

The Competition Commission of India (Settlement) Regulations, 2023

In exercise of the powers conferred by section 64 read with section 48A 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 settlement applications and for conducting the settlement 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 (Settlement) 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) "Penalty Guidelines" means guidelines published by the Commission under sub-section (3) of section 64B of the Act;

- (e) "Settlement Amount" means the amount determined by the Commission under regulation 6 of these regulations;
- (f) "Settlement 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 for settlement of proceedings initiated for the alleged contraventions to the Commission under these regulations;
- (g) "Settlement Application" means an application submitted by a Settlement Applicant to the Commission under these regulations for settlement 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 settlement. -

- (1) A Settlement Applicant may make a Settlement Application to the Commission in writing, accompanied by such fee as provided under sub-regulation (1) of regulation 9, 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 Settlement Applicant.

- b) proof of payment of fees to the Commission under regulation 10.

- c) details of the findings of the Director General in relation to the Settlement Applicant in the investigation report received under sub-section (4) of section 26 of the Act.

- d) full and true disclosure of facts in respect of the alleged contraventions and the findings of the Director General.

- e) details of the settlement proposal including as to how the same addresses the alleged contraventions, competition concerns and the manner of implementation and monitoring thereof.

- f) whether the Settlement Applicant, has previously been found to have contravened any provision of the Act or any proceeding against the Settlement Applicant is pending for any alleged violation of the provisions of the Act or whether the Settlement 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, findings of the Director General in the investigation report received under sub-section (4) of section 26 of the Act along with details of the competition concerns, alleged contraventions, settlement proposal offered by the Settlement Applicant and how they address the competition concerns.
 - i) any other information that may assist the Commission in determining the terms of the settlement and the Settlement Amount having due regard to the factors specified under regulation 8.
- (2) The Settlement Application under sub-regulation (1) may be submitted after the receipt of the report of the Director General by the Settlement Applicant under sub-section (4) of section 26 of the Act.

Provided that a Settlement Application shall not be entertained by the Commission if it is made after expiry of 45 (forty five) days from the receipt of report of the Director General by the Settlement Applicant.

Provided further that the Commission may entertain a Settlement Application after the period specified above, if the Settlement 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.

- (3) Where Settlement Application is incomplete in any respect or does not conform to the requirements of these regulations, the Settlement Applicant may be asked to remove such defect(s) or furnish the required information including document(s). The Settlement Applicant shall rectify such defects or furnish the required information including document(s) within 10 (ten) days of the receipt of communication or such other period as may be specified by the Commission, failing which the Settlement Application may be treated as withdrawn.
- (4) A Settlement Application may be withdrawn by the Settlement Applicant at any time prior to the passing of an order by the Commission under regulation 4.

4. Consideration of proposal for settlement. -

- (1) The Settlement 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 settlement proposal offered by the Settlement Applicant, it shall communicate to the Settlement Applicant the reasons for the same and call upon the Settlement Applicant to furnish, within 15 (fifteen) days of the receipt of the said communication, revised Settlement Application.

- (3) When the Settlement Application complete in all respects is placed for consideration before the Commission under sub-regulation (1) above, the inquiry against the Settlement Applicant shall remain in abeyance till final decision on the Settlement Application or till such time, as may be directed by the Commission.
- (4) While considering the proposal for settlement, 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 proposal for settlement submitted by the Settlement 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 48A of the Act agreeing to the proposal for settlement as contained in the Settlement Application filed under regulation 3 or the revised Settlement Application filed under sub-regulation (2) above, subject to such other terms relating to manner of implementation of settlement and monitoring and close the proceedings against the Settlement Applicant forthwith; or
 - b.) if the Commission is of the opinion that the Settlement Application filed under sub-regulation (1) of regulation 3 or the revised Settlement 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 48A of the Act, reject the

Settlement Application and proceed with its inquiry under section 26 of the Act; or

- c.) if the Commission is not satisfied with the Settlement Application, it shall within 15 (fifteen) days after the expiry of period specified in regulation 5, communicate to the Settlement Applicant the reasons for the same and call upon the Settlement Applicant to furnish, within 15 (fifteen) days of the receipt of the said communication, revised Settlement Application.
 - d.) if the Commission after considering the revised Settlement 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 48A of the Act agreeing to the proposal for settlement, subject to such other terms relating to manner of implementation of settlement and monitoring and close the proceedings against the Settlement Applicant forthwith.
 - e.) if the Commission after considering the revised Settlement Application is not satisfied with the same, it shall by an order passed in terms of sub-section (5) of section 48A of the Act, reject the revised Settlement Application and proceed with its inquiry under section 26 of the Act.
- (6) In case the Settlement Applicant fails to submit the revised Settlement 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 48A of the Act reject the Settlement Application and proceed with its inquiry under section 26 of the Act.

