COVID 19: An Overview of the Preliminary Regulatory Responses to the Pandemic in the Indian Corporate Sector

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Introduction

While the impact of the pandemic caused by COVID-19 has been deeply felt across all the aspects of human life across the world over the past couple of months, the commercial, corporate and business sectors in particular are considered to be one of the most affected areas in terms of the severity of the changes and regulatory responses relating thereto. A human and social crisis of unprecedented scale, the pandemic has caused and is still continuing to cause markets and institutions around the globe to reconsider their short-term as well as long-term strategies, expectations and capacity to absorb the regulatory turbulence and shocks felt on both the demand and supply sides of the equation, the extent of which is still being gauged as of now. In course of this paper, the author would like to spend some time delineating and reviewing certain specific regulatory responses that have been made by three of the biggest sectoral regulators and ministries in India, viz. the Ministry of Corporate Affairs (hereinafter "MCA"), the Securities and Exchange Board of India (hereinafter "SEBI"), and the Competition Commission of India (hereinafter "CCI"). It is to be noted that all the sectors and industries governed and regulated by the aforesaid bodies are currently in a state of flux, and therefore these regulatory responses are also prone to periodic and regular modifications depending on situational analysis and requirements.

Regulatory Responses from the Ministry of Corporate Affairs

In the light of the social distancing measures and lockdown that are in force during the pandemic, the MCA has recognized the difficulties involved in holding statutory corporate meetings of both shareholders as well as of the Board of Directors. While the Companies Act, 2013 or the Companies (Meetings of Board and Its Powers) Rules, 2014 used to provide for only physical meetings of the Board, the 2014 Rules have been amended by the MCA vide a notification dated March 19, 2020 allowing the Board to conduct such meetings via video-conferencing or other comparable audio-visual means at least till June 30, 2020, so long as such meetings are intended to approve annual financial statements, Board reports, prospectus, mergers, amalgamations, acquisitions or takeovers, or if the Audit Committee (one of the sub-committees of the Board) are meeting to consider financial statements.[i] From this list, one may be able to conclude that the legislative intention was to ensure that the pandemic and the restrictions issued because of it do not succeed in bringing the

essential corporate activities to a complete stop; the inclusion of mergers etc. in the list may in particular bear significance in relation to the collaborative restructuring that the fight against the pandemic gets to see in the coming days. While holding such virtual meetings, however, there is a list of legal issues that the Board must take into consideration, *inter alia* providing the directors the option to participate in such meetings using audio-visual means clearly in the notice to the meeting, ensuring that each member of the Board clearly indicates their consent to participate in such meetings and confirms receipt of the agenda beforehand, the quorum for such meetings is conclusively ascertained by the Chairperson, preferably by taking specific roll call during the meeting, any oral communication taking place during the meeting is preceded by the concerned member clearly stating their identity for the benefit of all other participants, the Chairperson announcing a summarized version of the all the decisions taken in the meeting, the members present having agreed to consider the statutory registers deemed to be signed by all of them as applicable, and finally, timely circulation of the minutes of the meeting among all the members within 15 days from the date of the meeting (in written or electronic format).[ii] Further, the mandatory period[iii] within which successive Board meetings have to be held has also been increased by 60 days for the period between April, 2020 to September, 2020 (allowing two consecutive meetings to take place as long as 180 days apart).[iv] Specifically, in case Independent Directors cannot hold their statutory exclusive annual meeting for the financial year 2019-20, the same would not be considered a statutory breach so long as the meeting is held subsequently following lifting of the ongoing restrictions, although the MCA has encouraged such directors to hold their meeting using audio-visual means if possible.[v]

