



CIVIL

The Competition Commission of India's Proposed Regulations on Determining the Cost of Production

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The Competition Commission of India (CCI) has released a draft of new regulations titled “The Competition Commission of India (Determination of Cost of Production) Regulations, 2025.” These regulations aim to update the existing framework for determining the cost of production, which is a critical factor in assessing predatory pricing—a practice prohibited under the Competition Act, 2002.

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Background

The Competition Act, 2002, was established to promote competition, protect consumer interests, and ensure fair trade practices in India. Over the years, the act has been amended to address evolving market conditions and legal interpretations. The most recent amendment, the Competition (Amendment) Act, 2023, introduced changes that necessitate a review of the existing regulations, including those related to the determination of the cost of production.

Predatory Pricing and Cost Benchmark

Predatory pricing, defined as selling goods or services below cost with the intent to eliminate competitors, is prohibited under Section 4(2)(a)(ii) of the Competition Act. The cost of production is a key factor in determining whether a price is predatory. The current regulations, the CCI (Determination of Cost of Production) Regulations, 2009, were notified to provide a framework for calculating this cost. However, significant developments in competition law, both in India and globally, have highlighted the need for a more modern and comprehensive approach.

Review of Existing Regulations

The CCI has proposed to review and update the Cost Regulations, 2009, to align them with modern economic theories, judicial interpretations, and international best practices. The goal is to ensure that the regulations reflect the current understanding of competition law and provide a strong framework for determining the cost of production. This update is crucial for effectively addressing allegations of predatory pricing and maintaining fair competition in the market.

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

The proposed regulations are established under the powers conferred by Section 64 of the Competition Act, 2002. The primary goal is to align the cost determination process with modern economic theories, judicial interpretations, and international best practices.

1. Definitions

The proposed regulations provide clear definitions for key terms:

- **Average Variable Cost:** Total variable cost divided by total output during the reference period.
- **Cost:** Includes total cost, total variable cost, total avoidable cost, average avoidable cost, long run average incremental cost, and average total cost.
- **Marginal Cost:** The change in total cost when the quantity produced changes by one unit.

These definitions ensure consistency and clarity in the cost determination process.

2. Determination of Cost

The cost for predatory pricing assessments will generally be based on the average variable cost, serving as a proxy for marginal cost. However, the CCI may consider other relevant cost concepts, such as average total cost or long run average incremental

cost, depending on the industry, market, and technology involved. This flexibility allows for a more nuanced approach to cost determination.

3. Engagement of Experts

The CCI or the Director General may seek assistance from experts to determine cost figures. If an enterprise disputes the cost determined by the CCI, it can request the appointment of experts to determine the cost, at its own expense. This ensures that the cost determination process remains fair and transparent.

4. Confidentiality Requests

Enterprises can request confidentiality for documents submitted to the CCI or the Director General. These requests will be considered in accordance with the procedure laid down in the Competition Commission of India (General) Regulations, 2025, ensuring that sensitive information is protected.

5. Removal of Difficulty

In situations not covered by the Act, rules, or these regulations, or in matters of their interpretation, the CCI will determine the procedure for cost determination. This clause provides a mechanism to address any unforeseen issues that may arise.

6. Repeal and Savings

The existing Competition Commission of India (Determination of Cost of Production) Regulations, 2009, will be repealed from the date the new (proposed) regulations come into force. However, any actions taken under the repealed regulations will be deemed to have been taken under the new regulations. Rights, privileges, obligations, and legal proceedings under the repealed regulations will remain unaffected.

Stakeholder Consultation

To ensure that the new regulations are comprehensive and address the concerns of all stakeholders, the CCI has invited public comments on the draft regulations. Stakeholders, including businesses, legal experts, and industry associations, are encouraged to submit their feedback within 30 days from February 17, 2025, to March 19, 2025. The comments should be submitted through a form available on the CCI's website.

Conclusion

The proposed regulations represent a significant step towards modernizing India's competition law framework. By updating the rules for determining the cost of production, the CCI aims to enhance the effectiveness of its efforts to prevent predatory pricing and promote fair competition. The stakeholder consultation process is an important part of this initiative, ensuring that the final regulations are well-informed and widely accepted.

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