

**DRAFT OF PROPOSED AMENDMENTS TO “THE COMPETITION  
COMMISSION OF INDIA (LESSER PENALTY) REGULATIONS, 2009”**

New Delhi, the \_\_\_day of April, 2017

No. L-3(4)/Reg-L.P./\_\_\_/CCI – In exercise of the powers conferred by section 64, read with section 46 and clause (b) of section 27 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 (Lesser Penalty) Regulations, 2009
- (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) “applicant” means an enterprise, as defined in clause (h) of section 2 of the Act, who is or was a member of a cartel and submits an application for lesser penalty to the Commission;
  - (c) “cartel” means a cartel as defined in clause (c) of section 2 of the Act;
  - (d) “Commission” means the Competition Commission of India established under sub-section (1) of section 7 of the Act;
  - (e) “company” means a company as defined in clause (a) of *Explanation* to sub-section (2) of section 48 of the Act;
  - (f) “designated authority” means an officer of the Commission who is authorized by the Chairperson to function as such, for the purpose of these regulations;
  - (g) “Director General” means the Director General as defined in clause (g) of section 2 of the Act;
  - (i) **“party” includes an enterprise or person defined in clause (h) and (l) of section 2 of the Act against whom inquiry or proceeding is instituted and shall include the Central Government, any State Government or any Statutory Authority and shall also include any person permitted to join the proceedings**
  - (h) “priority status” means the the position of the applicant marked for giving the benefit of lesser penalty in the queue of the applicants;
  - (i) “vital disclosure” means full and true disclosure of information or evidence by the applicant to the Commission, which is sufficient to enable the Commission to form a *prima-facie* opinion about the existence of a cartel or which helps to establish the contravention of the provisions of section 3 of the Act.
- (2) Words and expressions used but not defined in these regulations shall have the same meanings respectively as assigned to them in the Act, rules, regulations or in ***the Companies Act, 2013 (18 of 2013)***, as the case may be.

**3. Conditions for lesser penalty. –**

- (1) An applicant, seeking the benefit of lesser penalty under section 46 of the Act, shall –
  - (a) cease to have further participation in the cartel from the time of its disclosure unless otherwise directed by the Commission;

- (b) provide vital disclosure in respect of violation under sub-section (3) of section 3 of the Act;
  - (c) provide all relevant information, documents and evidence as may be required by the Commission ;
  - (d) provide the names of individuals, if any, who have been involved in the alleged cartel on its behalf and for whom lesser penalty is sought;**
  - (e) co-operate genuinely, fully, continuously and expeditiously throughout the investigation and other proceedings before the Commission; and
  - (f) not conceal, destroy, manipulate or remove the relevant documents in any manner, that may contribute to the establishment of a cartel.
- (2) Where an applicant fails to comply with the conditions mentioned in sub-regulation (1), the Commission shall be free to use the information and evidence submitted by the applicant, in accordance with the provisions of section 46 of the Act.
- (3) Without prejudice to sub-regulations (1) and (2), the Commission may subject the applicant to further restrictions or conditions, as it may deem fit, after considering the facts and circumstances of the case.
- (4) The discretion of the Commission, in regard to reduction in monetary penalty under these regulations, shall be exercised having due regard to –
- (a) the stage at which the applicant comes forward with the disclosure;
  - (b) the evidence already in possession of the Commission;
  - (c) the quality of the information provided by the applicant; and
  - (d) the entire facts and circumstances of the case.

#### **4. Grant of lesser penalty. –**

Subject to the conditions laid down in regulation 3, the applicant **and individual(s) mentioned in regulation 3(1)(d)** may be granted benefit of lesser penalty than leviable under clause (b) of section 27 of the Act, as the commission may decide, in the following manner, namely;-

- (a) The applicant **and individual(s) mentioned in regulation 3(1)(d)** may be granted benefit of reduction in penalty upto or equal to one hundred percent, if the applicant is the first to make a vital disclosure by submitting evidence of a cartel, enabling the Commission to form a prima-facie opinion regarding the existence of a cartel which is alleged to have violated section 3 of the Act and the Commission did not, at the time of application, have sufficient evidence to form such an opinion:

Provided that the Commission may also grant benefit of reduction in penalty upto or equal to one hundred percent, if the applicant is the first to make a vital disclosure by submitting such evidence which establishes the contravention of section 3 of the Act in a matter under investigation and the Commission, or the Director General did not, at the time of application, have sufficient evidence to establish such a contravention:

- (b) The applicants who are subsequent to the first applicant may also be granted benefit of reduction in penalty on making a disclosure by submitting evidence, which in the opinion of the Commission, may provide significant added value to the evidence already in possession of the Commission or the Director General, as the case

may be, to establish the existence of the cartel, which is alleged to have violated section 3 of the Act.

*Explanation.* – For the purposes of these regulations, “added value” means the extent to which the evidence provided enhances the ability of the Commission or the Director General, as the case may be, to establish the existence of a cartel, which is alleged to have violated section 3 of the Act.

- (c) The reduction in monetary penalty referred to in clause (b) shall be in the following order-
  - (i) the applicant **and individual(s) mentioned in regulation 3(1)(d)** marked as second in the priority status may be granted reduction of monetary penalty upto or equal to fifty percent of the full penalty leviable; and
  - (ii) the applicant(s) **and individual(s) mentioned in regulation 3(1)(d)** marked as third **or subsequent** in the priority status may be granted reduction of penalty upto or equal to thirty percent of the full penalty leviable.

