

The Competition Commission of India (Commitment) Regulations, 2023

In exercise of the powers conferred by section 64 read with section 48B of the Competition Act, 2002 (12 of 2003), the Competition Commission of India hereby makes the following regulations to specify the procedure for filing of commitment applications and for conducting the commitment proceedings, and matters connected therewith or incidental thereto, namely: -

1. Short title and commencement. -

- (1) These regulations may be called the Competition Commission of India (Commitment) Regulations, 2023.
- (2) They shall come into force on the date of their publication in the Official Gazette/ ----- day of -----, 2023.

2. Definitions. -

- (1) In these regulations, unless the context otherwise requires:
 - (a) "Act" means the Competition Act, 2002 (12 of 2003);
 - (b) "Commission" means the Competition Commission of India established under sub-section (1) of section 7 of the Act;
 - (c) "Director General" means the Director General as defined in clause (g) of section 2 of the Act;

- (d) "Commitment Applicant" means any enterprise, as defined in clause (h) of section 2 of the Act, against whom any inquiry has been initiated under sub-section (1) of section 26 of the Act for alleged contraventions of sub-section (4) of section 3 or section 4 of the Act, and submits an application offering commitments in respect of the alleged contraventions stated in the order passed by the Commission under sub-section (1) of section 26 of the Act;
- (e) "Commitment Application" means an application submitted by a Commitment Applicant to the Commission under these regulations offering commitments in respect of proceedings initiated for the alleged contraventions of sub-section (4) of section 3 or section 4 of the Act.
- (2) Words and expressions used but not defined in these regulations shall have the same meanings respectively as assigned to them in the Act or in the regulations framed thereunder or in the Companies Act, 2013 (18 of 2013), as the case may be.

3. Application for Commitment. -

- (1) A Commitment Applicant may make an application to the Commission in writing, accompanied by fee as provided under sub-regulation (1) of regulation 8, containing the information as specified below:
- a) name, legal status (company/ firm/ LLP/ trust etc.), registration number (if applicable), contact details including complete registered address/ principal business address, name of the authorised representative(s) and their contact

details (telephone number, email, country/ city/ area code), website address (if any), and official social media handles (if any) of the Commitment Applicant.

- b) proof of payment of fees to the Commission under regulation 8.
- c) details of the *prima facie* opinion of the Commission recorded in the order passed under sub-section (1) of section 26 of the Act in relation to the Commitment Applicant.
- d) full and true disclosure of facts in respect of the alleged contraventions of the Act.
- e) details of the commitments offered including how the same addresses the alleged contraventions, competition concerns and the manner of implementation and monitoring thereof.
- f) whether the Commitment Applicant, has previously been found to have contravened any provision of the Act or any proceeding against the Commitment Applicant is pending for any alleged violation of the provisions of the Act or whether the Commitment Applicant has in the past made any settlement/ commitment application(s). If so, the details thereof.
- g) details of nature, gravity and impact of the alleged contraventions, and the duration of the enterprise's involvement in the alleged contraventions.
- h) a summary containing *prima facie* opinion of the Commission expressed in the order issued under sub-section (1) of section

26 of the Act along with details of competition concerns, alleged contraventions, commitments offered by the Commitment Applicant and how they address the competition concerns.

- i) any other information that may assist the Commission in determining the terms of the commitment having due regard to the factors specified under regulation 7.
- (2) The Commitment Application under sub-regulation (1) may be submitted at any time after an order under sub-section (1) of section 26 of the Act has been passed by the Commission but within the time prescribed under sub-regulation (3) or prior to receipt by the party of the report of the Director General under sub-section (4) of section 26 of the Act, whichever is earlier.
- (3) A Commitment Application shall be filed within 45 (forty five) days from the receipt of the order passed by the Commission under sub-section (1) of section 26 of the Act.

Provided that the Commission may entertain a Commitment Application after the period specified above, if the Commitment Application is received within a further period of 30 (thirty) days and the Commission is satisfied that there had been sufficient cause for not filing the same within the specified period after recording reasons for condoning such delay.

- (4) Where the Commitment Application is incomplete in any respect or does not conform to the requirements of these regulations, the Commitment Applicant may be asked to remove such defect(s) or furnish the required information including document(s). The Commitment Applicant shall rectify

such defects or furnish the required information including document(s) within ten (10) days of the receipt of communication or such other period as may be specified by the Commission, failing which the Commitment Application may be treated as withdrawn.

- (5) A Commitment Application may be withdrawn by the Commitment Applicant at any time prior to the passing of an order by the Commission under regulation 4.

