

General Statement
The Competition Commission of India (Settlement) Regulations, 2024

1. The Competition Act, 2002 (**Act**) was amended on April 11, 2023, *vide* the Competition (Amendment) Act, 2023 (**Amendment Act**). Among other things, the Amendment Act introduced Section 48A and 48C in the Act to create a settlement mechanism. Section 48A of the Act enables an enterprise against whom an inquiry under Section 26(1) of the Act is initiated for an alleged contravention of Section 3(4) or Section 4 of the Act, as the case may be, to apply for settlement before the CCI. Whereas Section 48C provides for revocation of the settlement orders issued by the Commission and the consequences of the same. The intent of creating a procedure for settlement is driven by the need to reduce litigation and to ensure quicker market correction.
2. Accordingly, the draft Competition Commission of India (Settlement) Regulations, 2023 (**Settlement Regulations 2023**) were proposed to lay out the procedure to be followed during settlement proceedings. The draft Settlement Regulations 2023 were placed on the website of CCI inviting written comments from the stakeholders from 23.08.2023 to 13.09.2023.
3. CCI received comments from 41 stakeholders within the stipulated period from various disciplines which included industry associations, legal fraternity, policy think-tanks, academia, *etc.* CCI has carefully examined the comments received and in view of these comments, certain changes have been incorporated in the draft Settlement Regulations 2023. Accordingly, CCI has today notified the Competition Commission of India (Settlement) Regulations, 2024 (**Settlement Regulations 2024**).
4. In terms of Section 64A(b) of the Act, this general statement is being published to provide CCI's response to the public comments.
5. The Settlement Regulations 2024 *inter alia* provide for the following:
 - (a) Form and contents of the application for settlement along with fee payable;
 - (b) Circumstances in which the settlement applications can be rejected by CCI;
 - (c) Period during which settlements may be offered;
 - (d) Manner in which CCI will invite objections and suggestions to the settlement terms;

- (e) Nature and effect of the settlement order;
 - (f) Manner of determining Settlement Amount;
 - (g) Factors to be considered by CCI in assessing the settlement terms;
 - (h) Implementation and monitoring of the terms of the settlement order;
 - (i) Revocation of the settlement order and the consequences thereof, *etc.*
6. Considering the global nature of matters before CCI, a requirement has been included in the Settlement Regulations 2024 (*i.e.*, regulation 3(1)(j)) to the effect that the applicants need to disclose details of other competition authorities which have examined or are currently examining the alleged contraventions. This requirement aims to provide CCI with a comprehensive understanding of alleged violations, enabling a broader perspective on the nature and extent of the issues. Such transparency enhances the efficacy of enforcement actions.
7. Some stakeholders have highlighted that it is unclear how instances of past/on-going violation, required to be disclosed as part of the settlement application, would have any role in addressing competitive harms in an ongoing inquiry. The CCI is of the view that while market dynamics may evolve, the requirement to disclose past and ongoing violations in settlement applications will play a crucial role in antitrust enforcement, ensuring that CCI can make well-informed decisions and tailor the remedies effectively.
8. Stakeholders have also suggested that the proposed timeline of 45 days for submitting settlement applications is insufficient and may need to be extended. However, CCI is of the view that 45 days period as provided in regulation 3(2) of the Settlement Regulations 2024 is sufficient for the parties to evaluate as to whether to file a settlement application. Firstly, CCI can also extend this period by another 30 days on demonstration of sufficient cause. Further, the regulation now provides that the time period of 45 days will start from the date of receipt of confidential version of the Investigation Report, if applicable, which would ensure sufficient time with the parties to examine the matter for offering settlement to the CCI.
9. Stakeholders have suggested that the period under regulation 4 for submitting a revised settlement application should be increased to 30 days. In this regard, it is noted that regulation 4(5)(c) required an applicant to submit a revised settlement application within a period of 15 days post market testing of the settlement proposal. Based on the

suggestions by the stakeholders and considering that an applicant needs to analyse the objections/suggestions received on the settlement proposal during market testing for the purpose of revising the settlement application, the period has been extended from 15 to 30 days. Accordingly, necessary changes have been made in regulation 4(5)(c) of the Settlement Regulations 2024.

