

THE COMPETITION ACT,

2002

No. 12 OF 2003

as amended by

The Competition (Amendment) Act, 2007

2007

THE COMPETITION ACT, 2002¹

No. 12 OF 2003

[13th January, 2003.]

An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the Competition Act, 2002.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions

2. In this Act, unless the context otherwise requires,—
 - (a) "acquisition" means, directly or indirectly, acquiring or agreeing to acquire—
 - (i) shares, voting rights or assets of any enterprise; or
 - (ii) control over management or control over assets of any enterprise;

¹ The following Act of Parliament received the assent of the President on the 13th January, 2003

- (b) "agreement" includes any arrangement or understanding or action in concert,—
 - (i) whether or not, such arrangement, understanding or action is formal or in writing; or
 - (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;
- ²[(ba)“Appellate Tribunal” means the Competition Appellate Tribunal established under sub-section (1) of Section 53A”]
- (c) "cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;
- (d) "Chairperson" means the Chairperson of the Commission appointed under sub-section (1) of section 8;
- (e) "Commission" means the Competition Commission of India established under sub-section(1) of section 7;
- (f) "consumer" means any person who—
 - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;
 - (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;
- (g) "Director General" means the Director General appointed under sub-section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section;

² Ins. by Competition (Amendment) Act, 2007

- (h) "enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relating to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

Explanation.—For the purposes of this clause,—

- (a) "activity" includes profession or occupation;
- (b) "article" includes a new article and "service" includes a new service;
- (c) "unit" or "division", in relation to an enterprise, includes—
 - (i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;
 - (ii) any branch or office established for the provision of any service;
- (i) "goods" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930) and includes—
 - (A) products manufactured, processed or mined;
 - (B) debentures, stocks and shares after allotment;
 - (C) in relation to goods supplied, distributed or controlled in India, goods imported into India;
- (j) "Member" means a Member of the Commission appointed under sub-section (1) of section 8 and includes the Chairperson;
- (k) "notification" means a notification published in the Official Gazette;
- (l) "person" includes—
 - (i) an individual;
 - (ii) a Hindu undivided family;
 - (iii) a company;

- (iv) a firm;
 - (v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
 - (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
 - (vii) any body corporate incorporated by or under the laws of a country outside India;
 - (viii) a co-operative society registered under any law relating to cooperative societies;
 - (ix) a local authority;
 - (x) every artificial juridical person, not falling within any of the preceding sub-clauses;
- (m) "practice" includes any practice relating to the carrying on of any trade by a person or an enterprise;
- (n) "prescribed" means prescribed by rules made under this Act;
- (o) "price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing;
- (p) "public financial institution" means a public financial institution specified under section 4A of the Companies Act, 1956 (1 of 1956) and includes a State Financial, Industrial or Investment Corporation;
- (q) "regulations" means the regulations made by the Commission under section 64;
- (r) "relevant market" means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;
- (s) "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;
- (t) "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the

consumer, by reason of characteristics of the products or services, their prices and intended use;

- (u) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;
- (v) "shares" means shares in the share capital of a company carrying voting rights and includes—
 - (i) any security which entitles the holder to receive shares with voting rights;
 - (ii) stock except where a distinction between stock and share is expressed or implied;
- (w) "statutory authority" means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto;
- (x) "trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services;
- (y) "turnover" includes value of sale of goods or services;
- (z) words and expressions used but not defined in this Act and defined in the Companies Act, 1956 (1 of 1956) shall have the same meanings respectively assigned to them in that Act.

CHAPTER II
PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT
POSITION AND REGULATION OF COMBINATIONS

Prohibition of agreements

Anti-competitive agreements

3. (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.
- (2) Any agreement entered into in contravention of the provisions contained in subsection (1) shall be void.
- (3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—
- (a) directly or indirectly determines purchase or sale prices;
 - (b) limits or controls production, supply, markets, technical development, investment or provision of services;
 - (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
 - (d) directly or indirectly results in bid rigging or collusive bidding,

shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation.—For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

- (a) tie-in arrangement;
- (b) exclusive supply agreement;
- (c) exclusive distribution agreement;
- (d) refusal to deal;
- (e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Explanation.—For the purposes of this sub-section,—

- (a) "tie-in arrangement" includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
- (b) "exclusive supply agreement" includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;
- (c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;
- (d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;
- (e) "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

(5) Nothing contained in this section shall restrict—

- (i) the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under—
 - (a) the Copyright Act, 1957 (14 of 1957);

- (b) the Patents Act, 1970 (39 of 1970);
 - (c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);
 - (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);
 - (e) the Designs Act, 2000 (16 of 2000);
 - (f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);
- (ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

Prohibition of abuse of dominant position

Abuse of dominant position

4. ³[(1)No enterprise or group] shall abuse its dominant position.]