4. Consideration of proposal for Commitment. -

- (1) The Commitment Application complete in all respects in terms of regulation 3 shall be placed for consideration before the Commission in its ordinary meeting within 7 (seven) days of receipt thereof.
- (2) If the Commission is not *prima facie* satisfied with the commitments offered by the Commitment Applicant, it shall communicate to the Commitment Applicant the reasons for the same and call upon the Commitment Applicant to furnish, within 15 (fifteen) days of the receipt of the said communication, revised Commitment Application.
- (3) When the Commitment Application complete in all respects is placed for consideration before the Commission under sub-regulation (1) above, the Commission may keep the inquiry against the Commitment Applicant in abeyance till final decision on the Commitment Application or till such time, as may be directed by the Commission.

- (4) While considering the commitments offered under the Commitment Application, the Commission shall invite objections and suggestions in terms of regulation 5.

- (5) After consideration of the nature, gravity and impact of the alleged contraventions, the commitments offered by the Commitment Applicant and the comments, objections, or suggestions received under regulation 5,
 - a) the Commission may pass an order in terms of sub-section (3) of section 48B of the Act agreeing to the commitments offered as contained in the Commitment Application filed under regulation 3 or the revised Commitment Application filed under sub-regulation (2) above, subject to such other terms relating to manner of implementation and monitoring of commitments and close the proceedings against the Commitment Applicant forthwith; or

 - b) if the Commission is of the opinion that the Commitment Application filed under sub-regulation (1) of regulation 3 or the revised Commitment Application filed under sub-regulation (2) above are not appropriate in the circumstances, it shall by order passed in terms of sub-section (5) of section 48B of the Act, reject the Commitment Application and proceed with its inquiry under section 26 of the Act; or

 - c) if the Commission is not satisfied with the Commitment Application, it shall within 15 (fifteen) days after the expiry of period specified in regulation 5, communicate to the Commitment Applicant the reasons for the same and

call upon the Commitment Applicant to furnish, within 15 (fifteen) days of the receipt of the said communication, revised Commitment Application.

d) if the Commission after considering the revised Commitment Application under clause (c) of this sub-regulation 5 and agrees with the same, it shall pass an order in terms of sub-section (3) of section 48B of the Act agreeing to the commitments offered subject to such other terms relating to manner of implementation and monitoring of commitment and close the proceedings against the Commitment Applicant forthwith.

e) if the Commission after considering the revised Commitment Application is not satisfied with the same, it shall by an order passed in terms of sub-section (5) of section 48B of the Act, reject the revised Commitment Application and proceed with its inquiry under section 26 of the Act.

(6) In case the Commitment Applicant fails to submit the revised Commitment Application within the time period specified in sub-regulation (2) and sub-regulation (5)(c) above, then the Commission shall by an order passed in terms of sub-section (5) of section 48B of the Act reject the Commitment Application and proceed with its inquiry under section 26 of the Act.

(7) The Commission may before passing an order rejecting a Commitment Application under clause (b) and (e) of sub-regulation (5) and sub-regulation (6) above in terms of sub-section (5) of section 48B of the Act grant the Commitment Applicant an opportunity of being heard.

- (8) The entire commitment proceedings shall be concluded within 90 (ninety) days of the receipt of the Commitment Application failing which the inquiry against the Commitment Applicant shall stand resumed.

Provided that the Commission may extend the said period of 90 (ninety) days by such further period as may be specified, if deemed appropriate, for reasons to be recorded in writing.

- (9) The Commission may seek clarification, information, or data from the Commitment Applicant, as deemed appropriate, which shall be provided by the Commitment Applicant within the time specified by the Commission.

5. Invitation of objections and suggestions on proposal for commitment. -

- (1) While considering the commitments offered, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their comments, objections, suggestions, if any, within 21 (twenty one) days. For the said purpose, the Commission would share a non-confidential summary containing *prima facie* opinion of the Commission expressed in the order issued under sub-section (1) of section 26 of the Act along with details of the competition concerns, alleged contraventions, commitments offered by the Commitment Applicant and any other detail as deemed fit.

Provided that in appropriate cases, the Commission may also invite public to submit comments, objections and suggestions,

if any, within 21 (twenty one) days, by publishing the above-mentioned summary on its website.

- (2) The objections and suggestions filed by the concerned parties shall contain the following details:
 - a) name and contact details including address, telephone number, email of the concerned party and its authorised representative(s), if any.
 - b) statement of objections and suggestions duly authenticated by the authorised representative and supported by relevant documents.
 - c) a summary of the objections and suggestions not running into more than two pages.
 - d) any other information that may assist the Commission in determining the terms of the commitment.

6. Nature and effect of commitment order. -

- (1) The order passed by the Commission agreeing to the commitments offered shall not be construed as a finding of contravention by the Commission against the Commitment Applicant.
- (2) Filing of the Commitment Application or issuance of commitment order by the Commission order shall have no bearing on the inquiry under section 26 of the Act in relation to the alleged contraventions, in respect of the other parties to the inquiry who are not part of the commitment proceedings.