When it comes to shareholder meetings, the MCA has advised the companies not to hold any physical meetings at this stage and seek essential shareholder approval by way of postal ballots/e-voting. Section 108 of the 2013 Act and Rule 20 of the Companies (Management and Administration) Rules, 2014 already provide for detailed procedure with regard to such e-voting, although till date, only listed companies and all unlisted companies having more than 1000 shareholders were required to provide such facilities.[vi] Apart from said e-voting, if a company has to convene an Extraordinary General Meeting of the shareholder under unavoidable circumstances, then the same can be conducted using audio-visual means like the Board meetings till June 30, 2020, provided certain specific conditions such as attendance of at least one independent director (where applicable) and auditor (or his authorized and qualified representative), maintenance of all records of the meeting (and providing the same on the company website in case of public companies) and provision of e-voting facilities, notice for the meeting and e-voting being provided via registered shareholder email address or through the depository or depository participant

etc.[vii] The conditions make it clear that while the MCA acknowledges the need for the hour of allowing corporate activities to be compromised even under the current exceptional circumstances, at the same time, it also remains mindful of the need to maintain transparency and accountability in course of such activities. Having said that, if such virtual meetings continue to remain a regular feature in the Indian corporate scene for some time to come, then the author is of the opinion that certain issues of paramount importance need to be addressed specifically, including but not limited to those pertaining to privacy, data confidentiality and accessibility, especially when it comes to small-scale retail investors who own shares in such companies.

One of the significant changes that has been introduced by the MCA during ongoing crisis is to encourage companies satisfying the requirements prescribed under Section 135 of the 2013 Act[viii] to provide financial support to the different initiatives that are being undertaken all around the country for the purpose of dealing with the pandemic and the disruptions triggered by it –it is to such end that the MCA has vide notification dated March 23, 2020[ix] declared all expenditure on such grounds as incurred by the companies as to qualify as legitimate corporate social responsibility (hereinafter 'CSR') expenditure[x]. Further, a specific fund created for the purpose of providing necessary funding to deal with emergency or distress situations such as the one triggered by the pandemic, that goes by the name of Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM-CARES Fund), has also been announced as one, any contribution made wherein would qualify as legitimate CSR expenditure.[xi]

Some of the other significant changes introduced by the MCA as responses to the pandemic and the associated disruption include advising all Indian companies and limited liability partnerships to encourage their employees to work from home and facilitate the same[xii], waiving of the requirement to pay additional fees for delay in filing of the various statutory forms by the companies before the Registrar of Companies until June 30, 2020, deciding not to treat inability of any residential director to prove minimum 182 days of residence in the country during the financial year 2019-20 as a statutory violation in the light of the travel restrictions, postponement of the implementation of the Companies (Auditor's Report) Order, 2020 for the time being (this allows the companies not to have to immediately enhance their compliance level beyond the existing norms as the Order would have otherwise required) and allowing newly incorporated companies an extension of time by 6 months to declare themselves ready to commence business (earlier it used to be 6 months from the date of incorporation), to name a few.[xiii] Among other relaxations provided to statutory corporate practices, the one relating to maintenance of sufficient reserves (minimum 15%[xiv]) for the

debentures maturing in course of a financial year by investing such amounts in specified financial instruments by the end of April of that financial year, is significant –the deadline for such investment has been extended till the end of June, 2020 for the financial year 2020-21.[xv] Similar extension has been provided to deposit maintenance reserve too[xvi] (minimum 20% of the deposits repayable during that financial year[xvii]). Last but not the least, mention must be made in this context of the Companies Fresh Start Scheme, 2020 and the LLP Settlement Scheme, 2020 that have been introduced by the MCA –according to these schemes, companies and LLPs incorporated in India get the opportunity to rectify their existing defaults in terms of statutory procedural requirements including filing of all prescribed documents, without having to pay any penalty for the same during a moratorium period extending from April 1, 2020 to September 30, 2020.[xviii] Companies that have been rendered inactive owing to the pandemic also get to avail of this scheme to get the status of dormant companies (or even apply for getting their names struck off the register of companies), thereby minimizing their overall compliance requirements. While the relaxation is available for delay or default in filing of statutory documents, it cannot, however, be availed for other statutory violations that the company may be liable for. Once the company has withdrawn any appeal that it might have had filed against any order sanctioning it for delay/default, it has the opportunity of availing the benefits of this scheme by filing Form CFSS 2020 in order to procure the immunity certificate within 6 months from the date of the closure of the scheme.[xix] However, companies that have already applied for dormant status or for getting their names struck off the register, or companies against which the process for issuing final notice for such striking off has already been initiated, or companies that have been restructured or amalgamated under any scheme of compromise or arrangement under the 2013 Act, would not be able to avail the benefits of this scheme. The scheme applicable to LLPs as notified provide for similar relaxation of norms too.