10. The draft Settlement Regulations 2023 provided that before rejecting a settlement application, CCI *may* grant an opportunity of being heard to the settlement applicant. In this regard, the stakeholders suggested that CCI should grant an unqualified right to be heard to the settlement applicant before rejecting such application. Considering that the rejection of an application could impact their substantive rights, regulation 4(13) of the Settlement Regulations 2024 now provides that CCI *shall* provide an opportunity of being heard before rejecting a settlement application. Further, certain additional grounds for rejection of settlement application have been provided under regulation 4(12) of the Settlement Regulations 2024.
11. Stakeholders also sought clarity on CCI's ability to issue interim orders during settlement proceedings given that the inquiry would be in abeyance. In this regard, it is clarified that section 33 of the Act allows CCI to issue interim orders at any stage of the inquiry, *i.e.*, until the issuance of a final order under section 27. In addition, Regulation 4(14) has been inserted to provide that CCI may issue interim and/or other directions to protect the interest of consumers and/or to maintain & protect competition in the market and require the settlement applicant to comply with the same within a specified time period for consideration of the Settlement Application.
12. Stakeholders had indicated that while the regulations specify that a settlement decision for one party won't impact proceedings against others in the same case, it lacks clarity on the repercussions of a successful appeal against CCI's final order (under Section 27) by a party not utilizing the settlement mechanism on the settlement applicant. In this regard, it was recommended that the final regulations explicitly bind the applicant to settlement orders passed by CCI, preventing them from benefiting from a successful appeal. To address this, regulation 3(1)(k) and Schedule I have been inserted in the Settlement Regulations 2024 which require the applicants to submit specific

undertakings and waivers. It has been further provided that an applicant would continue to be bound by such waivers even if the settlement application has been rejected.

13. Stakeholders also highlighted that the overall timeframe of 120 days as provided by the draft Settlement Regulations 2023 for settlement proceedings may be insufficient. Considering various steps involved in settlement proceedings and the timeframe prescribed for such steps, regulation 4(10) of the Settlement Regulations 2024 now provides that the entire settlement proceedings shall be concluded within 180 working days. CCI has retained powers to extend this period, if deemed appropriate, for reasons to be recorded in writing.
14. It was also highlighted that the timeline for completion of settlement proceedings should commence after a complete settlement application is submitted to CCI. Accordingly, necessary amendments have been made in regulation 4(10) of the Settlement Regulations 2024.
15. Stakeholders have sought transitional provisions to allow settlement applications in the ongoing cases which may otherwise miss the opportunity to avail the settlement procedure. CCI has examined the said request of the stakeholders and observes that transitional provisions would necessitate prescription of separate time limits for cases at different stages of inquiry process, which is not desirable. Providing a singular time limit for filing a settlement application would avoid any confusion and misinterpretation of the provision. Further, extending the benefit of settlements to the cases where the inquiry process post receipt of the Investigation Report is in its final stages is not appropriate.
16. Regulation 6 of the draft Settlement Regulations 2023 originally set a cap of up to 15% on settlement discounts, but stakeholders have argued it might not be enough incentive for settlement applications. After examining practices in various jurisdictions, including those of the Securities and Exchange Board of India, CCI concluded that the proposed range is adequate. However, to enhance certainty and transparency, instead of a variable discount of up to 15%, a flat settlement discount will be applied. Necessary change has been incorporated in regulation 6 of the Settlement Regulations 2024. Additionally, stakeholders suggested allowing settlement applicants to submit arguments regarding the settlement amount or mitigating factors. In this regard, it is

noted that there is no bar on the settlement applicant to make submissions on the settlement amount or the mitigating factors, as part of its settlement application, thus no new provision is necessary.