(2) There shall be an abuse of dominant position ⁴[under sub-section (1), if an enterprise or a group].—

(a) directly or indirectly, imposes unfair or discriminatory—

- (i) condition in purchase or sale of goods or service; or
- (ii) price in purchase or sale (including predatory price) of goods or service.

Explanation.— For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

(b) limits or restricts—

- (i) production of goods or provision of services or market therefor; or
- (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

³ Subs. by Competition (Amendment) Act, 2007 for “No enterprise shall abuse its dominant position.”

⁴ Subs. by Competition (Amendment) Act, 2007 for “under sub-section (1), if an enterprise”

- (c) indulges in practice or practices resulting in denial of market access ⁵[in any manner]; or
- (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

Explanation.—For the purposes of this section, the expression—

- (a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—
 - (i) operate independently of competitive forces prevailing in the relevant market; or
 - (ii) affect its competitors or consumers or the relevant market in its favour.
- (b) "predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

⁶[(c) "group" shall have the same meaning as assigned to it in clause (b) of the Explanation to section 5.]

Regulation of combinations

Combination

- 5. The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—
 - (a) any acquisition where—
 - (i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—
 - (A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

⁵ Ins. by Competition (Amendment) Act, 2007

⁶ Ins. by Competition (Amendment) Act, 2007

- (B)⁷[in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]
- (ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,—
- (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or
- (B)⁸[in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or]
- (b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if—
- (i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,—
- (A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
- (B)⁹[in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]

⁷ Subs. by Competition (Amendment) Act, 2007 for:

“ in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or”

⁸ Subs. by Competition (Amendment) Act, 2007 for:

“ in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or”

⁹ Subs. by Competition (Amendment) Act, 2007 for

“ in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or”

- (ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,—
 - (A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or
 - (B) ¹⁰[in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six billion US dollars, including at least rupees fifteen hundred crores in India; or]
- (c) any merger or amalgamation in which—
 - (i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,—
 - (A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or
 - (B) ¹¹[in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]
 - (ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,—
 - (A) either in India, the assets of the value of more than rupees four-thousand crores or turnover more than rupees twelve thousand crores; or
 - (B) ¹²[in India or outside India, in aggregate, the assets of the value of more than two billion US dollars, including at least rupees five hundred crores in India, or turnover more than six

¹⁰ Subs. by Competition (Amendment) Act, 2007 for
 “ in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or”

¹¹ Subs. by Competition (Amendment) Act, 2007 for
 “ in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or”

¹² Subs. by Competition (Amendment) Act, 2007 for:
 “in India or outside India, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars.

billion US dollars, including at least rupees fifteen hundred crores in India;]

Explanation.— For the purposes of this section,—

- (a) "control" includes controlling the affairs or management by—
 - (i) one or more enterprises, either jointly or singly, over another enterprise or group;
 - (ii) one or more groups, either jointly or singly, over another group or enterprise;
- (b) "group" means two or more enterprises which, directly or indirectly, are in a position to —
 - (i) exercise twenty-six per cent. or more of the voting rights in the other enterprise; or
 - (ii) appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or
 - (iii) control the management or affairs of the other enterprise;
- (c) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

Regulation of combinations

6. (1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.
- (2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, ¹³[shall] give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within ¹⁴[thirty days] of—

¹³ Subs. by Competition (Amendment) Act, 2007 for "may, at his or its option"

¹⁴ Subs. by Competition (Amendment) Act, 2007 for "seven days"

- (a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;
- (b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.

¹⁵[(2A)No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section(2) or the Commission has passed orders under section 31, whichever is earlier.]