The author is of the opinion that the MCA's regulatory responses so far in the context of the pandemic can broadly be classified into two categories, viz. the ones that are trying to provide solutions to ensure that the corporate activities can continue unabated and also absorb the disruptions caused by the pandemic (these include the amendments relating to the CSR provisions, the Work from Home facilitation, and the changes introduced in the context of holding virtual meetings of the Board and the shareholders –they also allow for the possibility that the pandemic and its aftermath may continue for quite some time and acknowledge the need to change the existing norms and perspectives to such effect); on the other hand, there are also those responses that are merely of the nature of 'stopping the clock' provisions (these do not make any change in the regulatory norms as such, but merely postpone the implementation or application of the same to a point of time a few

months ahead, thereby assuming that the pandemic would be brought under effective control by that time –therefore, they may need to be bolstered with further extensions in the event that assumption proves not to be true, at least until more reforms of the first category are brought forth as solutions).

Regulatory Responses from the Securities and Exchange Board of India

While the bulk of the regulatory responses applicable to the companies in the context of COVID-19 have originated from the MCA, SEBI, the capital market regulator in the country, has also come up with certain responses of its own during this period, some of which are even directly linked with the stance assumed by the MCA in this regard. The first response had been in the form of the circular titled 'Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 due to the COVID-19 virus pandemic', dated March 19, 2020.[xx] SEBI has vide this circular sought to relax specific compliance requirements for listed companies under the aforesaid 2015 Regulations – extension of one month had been provided with regard to submission of compliance certificate regarding reports on corporate governance, share transfer facility and compliance with applicable secretarial standards, as well as submission annual financial results, extension of 3 weeks had been provided for submission of reports on investor complaints and shareholding patterns for the ongoing quarter, and extension of 45 days had been provided for submission of quarterly financial results.[xxi] Further, the same circular relaxed the maximum time gap of 120 days as applicable between two successive meetings of the Board and the Audit Committee, to the extent such meetings were to be held between December 1, 2019 and June 30, 2020.[xxii] Subsequently, in a circular dated March 23, 2020, SEBI has also provided comparable relaxations to companies having listed non-convertible debentures (hereinafter "NCDs"), non-convertible redeemable preference shares (hereinafter "NCRPs"), municipal debt securities and commercial papers, especially from compliance requirements applicable to such companies under the aforesaid 2015 Regulations, as well as the SEBI (Issue and Listing of Debt Securities) Regulations, 2008.[xxiii] With regard to public issue of debt securities, commercial papers, or NCRPs, companies can now provide their audited financial results only till September 30, 2019 provided they intend to issue such securities or papers by June 30, 2020, thus being allowed a relaxation of 60 days in the process.[xxiv] Similar relaxation of 60 days and 45 days have been provided to initial and annual disclosures required by companies (large entities) raising funds by issuing debt securities.[xxv] Further, relaxations of 45 days, 30 days and 45 days have also respectively been provided with regard to disclosure of half-yearly investor grievance report, half-yearly financial results and quarterly account reports required to be disclosed by companies under the SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015.[xxvi] Existing timelines

