

General Statement
Competition Commission of India (Commitment) 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 48B and 48C in the Act to create a commitment mechanism. Section 48B 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 offer commitments before the CCI. Whereas Section 48C provides for revocation of the commitment orders issued by the Commission and the consequences of the same. The intent of creating a procedure for commitment is driven by the need to ensure quicker market correction.
2. Accordingly, the draft Competition Commission of India (Commitment) Regulations, 2023 (**Commitment Regulations 2023**) were proposed to lay out the procedure to be followed during commitment proceedings. Commitment 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 39 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 Commitment Regulations 2023. Accordingly, CCI has today notified the Competition Commission of India (Commitment) Regulations, 2024 (**Commitment 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 Commitment Regulations 2024 *inter alia* provide for the following:
 - (a) Form and contents of the application for commitment along with fee payable;
 - (b) Circumstances in which the commitment applications can be rejected by CCI;
 - (c) Period during which commitments may be offered;
 - (d) Manner in which CCI will invite objections and suggestions to the commitment terms;
 - (e) Nature and effect of the commitment order;

- (f) Factors to be considered by CCI in assessing the commitment terms;
 - (g) Implementation and monitoring of the terms of the commitment order;
 - (h) Revocation of the commitment order and the consequences thereof.
6. Considering the global nature of matters before CCI, a requirement has been included in the Commitment 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 commitment 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 commitment 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 commitment applications is insufficient and may need to be extended. However, CCI is of the view that 45 days period as provided in regulation 3(3) of the Commitment Regulations 2024 is sufficient for the parties to evaluate as to whether to file a commitment application. Further, CCI can also extend this period by another 30 days on demonstration of sufficient cause. Therefore, the suggestion of the stakeholders has not been accepted.
9. Stakeholders have suggested that the period under regulation 4 for submitting a revised commitment application should be increased to 30 days. In this regard, it is noted that regulation 4(5)(c) requires an applicant to submit a revised commitment application within a period of 15 days post market testing of the commitment proposal. Based on the suggestions by the stakeholders and considering that an applicant needs to analyze the objections/suggestions received on the commitment proposal during market testing for the purpose of revising the commitment application, the period has been extended from 15 to 30 days. Accordingly, necessary changes have been made in regulation 4(5)(c) of the Commitment Regulations 2024.

10. Commitment Regulations 2023 provided that before rejecting a commitment application, CCI *may* grant an opportunity of being heard to the commitment applicant. In this regard, the stakeholders suggested that CCI should grant an unqualified right to be heard to the commitment applicant before rejecting such application. Considering that the rejection of an application could impact their substantive rights, regulation 4(10) of the Commitment Regulations 2024 now provides that CCI *shall* provide an opportunity of being heard before rejecting a commitment application.
11. Stakeholders have indicated that while the regulations specify that a commitment 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 commitment mechanism on the commitment applicant. In this regard, it was recommended that the final regulations explicitly bind the applicant to commitment 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 Commitment 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 commitment application has been rejected.
12. Stakeholders also highlighted that the overall timeframe of 90 days as provided by the Commitment Regulations 2023 for commitment proceedings may be insufficient. Considering various steps involved in commitment proceedings and timeframe prescribed for such steps, regulation 4(7) of the Commitment Regulations 2024 now provides that the entire commitment proceedings shall be concluded within 130 working days. CCI has retained powers to extend this period, if deemed appropriate, for reasons to be recorded in writing.
13. It was also highlighted that the timeline for completion of commitment proceedings should commence after a complete commitment application is submitted to CCI. Accordingly, necessary amendments have been made in regulation 4(7) of the Commitment Regulations 2024.
14. Stakeholders have sought transitional provisions to allow commitment applications in the ongoing cases which may otherwise miss the opportunity to avail the commitment

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 investigation / inquiry process, which is not desirable. Further, extending the benefit of commitments to the cases where the DG's investigation is in its final stages and the DG is close to submitting its report is not appropriate as CCI has already invested its resources in such cases.

15. Stakeholders also highlighted that fees for filing a commitment 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 8(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 8(1)(b) *i.e.*, in case the applicant has a total turnover exceeding ₹ 50 crores and up to ₹ 500 crores in India.
16. Stakeholders have highlighted few issues in respect of the appointment of third-party agencies to monitor implementation of commitment terms under regulation 9 of the Commitment Regulations 2023. In this regard, it is noted that the requirement of appointment of monitoring agencies is common to three different regulations *viz.* commitments, settlements, 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 9 of the Commitment Regulations 2024 has been appropriately amended.
17. Regulation 10 of the Commitment Regulations 2023 provided for revocation of commitment orders in certain situations. Stakeholders have *inter alia* suggested that CCI should grant a right to be heard to the commitment applicant prior to such revocation. As recommended by the stakeholders, regulation 10 of the Commitment 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.*
18. Further, in respect of such provisions related to revocation, stakeholders highlighted that the Commitment Regulations 2023 do not provide any opportunity for commitment applicants to seek modification of commitment 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 commitment order shall stand revoked and withdrawn. Therefore, CCI is not empowered to modify its orders in such cases.

19. In relation to regulation 11 of the Commitment Regulations 2023, the stakeholders highlighted that use of information provided by the commitment applicant despite withdrawal or rejection of the commitment 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 commitment 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.
20. Stakeholders also highlighted that the Commitment Regulations 2023 do not cast an express obligation on CCI to maintain confidentiality nor provide a mechanism for a commitment applicant to request CCI to maintain confidentiality over the commitment application. In this regard, regulation 13 has now been inserted in the Commitment Regulations 2024 stating that confidentiality requests will be governed by the extant provisions of the CCI (General) Regulations and the Act dealing with confidentiality.
21. The stakeholders also highlighted certain issues relating to inspection and certified copies of documents submitted during commitment proceedings. To provide necessary clarity, regulation 14 has been inserted in the Commitment Regulations 2024 stating that inspection and certified copies of documents submitted during commitment proceedings may be granted only to the Informant and the commitment 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 commitment 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.
