

General Statement

Competition Commission of India (Lesser Penalty) Regulations, 2024

1. The Competition Act, 2002 (the **Act**) was amended on April 11, 2023, *vide* the Competition (Amendment) Act, 2023 (**Amendment Act**). Among other things, the Amendment Act introduced ‘lesser penalty plus’ and ‘withdrawal of lesser penalty/ lesser penalty plus applications’ in the existing framework of Section 46 of the Act.
2. The ‘lesser penalty plus’ mechanism was introduced to incentivize an existing lesser penalty applicant in respect of a cartel to give full, true and vital disclosures about another cartel, hitherto not in the knowledge of the Competition Commission of India (**CCI**). Such applicant will be eligible to receive additional reduction in penalty (as a lesser penalty plus applicant) over and above the reduction in penalty which may be given to it as a lesser penalty applicant in the first cartel. Further, such applicant would also be entitled to receive applicable reduction in penalty in respect of the second cartel as a lesser penalty applicant. Lesser penalty plus mechanism is expected to give a much-required impetus to the current lesser penalty regime in India.
3. In view of the significant changes introduced by the Amendment Act, CCI proposed the Competition Commission of India (Lesser Penalty) Regulations, 2023 (**Draft LPR 2023**) to repeal and replace the Competition Commission of India (Lesser Penalty) Regulations, 2009.
4. The Draft LPR 2023 were placed on the website of CCI for inviting written comments from the stakeholders.
5. The Commission received comments from 20 stakeholders from various disciplines which included industry associations, legal fraternity, policy think-tanks, academia, *etc.* within the stipulated period. CCI has carefully examined the comments received, and based on its past experience as well as international best practices on the comments so received, certain changes have been incorporated in the Draft LPR 2023. Accordingly, CCI has today notified the Competition Commission of India (Lesser Penalty) Regulations, 2024 (**LPR 2024**).

6. In terms of Section 64A(b) of the Act, this general statement is being published to provide CCI's response to the public comments.
7. The stakeholders sought clarity on the term 'admission' used in the Draft LPR 2023. In this regard, it is noted that the Amendment Act introduced the word 'admission' in Section 46 of the Act. Accordingly, the term 'admission' has now been defined in regulation 2(1) of LPR 2024. In addition, Schedule I in LPR 2024 has also been amended to include a new clause (d) requiring the applicant to disclose its role in the cartel and provide 'admission' in that regard.
8. Regarding provision for forfeiture of the benefit of lesser penalty or lesser penalty plus, the stakeholders raised various concerns such as overlapping grounds between rejection and forfeiture, lack of clarity regarding stage of forfeiture, no opportunity for hearing before forfeiture, *etc.* Taking into consideration such concerns, the provision relating to forfeiture has been done away with and regulation 3 in the LPR 2024 has been appropriately amended hereunder – (i) an additional condition has been prescribed for the applicant seeking benefit of lesser penalty or lesser penalty plus; (ii) stage of rejection of application by CCI has been clarified; and (iii) opportunity of hearing before rejection of application has been provided. Consequently, contents of regulations 6(7) and 7(6) of Draft LPR 2023 have been suitably incorporated in regulation 3 of LPR 2024.
9. The stakeholders sought clarity whether the benefit of lesser penalty plus is available to the individuals of the lesser penalty plus applicant. In this regard, a proviso has been added to regulation 5(1) of LPR 2024 to extend the benefit of lesser penalty plus to those individuals of the applicant who were included in its lesser penalty application in the first cartel, if such individual(s) were also involved in the second cartel and have been included in the lesser penalty plus application.
10. The stakeholders sought clarity regarding the procedure to be followed by CCI while dealing with lesser penalty plus applications in the Draft LPR 2023. To address this, sufficient clarity has now been provided by making appropriate changes to regulation 7 in the LPR 2024. It has also been clarified that the additional benefit under lesser penalty plus will be granted only to one applicant which enables CCI to pass a *prima facie* order under section 26(1) of the Act in respect of the second cartel.

11. The stakeholders pointed out ambiguities in the treatment of confidentiality claims in the lesser penalty regime. The same have been addressed by adding regulation 8(2) in the LPR 2024. It has been clarified that after the expiry of stipulated period, all submissions filed by a lesser penalty applicant before the Director General shall be governed in terms of regulation 35 of the Competition Commission of India (General) Regulations, 2009 and not in terms of the provisions of regulation 8 of LPR 2024.
12. Some stakeholders stated that the Draft LPR 2023 provides for filing of application (for lesser penalty or lesser penalty plus or withdrawal thereof) only before receipt of investigation report by the Commission and not by the parties and thus, expressed concerns over unpredictability of timeline for filing such application(s). In this regard, Section 46 of the Act itself provides such timeline for filing of such applications. Further, the objective of lesser penalty regime is two-fold: to incentivize the applicant by offering reduction in penalty and to provide/disclose evidence at the earliest to aid investigation. Filing of application after completion of investigation *i.e.* receipt of investigation report will defeat the very purpose of lesser penalty regime. Accordingly, provisions in this regard have been retained in the LPR 2024.
13. Stakeholders also suggested that priority status and corresponding benefit of lesser penalty may be altered on the basis of quality of evidence. In this regard, it is noted that timing of an applicant approaching CCI is the principal factor considered while granting of priority status, in order to incentivize the cartel participants to disclose the cartel as soon as possible, in lieu of securing maximum benefit of reduction in penalty. Even as per international best practices, the applicant approaching earliest is given maximum benefit of reduction in penalty. Accordingly, such suggestion proposed by the stakeholders was not accepted.
14. Certain stakeholders also pointed out that CCI or the DG should not be allowed to use the information or evidence provided by an applicant after withdrawal of lesser penalty or lesser penalty plus application filed by them. In this regard, Section 46 of the Act itself provides for usage of such information or evidence, except 'admission' made by the applicant. Accordingly, such a suggestion proposed by the stakeholders was not accepted.