- (7) The Commission may before passing an order rejecting a Settlement Application under clause (b) and (e) of sub-regulation (5) and sub-regulation (6) above in terms of sub-section (5) of section 48A of the Act grant the Settlement Applicant an opportunity of being heard.
- (8) The Commission before passing of an order in terms of sub-section (3) of section 48A of the Act shall, communicate to the Settlement Applicant, the Settlement Amount computed in terms of regulation 6 and the Settlement Applicant shall communicate its acceptance of the same within 15 (fifteen) days of receipt of such communication. The settlement amount computed and communicated to the Settlement Applicant shall be final and any application seeking revision of the same shall not be entertained by the Commission.

The Settlement Applicant shall pay the settlement amount within a period of 30 (thirty) days from the date of acceptance thereof, whereupon the Commission shall pass an order in terms of sub-section (3) of section 48A of the Act.

Provided that if the Settlement Applicant fails to communicate its acceptance of the Settlement Amount or fails to pay the Settlement Amount within the period of 30 (thirty) days from the date of acceptance thereof, the Commission shall by an order passed in terms of sub-section (5) of section 48A of the Act, reject the Settlement Application and proceed with its inquiry under section 26 of the Act.

- (9) The entire settlement proceedings shall be concluded within 120 (one hundred twenty) days of the receipt of the Settlement Application failing which the inquiry against the Settlement Applicant shall stand resumed.

Provided that the Commission may extend the said period of 120 (one hundred twenty) days by such further period as may be specified, if deemed appropriate, for reasons to be recorded in writing.

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

5. Invitation of objections and suggestions on proposal for settlement. –

- (1) While considering the proposal for settlement, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their comments, objections, or 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, findings of the Director General in the investigation report received under sub-section (4) of section 26 of the Act along with details of the competition concerns, alleged contraventions, settlement proposal offered by the Settlement Applicant and any other detail as deemed fit.

- (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 settlement.

6. Manner of determining the Settlement Amount. -

- (1) The Settlement Amount may extend up to the maximum amount of penalty that would have otherwise been leviable under section 27(b) of the Act.
- (2) For the purpose of determining the Settlement Amount, the Commission will be guided by the Penalty Guidelines.
- (3) Further, the Commission shall consider the level of cooperation extended, nature of disclosure made by the Settlement Applicant and the settlement proposal, and may apply a settlement discount and reduce the amount determined under sub-regulation (1) and (2) by up to 15% (fifteen per cent).

7. Nature and effect of settlement order. -

- (1) Without prejudice to provisions of section 53N of the Act, the order passed by the Commission agreeing to the proposal for settlement shall not be construed as a finding of contravention by the Commission against the Settlement Applicant.
- (2) Filing of Settlement Application or issuance of settlement order by the Commission 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 settlement proceedings.
- (3) The settlement order shall be final and binding upon the Settlement Applicant.

8. Assessment of the terms of the settlement. -

The Commission shall while considering the nature, gravity, impact of the alleged contraventions and for the purpose of assessing the Settlement Application, 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 settlement terms address the alleged contraventions and the same can be implemented effectively and expeditiously besides being easy to monitor;
- (c) whether the terms of settlement make the markets more contestable;

- (d) procedural efficiencies, self-executing terms and early correction of market distortions;
- (e) whether the Settlement Applicant, has previously been found to have contravened any provision of the Act or any investigation/ inquiry is pending against the Settlement Applicant in respect of any alleged violation of the provisions of the Act or whether the Settlement Applicant has previously made any settlement/commitment application(s);
- (f) whether the Settlement 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 Settlement 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.

9. Fee under sub-section (1) of section 48A of the Act. -

1. Every application received under sub-section (1) of section 48A 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 Settlement Applicant has a total 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 Settlement Applicant has total 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.

(c) Rs. 50,00,000 (rupees fifty lakh) only in case the Settlement Applicant has total turnover exceeding Rs. 500,00,00,000 (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".

10. Implementation and monitoring of settlement order. -

1. Where the Commission is of the opinion that the implementation of the Settlement Order, 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 Settlement 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 Settlement.
5. The payment to the agencies appointed under sub-regulation (1) shall be made by the Settlement 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.

11. Revocation of the Settlement Order. -

If a Settlement Applicant fails to comply with the order passed under section 48A of the Act or it comes to the notice of the Commission that the Settlement 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 Settlement Applicant, may pass an order in terms thereof.

12. Power to use information provided by Settlement Applicant. -

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

13. Partial proposal for settlement not to affect inquiry in respect of other alleged contraventions. -

If the Settlement Application is made in respect of some of the contraventions noted by the Director General in its investigation

report received under sub-section (4) of section 26 of the Act, the inquiry *qua* remaining contravention(s) shall continue.

14. 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.

15. 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.