for the regular monthly reporting by portfolio managers are also being maintained for the next 2 months, and the applicability of the SEBI Guidelines for Portfolio Managers has been temporarily withheld for the time being.[xxvii] A similar relaxation of 2 months has also been provided to Venture Capital Funds and Alternative Investment Funds for any statutory filing requirement under the SEBI (Alternative Investment Funds) Regulations, 2012.[xxviii] Depository participants are also being allowed as of now to process applications for registration, KYC verification and related material changes on the basis of scanned copies of signed documents or copies that have not been certified as otherwise required for Foreign Portfolio Investors in particular (provided they subsequently obtain duly certified copies within a month from the end of the period of operation of this relief).[xxix] Processing of different investor requests relating to physical securities and compliance requirements has also been allowed to continue for an additional 21 days over and above the applicable timelines insofar as issuing companies and share issue/transfer agents are concerned.[xxx] All these relaxations are as of date applicable only till June 30, 2020.

Regulatory Responses from the Competition Commission of India

In relation to competition concerns surrounding various sectors, particularly in light of the various coordinated activities that the various enterprises operating in the healthcare, hospitality, essential commodities, banking and software development sectors need to undertake in order to effectively address the ongoing crisis, the role played by the competition watchdog, CCI, cannot be overlooked either. In the absence of specific exemptions from the provisions of the Competition Act, 2002, such activities might run afoul of the prohibitions applicable to anti-competitive agreements or abuse of dominant position, as prescribed under Sections 3 and 4 of the said Act, regardless of their efficacy in providing a united front to the perils posed by the pandemic.

Section 3 of the 2002 Act prohibits *inter alia* activities such as price fixing, market sharing, bid rigging, manipulating production and supply of products and services, and related collusive endeavours between enterprises having horizontal or vertical relationship vis-à-vis each other.[xxxi] Most of such activities are considered *per se* violative of the Act, and attract penalties accordingly. The measures being taken by various market players across multiple sectors to cope with the abnormalities in demand/supply conditions may involve multiple instances of cooperation and coordination with their horizontal and vertical counterparts. Sharing of consumer, price and production data, apportionment of markets as an efficiency-enhancing strategy, collaboration for the purpose of facilitating innovation are but some of the examples of such measures. Having said that, such prohibitions are not absolute, and there are provisions under competition law jurisprudence that

may allow for collaborative agreements in the form of joint ventures intended to increase pro-competitive market efficiency, assuming such efficiency, whether technological, capacity-based, or economic, can be effectively demonstrated by the parties involved in said agreements.[xxxii] An illustration of the power to provide similar exemption under the 2002 Act is Section 54 thereof, which authorizes the Central Government to extend such relaxation to certain agreements on grounds like public interest or national security, a power that has been exercised in the recent past. Even other jurisdictions such as the United States, European Union, Australia, United Kingdom, and some of the Nordic countries have witnessed similar relaxation norms being exercised by their respective antitrust authorities in the context of the Covid-19 pandemic.[xxxiii] The recent advisory that has been issued by the CCI on April 19, 2020, seeks to adhere to a similar line of thought.[xxxiv] Titled 'Advisory to Businesses in Time of COVID 19', it acknowledges the disruption that has been caused to the supply chain by the pandemic and recognizes the need for coordinated activities for the enterprises to engage in, especially in the healthcare and essential commodities sectors, in order to ensure smooth supply and fair distribution of products and services; such activities might include sharing of vital information between enterprises that might have otherwise attracted the prohibition under Section 3.[xxxv] Interestingly, the advisory also refers to the powers of the CCI granted under Section 19(3) of the 2002 Act, which allows the Commission to take into consideration factors such as improving production, supply or distribution of goods/services, increase in consumer utility, development on scientific, technological or economic fronts etc. while reviewing whether a certain activity might be allowed.[xxxvi] The author is of the opinion that such references, together with the advisory having limited such special consideration only to activities deemed 'necessary and proportionate' by the Commission for the purpose of combating the pandemic and assuaging the various shocks generated by it, might have had the cumulative effect of rendering aforesaid collaborative activities usually deemed *per se* illegal under Section 3, to be subjected to a Rule of Reason analysis instead[xxxvii]. On another note, the possibility of exploitative conduct by enterprises by way of imposing unfair pricing and non-pricing conditions in order to take advantage of the fluctuations taking place in several markets owing to the disturbances generated by the pandemic may also be examined by the Commission under Section 4 of the 2002 Act, assuming such conduct amounts to abuse of a dominant position in the relevant market concerned.[xxxviii] Apart from the penalties that the Commission has the power to impose on enterprises for the latter's inability to adequately establish a correlation between the production and distribution costs incurred and the final retail price charged from the consumer[xxxix], there are also other legislative provisions at play here, such as the Essential Commodities Act, 1955, which allows the Union Government to designate goods as essential

