The traveling and hospitality sector is also impacted by this to a great extent. While considering the ongoing pandemic in regard to this pandemic which is ongoing can exemption which may allow coordination in certain sectors can be implemented in short duration? If this is yes then the coordination needed not to be pricing alone but rather we should in order to maintain the availability of the stock or to maintain the traveling or important routes. Assuming this exemption which are permitted, could we get a step further and there is expect exemptions in the short run for market allocations. Though there are exemptions which may help in order to maintain the seamless of the delivery of those products and those services at the end when pandemic is order they can be initiated for only few months and these are then renewed as per the requirement. It can be stated that in purpose for the exemptions which us not to impede this competition or in order to encourage any dilutions in regard to its enforcement. The purpose of this is to help adversely sectors of the economy which are affected which are crucial to the economic recovery. Special measures must be taken during these such times in way of the exemptions or concessions which can be prove to be a boon in regard to them especially for those sectors which might provide benefits for Essential services.

I regard to this I would like to raise the certain question to the society in order they further think to will a certain industrial perform would be better if it is justified coordination which is permitted between the market participants in order to facilitate sustainability which is used presumably it to be prudent in regard to that in order to help in the reviving that sector. But there comes another question as to whether the three is same concessions would be allowed in those sectors as well there further arises a question that whether the pandemic has resulted into an enormous benefit to these certain industrial backgrounds by giving them a unpredictable boost or leveraged which a digital industry might especially online education or e commerce or games or data consumption or platform?

It was referred in a report that the pandemic might has turned out in this regard to be a huge opportunity for the Indian e-commerce gamers ,in regard to sales as excepted to be doubled the compared with these previous year as regarding seeing the business growth data elected from various brands or e tailers or e-commerce enablers or analysts Indian e-commerce as a 27 billion market in the calendar 2019 is all set to achieve 40 percent growth in 2020 as compared to 23 per cent growth in 2019. It is also need to find out the result of the pandemic there is much a need to increase in the annual online shopping and online penetration as to the percentage of total in order to retail spend. Always there another side in every story in regarding to the terms of concentration in certainty of the industries due to unforeseeable circumstances that might have arisen in these last year there is further need for competition regulators in order to give particular attention to these sectors in regard to evaluating the novelist disputes. During this covid 19 all the markets which are opened these came up with new challenges which have been introduced. Some of these markets are also unique in their character and value such marketing they need to

have specialized skills. If there are no proper understandings regarding the working of these markets do they are needed to be cautious so that they should not avoid any kind of market disruption. In order to conclude everyone should keep up the above discussions in their mind and the current situation and if there is any kind of regulation so they are required to see all the rational and balanced consideration of all the sides of the story.

### **Conclusion**

In the line with these practices there are likely chances that the central government might allow the collaboration in regard to deviation from the competition law they would allow only when the supply of essential commodities, medical suppliers or the equipment or the research and the developments etc but these must not be interpreted by a carte balance by seeing with regard to competition rules. Till then it is needed to be a status quo for the antitrust regime and the firms needed to be careful to not to assume that the exceptional times may justify a departure in regard to strict competition law compliance. It is also stated that it is important for the legal and compliance teams in order to remind the business colleagues in that regard by staying that crisis is not a time to let the company's guard down. Any action which might be taken by consumer in order to take advantage of the situation which is determinant to the consumer or in order to manipulate the market by theses anti-competitive agreement or by use of abuse of dominant position it is going to expose enterprises to antitrust scrutiny and financial penalties hefty. The competition law enforcement agencies are faced with a paradox as seen above these statements have to been issued in regard to allow collaboration between competitors in regard to boost go manufacturing and the supplies. But at the same time these agencies have to been categorical in issuing warnings against to anti-competitive behaviour. The task for providing to these tailors in order to narrow the current crisis is bit a more challenging. Consider the grave urgency where no country has to be ventured into the changing the legal regime per se. These exemptions are being worked in out from the statutory provisions. Since the government has not come out with any kind of specific exemption in regard to various sector from the purview of these various antitrust law it would be interesting to know that these antitrust watchdog might be watching the collaboration between the competitors which might include health care providers in order for sharing technical know-how or it might include the markets dealers as they might indulge in the deciding the prices of the various commodities in future or when there are food aggregators which might deal with the retailers so in order to have easy services etc. These must be monitored closely in the view of antitrust regulations of various countries. Most of essential goods include mask, ventilators etc these are generally used in regard to government procurement for this time with these various players there is need of the segment which might be allowed without having any wear and tear of fear of antitrust action of cartel later in order to collaborate with these government and each other in order to ensure welfare of the public. Since there is monopoly of the government in some sector they appear as sole buyer the impact in regard to this competition might seem less and such an impact is yet to be covered under the

same act by the concepts of buyer cartel. Government of various jurisdiction might come up with consolidated guidelines in regard to business in order to allow these certain need-based collaboration without having any kind of malice intention in regard to meet up the rising public demands in regard to goods and services in the parlance of this pandemic

Before there is any kind of collaboration with other competitors it given a advice to take up the appropriate legal help and check the competition law position which might also include the competition compliance programme. These competitors are suggested to not share the sensitive ingredients by way of use of any common platform that might set the price or restrict this output of essential commodities or facilities it might allocate to customers or divide in the markets in order to coordinate in this regard in commercial way. Any irresponsible and illogical action taken during crisis could have been a result in any kind of investigation by CCI sooner or lately. There is going to be a negative outcome which might not only affect the financial draining but also going to affect the company reputation in an more sever manner than the use competition law in the time of COVID-19. We can also see an example where in European countries has there are going to be reduction in the non-critical goods while the producing channel will be involved in increasing the supply chain of medical and essential goods. This output will become more efficient if a certain sire would be producing one medicine at a time rather there are different products but this not have been accepted by all agencies. We are yet not finished with the seeing the full magnitude of the complex issues that might arise in the competition law due to this pandemic and we need to be more pragmatic and innovative in order to deal problem. The CCI took effort in order to revise the guidance norms and brought many important changes and it all welcomed the clarification signals which has a great focus on the CCI on increasing the transparency and will improve the efficiency of doing business. But with these changes the thing which will substantially be reduced is the burden of the parties in regard to there a few things which will be required by those parties in order to collate and present the detailed information. Thus the CCI also shown its willingness regarding to have an open and helpful discussions with the filing of the parties for pre-consultations this will also going to assist the M&A world in regarding to approach the CCI in order to seek any further clarification in that regard that may need and highlights the genuine and justified impediments regarding to the meeting of any increased information of the burden to those health concerns and confinement measures and should also border the closure which is adopted in the wake of the Covid-19 crisis that might have caused many disruption in regard to the supply and distribution chain of the good and the job and services which the public sector needed in the same time those buyers around the World need some kind of goods urgently and at the dramatic increment in the volumes

And there is demand for health care material which includes face masks, protective gloves ,ventilators and the beds and medicine needed for intensive care material for Covid-19 tests and there is need for lab supplies an hospital infrastructure has also massively effected which might have surged in those weeks the consequences are that many cases a public buyer that may find



that there is only one kind of supply which might be able to do the delivery of the material as it requires, in those best of the cases there are only limited pool of those suppliers for the delivery capacity but there is no time for the buyer to run out of procurement in the due process of those urgency in regard to those needs which are to be covered. In such cases buyers are needed to directly negotiate and buy from supplier that might be having capacity.

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