



Lesser Penalty Regime



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SESSION

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Disclaimer: Views expressed during this Presentation do not necessarily, reflect those of CCI.



CARTELS & LENIENCY



- ❑ Cartels most egregious violation of competition law. It's a civil offence in India;
- ❑ Growing focus of antitrust authorities on unveiling cartel activities;
- ❑ An optimum mix of strong investigative powers and lucrative leniency program may offer the most effective cartel enforcement mechanism.
- ❑ Detection + Deterrence—the two pillars on which cartel enforcement can successfully stand and sustain.
- ❑ A leniency program, in its most effective sense, can provide both detection and deterrence;



INDIAN LENIENCY REGIME



- ❑ Section 46 of the Competition Act, 2002.
- ❑ Competition Commission of India (Lesser Penalty) Regulations, 2009, as amended in 2017 made under powers exercised under Section 64 of the Act.
- ❑ Section 32 empowers CCI to inquire into cartels operating outside India which causes or is likely to cause an AAEC in India.



LESSER PENALTY REGIME

- ▶ Objective- To get cartel members to share information and cooperate in unravelling the cartel.
- ▶ What- it's a type of whistle blower protection
- ▶ Why- incentive for wrong doers to come forward and confess. In return immunity/lenient treatment
- ▶ Who- by producers, sellers, distributors, traders, service providers in the cartel.
- ▶ When- provisions of Section 3(3) are violated
- ▶ How- make full and true disclosure of violations which are vital.
- ▶ Where- Before the Commission.



Lesser Penalty Regime



- ❑ Applicability – Only Cartel Cases
- ❑ Who may approach:
 - ❑ Enterprise who is or was member of cartel.
 - ❑ Individual who has been involved in cartel on behalf of enterprise.
- ❑ What all to disclose:
 - ❑ Name and address of Applicant and other enterprises involved.
 - ❑ Detailed description of cartel arrangement.
 - ❑ Goods or services involved.
 - ❑ Geographic market covered.
 - ❑ Commencement and duration of cartel.
 - ❑ Estimated volume of business affected in India by cartel.



Grant of Lesser Penalty



- ❑ First Priority Status: Up to 100% penalty reduction
- ❑ Second Priority Status: Up to 50% penalty reduction
- ❑ Third Priority Status: Up to 30% penalty reduction*
- ❑ * 3rd and subsequent applicant eligible to be within this band.



Grant of Lesser Penalty



- ❑ Parameters for determination of Lesser Penalty:
 - ❑ Stage at which Applicant comes forward with disclosure.
 - ❑ Evidence already in possession of CCI.
 - ❑ Quality of information provided.
 - ❑ Entire facts and circumstances of the case.

- ❑ Who gets reduction in penalty: The Applicant enterprise and the individual officers/representatives named in the application;



Conditions for Lesser Penalty



- ❑ No concept of immunity applicant—though first applicant is eligible for up to 100% reduction in fines.
- ❑ Conditions to be met:
 - ❑ To provide information before receipt of investigation report
 - ❑ Applicant ceases to have further participation in the cartel except when directed by the Commission;
 - ❑ Provide vital disclosure and Co-operate fully, continuously and expeditiously throughout the proceedings;
 - ❑ Provide names of individuals who have been involved in cartel on behalf of the applicant and for whom lesser penalty is sought;
 - ❑ Not conceal, destroy, manipulate or remove relevant document.