- (3) The Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in sections 29, 30 and 31.
- (4) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.
- (5) The public financial institution, foreign institutional investor, bank or venture capital fund, referred to in sub-section (4), shall, within seven days from the date of the acquisition, file, in the form as may be specified by regulations, with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

Explanation.—For the purposes of this section, the expression—

- (a) "foreign institutional investor" has the same meaning as assigned to it in clause (a) of the Explanation to section 115AD of the Income-tax Act, 1961(43 of 1961);
- (b) "venture capital fund" has the same meaning as assigned to it in clause (b) of the Explanation to clause (23 FB) of section 10 of the Income-tax Act, 1961(43 of 1961);

¹⁵ Ins. by Competition (Amendment) Act, 2007

CHAPTER III

COMPETITION COMMISSION OF INDIA

Establishment of Commission

7. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India".
- (2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.
- (3) The head office of the Commission shall be at such place as the Central Government may decide from time to time.
- (4) The Commission may establish offices at other places in India.

Composition of Commission

- ¹⁶[8.(1) The Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.
- (2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.
- (3) The Chairperson and other Members shall be whole-time Members.]

¹⁶ Subs. by Competition (Amendment) Act, 2007 for ;

“ (1) The Commission shall consist of a Chairperson and not less than two and not more than ten other Members to be appointed by the Central Government:
Provided that the Central Government shall appoint the Chairperson and a Member during the first year of the establishment of the Commission.

(2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has been, or is qualified to be a judge of a High Court, or, has special knowledge of, and professional experience of not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government may be useful to the Commission.

(3) The Chairperson and other Members shall be whole-time Members.”

¹⁷[**Selection Committee for Chairperson and Members of Commission**]

¹⁸9.(1) The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of –

- | | | | |
|----|---|------|--------------|
| a) | the Chief Justice of India or his nominee | ---- | Chairperson; |
| b) | the Secretary in the Ministry of Corporate Affairs | ---- | Member; |
| c) | the Secretary in the Ministry of Law and Justice | ---- | Member; |
| d) | two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy | ---- | Members. |

(2) The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.]

Term of office of Chairperson and other Members

10.(1) The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment:

¹⁹[Provided that the Chairperson or other Members shall not hold office as such after he has attained the age of sixty-five years]

(2) A vacancy caused by the resignation or removal of the Chairperson or any other Member under section 11 or by death or otherwise shall be filled by fresh appointment in accordance with the provisions of sections 8 and 9.

(3) The Chairperson and every other Member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form, manner and before such authority, as may be prescribed.

(4) In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson, until the date on which a new Chairperson, appointed in

¹⁷ Subs. by Competition (Amendment) Act, 2007 for “Selection of Chairperson and other Members”

¹⁸ Subs. by Competition (Amendment) Act, 2007 for:
“The Chairperson and other Members shall be selected in the manner as may be prescribed.”

¹⁹ Subs. by Competition (Amendment) Act, 2007 for:
“Provided that no Chairperson or other Member shall hold office as such after he has attained-
(a) in the case of the Chairperson, the age of sixty-seven years;
(b) in the case of any other Member, the age of sixty-five years.”

accordance with the provisions of this Act to fill such vacancy, enters upon his office.

- (5) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of his functions.

Resignation, removal and suspension of Chairperson and other members

- 11.(1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

- (2) Notwithstanding anything contained in sub-section (1), the Central Government may, by order, remove the Chairperson or any other Member from his office if such Chairperson or Member, as the case may be,—

- (a) is, or at any time has been, adjudged as an insolvent; or
- (b) has engaged at any time, during his term of office, in any paid employment; or
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
- (f) has become physically or mentally incapable of acting as a Member.

- (3) Notwithstanding anything contained in sub-section (2), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that subsection unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry, held by it in accordance with such procedure as may be prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.

Restriction on employment of Chairperson and other Members in certain cases

12. The Chairperson and other Members shall not, for a period of ²⁰[two years] from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

²¹[**Administrative powers of Chairperson**]

- ²²13. The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission:

Provided that the Chairperson may delegate such of his powers relating to administrative matters of the Commission, as he may think fit, to any other Member or officer of the Commission.”]

Salary and allowances and other terms and conditions of service of Chairperson and other Members

- 14.(1) The salary, and the other terms and conditions of service, of the Chairperson and other Members, including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be prescribed.

(2)The salary, allowances and other terms and conditions of service of the Chairperson or a Member shall not be varied to his disadvantage after appointment.