17. Stakeholders also highlighted that fees for filing a settlement application may be too high for MSMEs and Start-ups. In view of the concerns expressed by the stakeholders, applicable fee has been reduced from (a) ₹ 5 lakh to ₹ 2.5 lakh in regulation 9(1)(a) *i.e.*, in case the applicant has a total turnover of up to ₹ 50 crores in India; and (b) ₹ 15 lakh to ₹ 10 lakh in regulation 9(1)(b) *i.e.*, in case the applicant has a total turnover exceeding ₹ 50 crores and up to ₹ 500 crores in India.
18. Stakeholders have highlighted few issues in respect of the appointment of third-party agencies to monitor implementation of settlement terms under regulation 9 of the draft Settlement Regulations 2023. In this regard, it is noted that the requirement of appointment of monitoring agencies is common to three different regulations *viz.* settlements, commitment, and combination regulations. Therefore, it has been decided that a unified framework providing for engagement of a monitoring agency will be included in the CCI (General) Regulations, 2009. Accordingly, regulation 10 of the Settlement Regulations 2024 has been appropriately amended.
19. Regulation 11 of the draft Settlement Regulations 2023 provided for revocation of settlement orders in certain situations. Stakeholders have *inter alia* suggested that CCI should grant a right to be heard to the settlement applicant prior to such revocation. As recommended by the stakeholders, regulation 11 of the Settlement Regulations 2024 now prescribes the process to be followed for proceedings under section 48C of the Act including an opportunity to the applicant to present its case, determination of the '*legal costs incurred*', recovery of such legal costs, *etc.*
20. Further, in respect of such provisions related to revocation, stakeholders highlighted that the draft Settlement Regulations 2023 do not provide any opportunity for settlement applicants to seek modification of settlement order *inter alia* due to change in circumstances. In this regard, it may be noted that Section 48C of the Act provides that in case of material change in facts, the settlement order shall stand revoked and withdrawn. Therefore, CCI is not empowered to modify its orders in such cases.

21. In relation to regulation 12 of the draft Settlement Regulations 2023, the stakeholders highlighted that use of information provided by the settlement applicant despite withdrawal or rejection of the settlement application may disincentivise such applicants. In view of the concerns expressed by the stakeholders, the usage of information provided by the applicant has been restricted to cases where the settlement order has been revoked and withdrawn in terms of Section 48C of the Act. It has also been *inter alia* provided that where an application is rejected or withdrawn, CCI and the DG may use the information gathered from sources other than the applicant.
22. Earlier, regulation 13 of the draft Settlement Regulations 2023 provided that if the settlement application is made in respect of some of the alleged contraventions noted by the DG in its Investigation Report, the inquiry *qua* remaining contravention(s) shall continue. Certain stakeholders sought clarity on this aspect. Based on the comments received from stakeholders, regulation 13 of the draft Settlement Regulations 2023 has been deleted and regulation 3(5)(a) has been inserted to provide that a settlement application should cover all the contraventions found by the DG.
23. Stakeholders also highlighted that the draft Settlement Regulations 2023 do not cast an express obligation on CCI to maintain confidentiality nor provide a mechanism for a settlement applicant to request CCI to maintain confidentiality over the settlement application. In this regard, regulation 13 has now been inserted in the Settlement Regulations 2024 stating that confidentiality requests will be governed by the extant provisions of the CCI (General) Regulations and the Act dealing with confidentiality.
24. The stakeholders also highlighted certain issues relating to inspection and certified copies of documents submitted during settlement proceedings. To provide necessary clarity, regulation 14 has been inserted in the Settlement Regulations 2024 stating that inspection and certified copies of documents submitted during settlement proceedings may be granted only to the Informant and the Settlement Applicant. Further, access to these documents would not be available to any other party *viz.* third parties, other opposite parties who are not part of the settlement proceedings, *etc.* Furthermore, it has also been clarified that access to comments received under regulation 5 shall be allowed only after expiry of the 21 (twenty-one) days period mentioned therein.