commodities that cannot be sold for prices exceeding the maximum retail price as indicated on the package[xl]. Relevant departments of the government also have the power to implement price controlling mechanisms on such occasions.[xli]

In the light of the aforesaid stance that the CCI has adopted in this matter, it might be advisable for the companies seeking to collaborate on one or more fronts with the objective of dealing with the pandemic in a manner more efficient, to follow certain practices that might help convince the regulator of their good faith and lack of intention to enter into anti-competitive agreements or engage in abuse of dominance. Ring-fencing the relevant organizational departments that are engaging in such collaboration, as well as all the organizational data that are not considered essential for the purpose of such collaboration can be a good start; refraining from any kind of organizational coordination including data sharing or market allocation for the purpose of bidding for any of the tenders that the government and public sector enterprises may soon float in relation to measures against the pandemic may turn out be another important precautionary practice. Further, given the increase in communication between market players under such conditions, both on the horizontal as well as vertical levels, if only for the purpose of coordination, as well as the lack of organizational supervision of such communication in the light of most of the actual personnel involved working from home and not supervised office spaces or protected networks, it is also imperative that confidential organizational data is not carelessly communicated so as to allow other rival organizations be privy to the same.

Conclusion

An overview of the various responses of the aforementioned regulators to the challenges posed by the COVID-19 pandemic, as has been provided above, might lead one to several interesting observations. The first would be that the lack of certainty about the duration of the pandemic and the recurring effects in its aftermath is also reflected in the nature of the measures that have been adopted so far. This is apparent from the fact some of the measures are merely meant to stop the clock till the crisis is over; while an acceptable preliminary response, such measures have already revealed their susceptibility to periodic and regular extension or renewal as the pandemic keeps on assuming the shape of a bigger and more durable threat than it had seemed at first. Unless the situation improves considerably over the next couple of months, these preliminary responses might not continue to be effective in their renewed avatars and have to give way to more permanent solutions. Another point is that some of the measures that have been advised by the regulators might face technological and access-related barriers in terms of implementation on a national scale. While with time, effort and dedicated planning, such barriers can be overcome, it might require intervention on the part of the State where the scale and scope of the problem or its solution may defy isolated or even institutional efforts from

the private corporate players. The ease of business policy of the Union Government has so far been reflected in several of the measures, at least to the extent that they allow relaxation of compliance requirements on the companies' part; however, one must also keep in mind the degree of effectiveness on the part of the regulator as well as the judiciary to ensure that such relaxation is not being abused, especially in light of the severe operational limitations that the latter are facing at the current stage. Injection of sufficient stimulus into the economy across sectors and active solicitation of investment might prove to be of some assistance in this war that the country is waging against the pandemic, along with the rest of the world –keeping in mind the severity and suddenness of the problems with which the globe has been besieged within a relatively short span of time, the author is of the opinion that so far, the hybrid proactive and reactive regulatory responses that the corporate sector has witnessed in this country bear considerable promise for the future.

