

[Published in the Gazette of India, Extraordinary, Part III- Section 4 dated the 20th August, 2009]

## THE COMPETITION COMMISSION OF INDIA

### NOTIFICATION

#### The Competition Commission of India (Determination of Cost of Production) Regulations, 2009

(No. 6 of 2009)

New Delhi, the 20<sup>th</sup> day of August, 2009

No. L-3 (5)/Reg-Cost/2009-10/CCI.-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, 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) “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;
    - 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. “market value” means the consideration which the customer pays or agrees to pay for a product which is sold or provided or can be sold or provided, as the case may be;
  - (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, 1956 (1 of 1956), as the case may be.

### **3. Determination of cost. –**

- (1) "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 avoidable cost, long run average incremental cost, market value.

- (2) In arriving at the figures of costs, the Commission /Director General may take the help of suitable experts.

### **4. Engagement of experts. –**

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. On consideration of the request made by an enterprise, the Commission may, if 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, 2009.

### **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.