- (3) The commitment order shall be final and binding upon the Commitment Applicant.

7. Assessment of the terms of the commitment. -

The Commission shall while considering the nature, gravity and impact of the alleged contraventions and effectiveness of the commitments offered, have due regard to all or any of the following factors, including:

- (a) the nature of conduct, its type, duration and extent of the alleged contraventions;
- (b) whether the commitment terms address the identified competition concerns, alleged contraventions, and the same can be implemented effectively and expeditiously besides being easy to monitor;
- (c) whether the terms of commitment make the markets more contestable;
- (d) procedural efficiencies, self-executing terms and early correction of market distortions;
- (e) whether the Commitment Applicant, has previously been found to have contravened any provision of the Act or any investigation/ inquiry is pending against the Commitment Applicant in respect of any alleged violation of the provisions of the Act or whether the Commitment Applicant has previously made any settlement/ commitment application(s);

- (f) whether the Commitment Applicant has already modified its conduct and policies which have been found to be in prima facie violation of the Act by the Commission or steps taken by the Commitment Applicant to minimize future violations or lapses;
- (g) any other factor as may be deemed appropriate by the Commission in the facts and circumstances of the case.

8. Fee under sub-section (1) of section 48B of the Act. -

- (1) Every application received under sub-section (1) of section 48B of the Act by the Commission shall be accompanied with proof of payment of non-refundable fees as under:
 - (a) Rs. 5,00,000 (rupees five lakh) only in case the Commitment Applicant has a turnover of up to Rs. 50,00,00,000 (rupees fifty crores) in India in the preceding financial year; or
 - (b) Rs. 15,00,000 (rupees fifteen lakh) only in case the Commitment Applicant has a turnover exceeding Rs. 50,00,00,000 (rupees fifty crores) and up to Rs. 500,00,00,000 (rupees five hundred crores) in India in the preceding financial year; or
 - (c) Rs. 50,00,000 (rupees fifty lakh) only in case the Commitment Applicant has a turnover exceeding Rs. 500,00,00,000 (rupees five hundred crores) in India in the preceding year.
- (2) The fee can be paid either by tendering demand draft or pay order or banker's cheque, payable in favour of Competition Commission of India (Competition Fund), New Delhi or through Electronic Clearance Service (ECS) by direct remittance to the

Competition Commission of India (Competition Fund), Account No. 1988002100187687 with "Punjab National Bank, Bhikaji Cama Place, New Delhi- 110066".

9. Implementation and monitoring of commitment order. –

- (1) Where the Commission is of the opinion that the implementation of the commitments, needs monitoring, it may appoint agencies to oversee such implementation, on such terms and conditions as may be specified by the Commission.
- (2) The agencies appointed under sub-regulation (1) shall be independent of the Commitment Applicant and shall confirm that it does not have any conflict of interest. Such independent agencies referred to in this regulation may include an accounting firm, management consultancy, law firm, any other professional organization, or independent practitioners of repute.
- (3) The agencies appointed under sub-regulation (1) shall carry out the responsibilities as specified by the Commission from time to time.
- (4) The agencies appointed under sub-regulation (1) shall submit a report to the Commission upon completion of each of the actions required for carrying out the terms of the Commitment.
- (5) The payment to the agencies appointed under sub-regulation (1) shall be made by the Commitment Applicant, by depositing it with the Commission or as may be directed by the Commission, subject to satisfactory discharge of the responsibilities by the agencies.

10. Revocation of the Commitment Order. -

If a Commitment Applicant fails to comply with the order passed under section 48B of the Act or it comes to the notice of the Commission that the Commitment Applicant has not made full and true disclosure or there has been a material change in the facts, the Commission shall initiate the proceedings in terms of section 48C of the Act and after providing an opportunity to the Commitment Applicant, may pass an order in terms thereof.

11. Power to use information provided by Commitment Applicant.

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Notwithstanding anything contained in these regulations, the Commission may use the information submitted by the Commitment Applicant against it or such other parties to the inquiry who are not part of the commitment proceedings.

12. Partial commitments offered not to affect inquiry in respect of other alleged contraventions. -

If the Commitment Application is made in respect of some of the contraventions noted by the Commission in its order passed under sub-section (1) of section 26 of the Act, the inquiry *qua* remaining contraventions shall continue.

13. Powers to determine procedure in certain circumstances. -

In a situation not provided for in these regulations, the Commission may, for reasons to be recorded in writing, determine the procedure in a particular case.

14. Power to remove difficulties. -

In the matter of implementation of these regulations, if any doubt or difficulty arises, the same shall be placed before the Commission and the decision of the Commission thereon shall be binding.