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[i] *See* MCA Circular D.O.NO.Secy (MCA)/COVID-19/1/2020 dated March 19, 2020.
[iiii] *Id.*
[iii] *See* Companies Act, 2013, Section 173.
[iv] *See* MCA F. No. 2/1/2020-CL-V, General Circular No. 11/2020 dated March 24, 2020.
[v] *Id.*
[vi] *See* SEBI Circular No. CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014, read with aforesaid Section 108 of the 2013 Act and Rule 20 of the 2014 Rules. All the rules applicable to e-voting as mentioned under the aforesaid Rule 20 would apply to such voting at this juncture, along with the ones already mentioned.
[vii] *See* MCA F. No. 2/1/2020-CL-V, General Circular No. 14/2020 dated April 8, 2020 delineating all the necessary rules and practices that such virtual EGM would have to adhere to.
[viii] This includes companies having a net worth/turnover greater than or equal to INR 500/1000 crores, or a net profit greater than or equal to INR 5 crores in the last financial year. Such companies are required to spend in the ongoing financial year as CSR expenses an amount equal to or greater than 2% of their average net profit over the last 3 financial years (or all preceding financial years in case the company has not been existence for 3 years yet). *See* Companies Act, 2013, Section 135. By virtue of the Companies (Amendment) Act, 2019, penal provisions in the nature of fines for errant companies and even imprisonment for the officers involved have been provided under the aegis of Section 135, which makes the Indian CSR regime to be first of its kind in terms of its mandatory nature. However, criminal liability attracted for non-compliance with the aforesaid Section 135 might be phased out, while keeping the civil liability intact, as per the impression provided by official sources; *see* PTI, *Stimulus package: CSR norm violations not to be treated as criminal offence, says Nirmala Sitharaman*, available at https://www.thehindubusinessline.com/economy/govt-not-to-treat-csr-violations-as-criminal-offence-nirmala-sitharaman/article29234104.ece (last visited on May 1, 2020).
[ix] *See* MCA Circular No. 05/01/2019-CSR dated March 23, 2020.
[x] Such spending would qualify as to be within the ambit of items (i) and (xii) of Schedule VII to the 2013 Act, including heads such as healthcare promotion, disaster management etc. Liberal interpretation of the items of Schedule VII is an approach that has already been adopted by the MCA in the past; *see* for example MCA Circular No. 05/01/2014-CSR dated June 18, 2014.
[xi] *See* MCA Circular No. eF No. CSR-05/01/2020-CSR-MCA dated March 28, 2020. It is interesting to note that while donations made to the existing Prime Minister's National Relief Fund also qualify as CSR expenses, donations made to the state-level counterparts of such funds do not qualify to be thus till date, by virtue of the latter funds not having been included in Schedule VII to the 2013 Act. Such a clarification has been provided in the MCA General Circular No. 15/2020 dated April 10, 2020. The same clarification also provided that while regular payment of wages and salary to employees and workers by the companies would not constitute CSR expenses, any ex-gratia payment that the company specifically to such employees and workers for the purpose of battling the pandemic in addition to their regular salary/wages might count as CSR expenditure, provided there is a valid resolution to

such effect by the Board of Directors of the company and the resolution has been duly certified by the statutory auditor.

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[xiii] *See* MCA F. No. 2/1/2020-CL-V, General Circular No. 11/2020 dated March 24, 2020.

[xiv] *See* Companies (Share Capital and Debentures) Rules, 2014, Rule 18.

[xv] *See* MCA F. No. 2/1/2020-CL-V, General Circular No. 11/2020 dated March 24, 2020.

[xvi] *Id.*

[xvii] *See* Companies Act, 2013, Section 73(2)(c).

[xviii] *See* MCA F. No. 2/1/2020-CL-V, General Circular No. 12/2020 dated March 30, 2020 and MCA F. No. 2/1/2020-CL-V, General Circular No. 13/2020 dated March 24, 2020.

