

Competition Commission of India

19.04.2020

Advisory to Businesses in Time of COVID-19

COVID - 19 has caused disruptions in supply chains, including those of critical healthcare products and other essential commodities/ services. To cope with significant changes in supply and demand patterns arising out of this extraordinary situation, businesses may need to coordinate certain activities, by way of sharing data on stock levels, timings of operation, sharing of distribution network and infrastructure, transport logistics, R & D, production *etc.* to ensure continued supply and fair distribution of products (*e.g.* medical and healthcare products such as ventilators, face masks, gloves, vaccines *etc.* and essential commodities) & services (*e.g.* logistics, testing *etc.*).

The Competition Act, 2002 (“the Act”) prohibits conduct that causes or is likely to cause an appreciable adverse effect on competition. Section 3(3) of the Act presumes certain concerted actions between competitors to cause an appreciable adverse effect on competition. This presumption is not applicable to joint ventures, if such agreements increase efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services. Also, while conducting competition assessment, Section 19(3) of the Act enables the Commission to have due regard, amongst others, to the accrual of benefits to consumers ; improvement in production or distribution of goods or provision of services ; and promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

Thus, the Act has in-built safeguards to protect businesses from sanctions for certain coordinated conduct, provided such arrangements, as mentioned above, result in increasing efficiencies. These provisions will inform the decisions of the Commission. However, only such conduct of businesses which is necessary and proportionate to address concerns arising from COVID-19 will be considered.

Businesses are, however, cautioned not to take advantage of COVID-19 to contravene any of the provisions of the Act.