Vacancy, etc. not to invalidate proceedings of Commission

15. No act or proceeding of the Commission shall be invalid merely by reason of—
(a) any vacancy in, or any defect in the constitution of, the Commission; or

²⁰ Subs. by Competition (Amendment) Act, 2007 for “one year”

²¹ Subs. by Competition (Amendment) Act, 2007 for “Financial and administrative powers of Member Administration”

²² Subs. by Competition (Amendment) Act, 2007 for:

“ The Central Government shall designate any Member as Member Administration who shall exercise such financial and administrative powers as may be vested in him under the rules made by the Central Government:
Provided that the Member Administration shall have authority to delegate such of his financial and administrative powers as he may think fit to any other officer of the Commission subject to the condition that such officer shall, while exercising such delegated powers continue to act under the direction, superintendence and control of the Member Administration.”

- (b) any defect in the appointment of a person acting as a Chairperson or as a Member; or
- (c) any irregularity in the procedure of the Commission not affecting the merits of the case.

Appointment of Director General, etc.

16. ²³[(1)The Central Government may, by notification, appoint a Director General for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for performing such other functions as are, or may be, provided by or under this Act.

(1A)The number of other Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner of appointment of such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees shall be such as may be prescribed.”]

(2) Every Additional, Joint, Deputy and Assistant Directors General or ²⁴[such officers or other employees,] shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General.

(3) The salary, allowances and other terms and conditions of service of the Director General and Additional, Joint, Deputy and Assistant Directors General or, ²⁵[such officers or other employees,] shall be such as may be prescribed.

(4) The Director General and Additional, Joint, Deputy and Assistant Directors General or ²⁶[such officers or other employees,] shall be appointed from amongst persons of integrity and outstanding ability and who have experience in investigation, and knowledge of accountancy, management, business, public administration, international trade, law or economics and such other qualifications as may be prescribed.

²³ Subs. by Competition (Amendment) Act, 2007 for :

“ The Central Government may, by notification, appoint a Director General and as many Additional, Joint, Deputy or Assistant Directors General or such other advisers, consultants or officers, as it may think fit, for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for the conduct of cases before the Commission and for performing such other functions as are, or may be, provided by or under this Act”

²⁴ Subs. by Competition (Amendment) Act, 2007 for “such other advisers, consultants and officers,”

²⁵ Subs. by Competition (Amendment) Act, 2007 for “such other advisers, consultants and officers,”

²⁶ Subs. by Competition (Amendment) Act, 2007 for “such other advisers, consultants and officers,”

²⁷[**Appointment of Secretary, experts, professionals and officers and other employees of Commission**]

²⁸[**17.(1)**The Commission may appoint a Secretary and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

(2) The salaries and allowances payable to and other terms and conditions of service of the Secretary and officers and other employees of the Commission and the number of such officers and other employees shall be such as may be prescribed.

(3) The Commission may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under this Act.]

²⁷ Subs. by Competition (Amendment) Act, 2007 for “Registrar and officers and other employees of Commission”

²⁸ Subs. by Competition (Amendment) Act, 2007 for:

- “ (1) The Commission may appoint a Registrar and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act
- (2) The salaries and allowances payable to and other terms and conditions of service of the Registrar and officers and other employees of the Commission and the number of such officers and other employees shall be such as may be prescribed.”

CHAPTER IV
DUTIES, POWERS AND FUNCTIONS OF COMMISSION

Duties of Commission

- 18.** Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India:

Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country.

Inquiry into certain agreements and dominant position of enterprise

- 19.(1)** The Commission may inquire into any alleged contravention of the provisions contained in subsection (1) of section 3 or sub-section (1) of section 4 either on its own motion or on—

- (a) ²⁹[receipt of any information, in such manner and] accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or
- (b) a reference made to it by the Central Government or a State Government or a statutory authority.

- (2) Without prejudice to the provisions contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7).

- (3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:—

- (a) creation of barriers to new entrants in the market;
- (b) driving existing competitors out of the market;
- (c) foreclosure of competition by hindering entry into the market;
- (d) accrual of benefits to consumers;

²⁹ Subs. by Competition (Amendment) Act, 2007 for “receipt of a complaint,”

- (e) improvements in production or distribution of goods or provision of services;
 - (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.
- (4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:—
- (a) market share of the enterprise;
 - (b) size and resources of the enterprise;
 - (c) size and importance of the competitors;
 - (d) economic power of the enterprise including commercial advantages over competitors;
 - (e) vertical integration of the enterprises or sale or service network of such enterprises;
 - (f) dependence of consumers on the enterprise;
 - (g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
 - (h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
 - (i) countervailing buying power;
 - (j) market structure and size of market;
 - (k) social obligations and social costs;
 - (l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
 - (m) any other factor which the Commission may consider relevant for the inquiry.
- (5) For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographic market" and "relevant product market".