**5. Procedure for grant of lesser penalty. –**

- (1) For the purpose of grant of lesser penalty, the applicant or its authorized representative may make an application containing all the material information as specified in the Schedule, or may contact, orally or through e-mail or fax, the designated authority for furnishing the information and evidence relating to the existence of a cartel. The designated authority shall, thereafter, within **five** working days, put up the matter before the Commission for its consideration.
- (2) The Commission shall thereupon mark the priority status of the applicant and the designated authority shall convey the same to the applicant either on telephone, or through e-mail or fax. If the information received under sub-regulation (1) is oral or through e-mail or fax, the Commission shall direct the applicant to submit a written application containing all the material information as specified in the Schedule within a period not exceeding fifteen days.
- (3) The date and time of receipt of the application by the Commission shall be the date and time as recorded by the designated authority or as recorded on the server or the facsimile transmission machine of the designated authority.
- (4) Where the application, along with the necessary documents, is not received within a period of fifteen days **from the date of communication of direction under sub-regulation (2)** or during the further period as may be extended by the Commission, the applicant may forfeit its claim for priority status and consequently for the benefit of grant of lesser penalty.
- (5) The Commission, through its designated authority, shall provide written acknowledgement on the receipt of the application informing the priority status of the application but merely on that basis, it shall not entitle the applicant for grant of lesser penalty.

- (6) **Where the evidence furnished by the applicant to the Commission is not sufficient to enable the Commission to form a prima facie opinion about the existence of a cartel, the Commission through its designated authority shall inform the decision of the Commission to the applicant.**
- (6) Unless the evidence submitted by the first applicant has been evaluated, the next applicant shall not be considered by the Commission.
- (7) Where the Commission is of the opinion that the applicant or its authorized representative, seeking the benefit of lesser penalty or priority status, has not provided full and true disclosure of the information and evidence as referred and described in the Schedule or as required by the Commission, from time to time, the Commission may take a decision after considering the facts and circumstances of the case for rejecting the application of the applicant, but before doing so the Commission shall provide an opportunity of hearing to such applicant.
- (8) Where the benefit of the priority status is not granted to the first applicant, the subsequent applicants shall move up in order of priority for grant of priority status by the Commission and the procedure prescribed above, as in the case of first applicant, shall apply mutatis mutandis.
- (9) The decision of the Commission of granting or rejecting the application for lesser penalty shall be communicated to the applicant.

#### **6. Confidentiality. –**

Notwithstanding anything contained in the Competition Commission of India (General) Regulations, 2009, **the Commission or the Director General shall treat as confidential:**

- (a) the identity of the applicant; and**
- (b) the information, documents and evidence furnished by the applicant under Regulation 5**

Provided that the identity of the applicant or such information or documents or evidence may be disclosed if -

- (a) the disclosure is required by Law; or
- (b) the applicant has agreed to such disclosure in writing; or
- (c) there has been a public disclosure by the applicant; or

**Provided further that where, in the interest of principles of natural justice, the information furnished under Regulation 5 is required to be confronted to any party(s) during the investigation, the Director General may confront such information to such party(s) for reasons to be recorded in writing irrespective of whether the applicant has agreed to such disclosure. Such disclosure shall only be made towards the end of the investigation.**

#### **7. Inspection and Certified Copies of documents. –**

**Notwithstanding the confidentiality under Regulation 6, where the Commission directs investigation under Section 26(1) of the Act based on the information, documents and evidence furnished by the applicant under Section 46 of the Act or has received any information, documents and evidence under Section 46 of the Act in a matter under investigation, the provisions of sub-regulation (1), (3) and (4) of Regulation 37 and the**

**provisions of Regulation 50 of the Competition Commission of India (General) Regulations, 2009 shall become applicable to the information and evidence furnished by the applicant(s) under Regulation 5 after the Commission forwards a copy of the report containing the findings of the Director General to the party(s) concerned, subject to the condition that such party(s) shall not disclose the information, documents and evidence so obtained to any other person.**

#### **8. Removal of difficulty.–**

In the matter of interpretation or implementation of the provisions of these regulations, if any doubt or difficulty arises, the same shall be placed before the Commission and the decision of the Commission thereon, shall be binding.

## **THE SCHEDULE**

### CONTENTS OF THE APPLICATION

[See sub-regulations (1) and (2) of regulation 5]

The application for lesser penalty shall, *inter-alia*, include the following, namely;-

- (a) name and address of the applicant or its authorized representative as well as of all other enterprises in the cartel;
- (b) in case the applicant is based outside India, the address of the applicant in India for communication including the telephone numbers and the e-mail address, etc. ;
- (c) a detailed description of the alleged cartel arrangement, including its aims and objectives and the details of activities and functions carried out for securing such aims and objectives;
- (d) the goods or services involved;
- (e) the geographic market covered;
- (f) the commencement and duration of the cartel;
- (g) the estimated volume of business affected *in India* by the alleged cartel;
- (h) the names, positions, office locations and, wherever necessary, home addresses of all individuals who, in the knowledge of the applicant, are or have been associated with the alleged cartel, including those individuals which have been involved on behalf of the applicant ;
- (i) the details of other Competition Authorities, forums or courts, if any, which have been approached or are intended to be approached in relation to the alleged cartel;
- (j) a descriptive list of evidence regarding the nature and content of evidence provided in support of the application for lesser penalty; and
- (l) any other material information as may be directed by the Commission.