

BACKGROUND NOTE:
Draft 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 prohibits predatory pricing as an abusive conduct by a dominant enterprise. 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 the intent to reduce competition or eliminate competitors.
3. Similarly, the above-mentioned Explanation also refers to a cost benchmark, to be determined by regulations, for the purpose of examining allegations related to predatory pricing. In this regard, Section 64(2)(a) of the Act also 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**).
4. 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 proposes to review the Cost Regulations 2009 wherein certain changes are being proposed to keep the regulations in sync with the evolution of competition law jurisprudence. The review of these regulations aims to align them with modern economic theories, judicial interpretations, and international competition law practices.
5. The CCI invites stakeholders to submit written comments on the draft Competition Commission of India (Determination of Cost of Production) Regulations, 2025, within 30 (thirty) days from 17.02.2025 to 19.03.2025. The comments must be sent by duly filling up the form hosted on the CCI’s website at: <https://www.cci.gov.in/stakeholders-topics-consultations>.

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THE COMPETITION COMMISSION OF INDIA

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

No.....-In exercise of powers conferred by clause (a) of sub-section (2) of section 64 of the Competition Act, 2002 (12 of 2003), the Competition Commission of India hereby makes the following regulations, namely: -

1. Short title and commencement. –

- (1) These regulations may be called the Competition Commission of India (Determination of Cost of Production) Regulations, 2025.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.–

- (1) In these regulations, unless the context otherwise requires - (a) “Act” means the Competition Act, 2002 (12 of 2003);
 - (b) “average variable cost” means total variable cost divided by total output during the referred period;
 - (c) “Cost” as used in Regulation 3 and its derivation may have reference to:
 - i. “total cost” means the actual cost of production including items, such as cost of material consumed, direct wages and salaries, direct expenses, work overheads, quality control cost, research and development cost, packaging cost, finance and administrative overheads attributable to the product during the referred period;
 - ii. “total variable cost” means the total cost referred to in clause (i) minus the fixed cost and share of fixed overheads, if any, during the referred period;

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- iii. “total avoidable cost” means the cost that could have been avoided if the enterprise had not produced the quantity of extra output during the referred period;
 - iv. “average avoidable cost” is the total avoidable cost divided by the total output considered for estimating ‘total avoidable cost’;
 - v. “long run average incremental cost” is the increment to long run average cost on account of an additional unit of product, where long run cost includes both capital and operating costs;
 - vi. “average total cost” is total cost divided by total output during the referred period ;
- (d) “Commission” means the Competition Commission of India established under sub-section (1) of section 7 of the Act;
- (e) “product” means the goods or services, as the case may be, as defined in the Act;
- (f) “marginal cost” is the change in total cost that arises when the quantity produced changes by one unit.
- (2) Words and expressions used but not defined in these regulations shall have the same meaning respectively assigned to them in the Act or the Companies Act, 2013 (18 of 2013), as the case may be.

3. Determination of cost. –

“Cost” in the Explanation to section 4 of the Act shall, generally, be taken as average variable cost, as a proxy for marginal cost:

Provided that in specific cases, for reasons to be recorded in writing, the Commission may, depending on the nature of the industry, market and technology used, consider any other relevant cost concept such as average total cost, average avoidable cost, or long run average incremental cost.

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4. Engagement of experts. –

- (1) In arriving at the figures of costs, the Commission or the Director General, as the case may be, may take the help of suitable experts.
- (2) Where an enterprise disputes the cost determined by the Commission under regulation 3, it may, for reasons to be submitted in writing, request the Commission to appoint expert (s) for determining the cost.
- (3) On consideration of the request made by an enterprise, the Commission may, where it so decides, appoint expert(s) of its choice, at the cost of the enterprise making the request, to enable it to determine the cost.

5. Request for confidentiality. –

Any request for confidentiality of the documents submitted to the Commission or the Director General, as the case may be, shall be duly considered in accordance with the procedure laid down in the Competition Commission of India (General) Regulations, 2025.

6. Removal of difficulty. –

In a situation not provided for in the Act, rules or these regulations or in the matter of their interpretation, the procedure for determining the cost shall be determined by the Commission.

7. Repeal and Savings. –

- (1) The Competition Commission of India (Determination of Cost of Production) Regulations, 2009, stand repealed from the date on which these regulations come into force.
- (2) Notwithstanding such repeal, –

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(a) anything done or any action taken or purported to have been done or taken, or any proceedings or decision, inquiry or investigation commenced under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred thereunder, or any investigation, legal proceeding or remedy ensued thereunder, shall remain unaffected as if the repealed regulations have never been repealed;

(c) after the repeal of the Competition Commission of India (Determination of Cost of Production) Regulations, 2009, any reference thereto including in any regulations, direction or decision issued by the Commission, shall be deemed to be a reference to the corresponding provisions of these regulations.