[xix] *Id.*

[xx] *See* SEBI Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/38, dated March 19, 2020.

[xxi] *Id.*

[xxii] *Id.*

[xxiii] *See* SEBI Circular No. SEBI/HO/DDHS/ON/P/2020/41, dated March 23, 2020.

[xxiv] *Id.*

[xxv] *Id.*

[xxvi] *Id.*

[xxvii] *See* SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/57, dated March 30, 2020.

[xxviii] *See* SEBI Circular No. SEBI/HO/IMD/DF1/CIR/P/2020/58, dated March 30, 2020.

[xxix] *See* SEBI Circular No. SEBI/HO/FPI&C/CIR/P/2020/056, dated March 30, 2020.

[xxx] *See* SEBI Circular No. SEBI/HO/MIRSD/RTAMB/CIR/P/2020/59, dated April 13, 2020.

[xxxi] *See* Competition Act, 2002, Section 3.

[xxxii] *See* Competition Act, 2002, Proviso to Section 3(3).

[xxxiii] For further details about the US antitrust authority's position on this, *see* Department of Justice & Federal Trade Commission, Joint Antitrust Statement Regarding COVID 19, available at https://www.ftc.gov/system/files/documents/public_statements/1569593/statement_on_coronavirus_ftc-doj-3-24-20.pdf (last visited on May 1, 2020).
For the EU position, *see* European Commission, *Temporary Framework for assessing antitrust issues related to business cooperation in response to situations of urgency stemming from the current COVID-19 outbreak*, available at https://ec.europa.eu/info/sites/info/files/framework_communication_antitrust_issues_related_to_cooperation_between_competitors_in_covid-19.pdf (last visited on May 1, 2020).
For the UK position, *see* Competition and Markets Authority, *Protecting consumers during the coronavirus (COVID-19) pandemic: update on the work of the CMA's Taskforce*, available at https://www.gov.uk/government/publications/protecting-consumers-during-the-coronavirus-covid-19-pandemic-update-on-the-work-of-the-cmas-taskforce/protecting-consumers-during-the-coronavirus-covid-19-pandemic-update-on-the-work-of-the-cmas-taskforce (last visited on May 1, 2020).
For the Australian position, *see* Rod Sims, Australian Competition and Consumer Commission, *Managing the impacts of COVID-19 disruption on consumers and business*, available at https://www.accc.gov.au/speech/managing-the-impacts-of-covid-19-disruption-on-consumers-and-business (last visited on May 1, 2020).

[xxxiv] *See* Competition Commission of India, *Advisory to Businesses in Times of COVID-19*, available at https://www.cci.gov.in/sites/default/files/whats_newdocument/Advisory.pdf (last visited on May 1, 2020).

[xxxv] *Id.*

[xxxvi] *See* Competition Act, 2002, S. 19(3).

[xxxvii] For a detailed discussion about the Rule of Reason analysis in Competition Law jurisprudence and the way it requires the authorities to ascertain the exact nature and extent of the anticompetitive impact, actual or potential, of any action, if any, as well as of any pro-competitive or efficiency-enhancing benefits of such action, before deciding whether to allow or prohibit it, *see* Herbert J. Hovenkamp, *The Rule of Reason*, available at https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=2780&context=faculty_scholarship (last visited on May 1, 2020).

[xxxviii] *See* Competition Act, 2002, Section 4.

[xxxix] *Id.*, Section 27.

[xl] *See* for example how the Ministry of Consumer Affairs, Food and Public Distribution have included face masks and hand sanitizers within the ambit of essential commodities vide order numbered S.O. 1087(E) dated March 13, 2020.

[xli] *See* for example how the Ministry of Consumer Affairs, Food and Public Distribution have capped the price of face masks and hand sanitizers in exercise of such power provided under Sections 2A and 3 of the Essential Commodities Act, 1955 vide notification dated March 21, 2020.