Conditions for Lesser Penalty



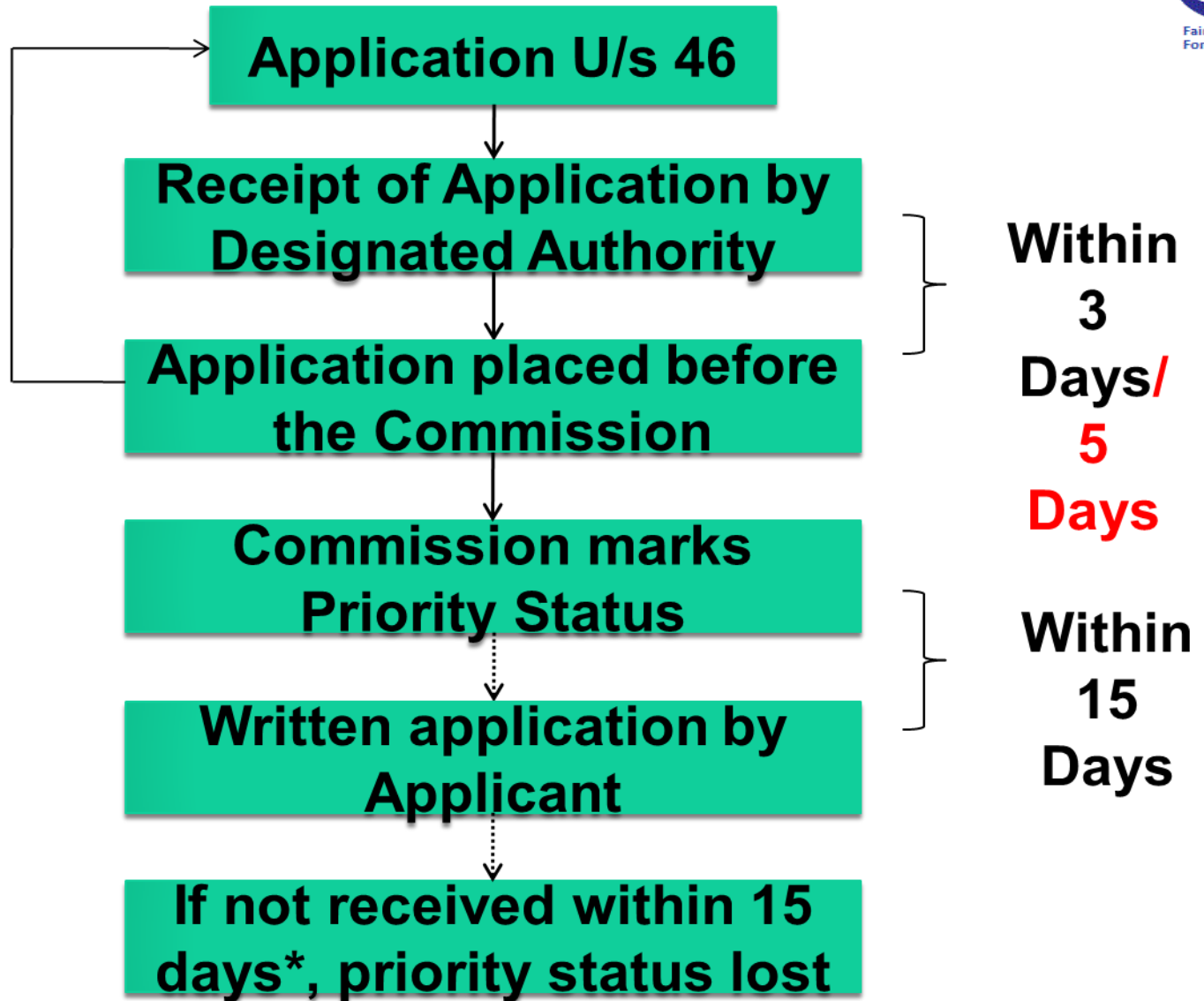
- ❑ Applications can be either oral or in writing
- ❑ Commission marks priority status and designated authority conveys same to applicant.
- ❑ Lesser penalty is not a vested right. Its subject to fulfilment of conditions specified.
- ❑ Unless an application for lesser penalty is evaluated, next application will not be entertained.



Procedure for Grant of Lesser Penalty



**Intimation
of priority
Status**





Tools

- ❑ Other tools employed to detect cartels
- ❑ Cartel screening- CCI has signed an MOU with GEM largest e-marketplace for public procurement.
- ❑ Raids conducted by DG, pursuant to a *prima facie* order for investigation passed by Commission.



Confidentiality



❑ Confidentiality

- ❑ Identity of LP Applicant.
- ❑ Contents of LP application.

❑ Confidentiality ends:

- ❑ Disclosure is required by Law.
- ❑ Applicant has agreed to such disclosure in writing.
- ❑ There has been public disclosure by Applicant.

- ❑ Note: Non-confidential version of Lesser Penalty applications shall be open for inspection after CCI forwards copy of DG's investigation report to parties; but parties shall not disclose such information, documents and evidence other than for CCI proceedings



Case Law Experience



- ❑ As per public domain, **10 LP** cases have been decided.
- ❑ Cartelisation amongst NSK Limited, Japan ('NSK') and JTEKT Corporation, Japan ('JTEKT') and their Indian subsidiaries namely Rane NSK Steering Systems Ltd. ('RNSS') and JTEKT Sona Automotive India Limited ('JSAI') (**2019**)
- ❑ Cartelisation in Indian Zinc-Carbon Dry Cell Batteries Market (**2018**)
- ❑ Bid Rigging in tenders by Sports Broadcasters (**2018**)
- ❑ Bid Rigging in tenders of Pune Municipal Corporation (**2018**)
- ❑ Bid Rigging in tenders of Indian Railways –Brushless DC fans (**2017**)



Proposed Amendments to Framework of Lesser Penalty:



- ❑ CLRC submitted its recommendations to Ministry of Corporate Affairs (Parent Ministry)
- ❑ Ch. 5 Sub. Ch. 10, deals with Lesser Penalty
- ❑ Existing law does not deal with **Leniency Plus Regime**
 - ❑ Aimed at attracting leniency applications by encouraging companies already under investigation for one cartel to other cartels unknown to the competition regulator (ICN)
 - ❑ Leniency Plus applicant would receive reduction in penalty over and above any other reductions under normal lesser penalty framework
- ❑ Provision for withdrawal of lesser penalty application [Such provisions exist in the UK (CMA) and Brazil (CADE)]



THANK YOU

