

## GENERAL STATEMENT

### The Competition Commission of India (Determination of Cost of Production) Regulations, 2025

1. The Competition Act, 2002 (the 'Act') aims to prevent practices having an adverse effect on competition, to promote and sustain competition in the markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India. The Competition (Amendment) Act, 2023 (Amendment Act) incorporated various amendments in the Act which created a need for amendment/ repeal/ overhauling of the various regulations framed by the Commission as well as for introduction of certain new ones. In this regard, the Commission has already notified Settlement Regulations, Commitment Regulations, Lesser Penalty Regulations, General Regulations, *etc.*
2. Section 4(2)(a)(ii) of the Act identifies predatory pricing by a dominant enterprise as an abusive practice. In this context, Explanation (b) to Section 4 defines "predatory price" as the sale of goods or provision of services at a price below the cost, as determined by regulations, with a view to reduce competition or eliminate competitors. In this regard, Section 64(2)(a) of the Act empowers the Commission to make regulations w.r.t. *the cost of production to be determined under clause (b) of the Explanation to section 4*. Accordingly, the Commission notified the CCI (Determination of Cost of Production) Regulations, 2009 on 20.08.2009 (**Cost Regulations 2009**).
3. Since the enactment of the Act and the introduction of the Cost Regulations, 2009, competition law in India as well as globally, has undergone significant development. Accordingly, the Commission proposed to review the Cost Regulations 2009 wherein certain changes were proposed to keep the regulations in sync with the evolution of competition law jurisprudence. The review of these regulations is aimed to align them with modern economic theories, judicial interpretations, and international competition law practices.
4. Accordingly, the *draft* Competition Commission of India (Determination of Cost of Production) Regulations, 2025 along with Background Note, were put up for public consultation on the website of the Commission and comments/ suggestions from the stakeholders were invited thereupon from 17.02.2025 to 19.03.2025. In response, comments from 14 stakeholders were received. The Commission has perused the comments received and in view of the same, certain changes have been incorporated in the above-mentioned draft regulations.

5. Accordingly, today, the Commission has notified the Competition Commission of India (Determination of Cost of Production) Regulations, 2025 (**Cost Regulations 2025**) repealing the Cost Regulations 2009 *vide* repeal and saving clause introduced in the Cost Regulations 2025. Further, in terms of Section 64A(b) of the Act, the present General Statement is being published along with, to provide the Commission's response to the public comments received.
6. The definition of '*total cost*' under Regulation 2(1)(c) has been revised to explicitly include depreciation and to exclude financing overheads, thereby ensuring a more appropriate and consistent measurement of the cost of production. In addition, based on the suggestions received, editorial refinements have been made to the definitions of '*total variable cost*' and '*average avoidable cost*' to improve clarity, precision, and ease of interpretation in the application of these cost benchmarks.
7. In response to stakeholder feedback noting that the definition of '*long run average incremental cost*' (LRAIC) was unclear due to its reliance on the undefined term '*long run average cost*', the definition has been revised and clarified in line with international best practices. The updated definition in Regulation 2(1)(c)(v) now specifies that LRAIC includes all variable and fixed costs, including sunk costs, that are directly or indirectly attributable to the production of a specific product or service. This encompasses product-specific fixed costs incurred either before or during the period under investigation. For multi-product enterprises, the definition further clarifies that common costs are included in LRAIC to the extent they are caused by or incrementally attributable to the production of the relevant product or service.
8. A stakeholder submitted that the term *determining* as used in Regulation 4(2) legally implies a final decision, which is the function of the Commission and cannot be delegated. In this regard, it is clarified that the draft Regulations do not envisage that the final cost determination is being delegated to experts. However, to further reinforce this position, Regulation 4 has been amended to state explicitly that experts appointed under this provision are intended solely to assist the Commission in arriving at the cost determination. Additionally, Regulation 4 has been revised to clarify that only a party to the proceedings may dispute the cost determined by the Commission under Regulation 3.
9. Some stakeholders expressed concern that the draft Regulations lack clarity on how the Commission will assess costs in different sectors *viz.* digital markets. In response, the Commission notes that the Cost Regulations 2025 establish a sector-agnostic, cost-based framework that is flexible and adaptable to various industries, including the digital economy. Therefore, rather than prescribing sector-specific metrics, the framework

allows for case-by-case assessment, enabling the Commission to consider the unique features and evolving dynamics of digital markets when evaluating alleged predatory conduct.

10. Few stakeholders advocated for retaining *market value* as an alternative cost benchmark, especially in markets where pricing may diverge from internal costs due to cross-subsidization, high fixed costs, and advertising-based models. In response, the Commission clarifies that while market value may help contextualize pricing dynamics, it does not constitute a cost benchmark, as it reflects external factors like consumer willingness to pay and perceived value. The draft regulations maintain a cost-based assessment framework grounded in measurable production costs, consistent with international best practices and jurisprudence.
11. Further, the suggestion to limit the scope of ‘experts’ under the regulations exclusively to Members of the Institute of Cost Accountants of India (ICMAI) has not been accepted. While the ICMAI is a recognised professional body, the determination of costs under these regulations may require diverse expertise, including that of Cost Accountants, Chartered Accountants, Economists, and other qualified professionals. Therefore, restricting the definition of ‘experts’ is not advisable, as it may unduly limit the Commission’s ability to engage suitable experts based on the specific needs of a case.
12. A stakeholder expressed concern that implementation of the proposed regulations may discourage firms from engaging in aggressive price competition, fearing that such conduct could trigger investigations or liability under predatory pricing provisions. It was further submitted that predatory pricing assessments should involve more than a cost-based analysis and must consider the potential for recoupment. The Commission clarifies that recoupment is not a requirement under the Act for establishing predatory pricing. Further, the regulations are procedural and only aim to provide a framework for cost determination, not to define the substantive test for predation. Accordingly, the suggestion has not been accepted.

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