

## Competition Commission notifies norms to assess predatory pricing practices

### Crux:

The Competition Commission of India (CCI) vide its Notification F.No. CCI/ Reg-COP/01/ 2025-26 dated May 07, 2025, has notified the Determination of Cost of Production Regulations, 2025, replacing the earlier norms established in 2009. These updated regulations aim to modernize and clarify the framework for calculating the cost of production, particularly in the context of assessing anti-competitive practices such as predatory pricing and deep discounting in e-commerce.

### Key Takeaways:

The Competition Commission of India (CCI) vide its **Notification F.No. CCI/ Reg-COP/01/ 2025-26 dated May 07, 2025**, has issued the Determination of Cost of Production Regulations, 2025, replacing the 2009 regulations, so as to provide the framework for determining the cost of production, which is relevant for assessing predatory pricing by dominant enterprises under the Competition Act, 2002.

Predatory pricing involves selling goods or services below cost to reduce competition. The 2025 regulations, developed after public consultation, incorporate several changes to align with the evolution of competition law.

The revisions include updated definitions for 'total cost', 'total variable cost', 'average avoidable cost', and a clarified definition for long run average incremental cost' (LRAIC) to improve precision.

Cost in the Explanation to section 4 of the Act is generally taken as average variable cost, as a proxy for marginal cost. However, in specific cases, 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.

In arriving at the figures of costs, the Commission may take the help of suitable experts. However, if a party disputes the cost determined by the Commission, it may request the Commission to appoint an expert (s) to assist in determining the cost. And the Commission may appoint expert(s) of its choice, at the cost of the party making the request, to enable it to determine the cost.

The framework is designed to be sector-agnostic, applicable across industries including digital markets, and maintains a cost-based assessment, not relying on market value as a benchmark.

### Critique:

The modernized framework by CCI seems to have been designed to align the cost assessment framework with current economic practices and legal interpretations under Indian competition law. In cases involving predatory pricing, the cost of production is now to be determined strictly in accordance with the 2025 Regulations, providing a clearer statutory

basis for enforcement actions. The notification also reflects CCI's commitment to enhancing regulatory clarity and strengthening the analytical tools available for market oversight and anti-competitive conduct investigations.

**Link -** <https://www.cci.gov.in/images/whatsnew/en/gazette1746632546.pdf>