- (6) The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:—
- (a) regulatory trade barriers;
 - (b) local specification requirements;
 - (c) national procurement policies;
 - (d) adequate distribution facilities;
 - (e) transport costs;
 - (f) language;
 - (g) consumer preferences;
 - (h) need for secure or regular supplies or rapid after-sales services.
- (7) The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:—
- (a) physical characteristics or end-use of goods;
 - (b) price of goods or service;
 - (c) consumer preferences;
 - (d) exclusion of in-house production;
 - (e) existence of specialised producers;
 - (f) classification of industrial products.

Inquiry into combination by Commission

20.(1) The Commission may, upon its own knowledge or information relating to acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of section 5 or merger or amalgamation referred to in clause (c) of that section, inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India:

Provided that the Commission shall not initiate any inquiry under this sub-section after the expiry of one year from the date on which such combination has taken effect.

- (2) The Commission shall, on receipt of a notice under sub-section (2) of section 6³⁰[***], inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.
- (3) Notwithstanding anything contained in section 5, the Central Government shall, on the expiry of a period of two years from the date of commencement of this Act and thereafter every two years, in consultation with the Commission, by notification, enhance or reduce, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, the value of assets or the value of turnover, for the purposes of that section.
- (4) For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:—
- (a) actual and potential level of competition through imports in the market;
 - (b) extent of barriers to entry into the market;
 - (c) level of combination in the market;
 - (d) degree of countervailing power in the market;
 - (e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
 - (f) extent of effective competition likely to sustain in a market;
 - (g) extent to which substitutes are available or are likely to be available in the market;
 - (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
 - (i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
 - (j) nature and extent of vertical integration in the market;
 - (k) possibility of a failing business;
 - (l) nature and extent of innovation;
 - (m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;

³⁰ The words “or upon receipt of a reference under sub-section (1) of section 21” omitted by Competition (Amendment) Act, 2007

- (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

Reference by statutory authority

21.(1) Where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the Commission:

³¹[Provided that any statutory authority, may, suo motu, make such a reference to the Commission.]

³²[(2)On receipt of a reference under sub-section (1), the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefor on the issues referred to in the said opinion.]

³³[Reference by Commission]

³⁴**[21A.(1)**Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of this Act whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority:

Provided that the Commission, may, suo motu, make such a reference to the statutory authority.

(2) On receipt of a reference under sub-section (1), the statutory authority shall give its opinion, within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons therefor on the issues referred to in the said opinion.]

³¹ Ins. by Competition (Amendment) Act, 2007

³² Subs. by Competition (Amendment) Act, 2007 for:

“ On receipt of a reference under sub-section (1), the Commission shall, after hearing the parties to the proceedings, give its opinion to such statutory authority which shall thereafter pass such order on the issues referred to in that sub-section as it deems fit:
Provided that the Commission shall give its opinion under this section within sixty days of receipt of such reference.”

³³ Ins. by Competition (Amendment) Act, 2007

³⁴ Ins. by Competition (Amendment) Act, 2007

³⁵**[Meetings of Commission]**

³⁶**22.(1)**The Commission shall meet at such times and places, and shall observe such rules and procedure in regard to the transaction of business at its meetings as may be provided by regulations.

(2) The Chairperson, if for any reason, is unable to attend a meeting of the Commission, the senior-most Member present at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Commission shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or/casting vote:

Provided that the quorum for such meeting shall be three Members.]

³⁷**23.** [Omitted by the Competition (Amendment) Act, 2007]

³⁸**24.** [Omitted by the Competition (Amendment) Act, 2007]

³⁵ Subs. by Competition (Amendment) Act, 2007 for "Benches of Commission"

³⁶ Subs. by Competition (Amendment) Act, 2007 for:

- " (1) The jurisdiction, powers and authority of the Commission may be exercised by Benches thereof.
(2) The Benches shall be constituted by the Chairperson and each Bench shall consist of not less than two Members.
(3) Every Bench shall consist of at least one Judicial Member.
Explanation.—For the purposes of this sub-section, "Judicial Member" means a Member who is, or has been, or is qualified to be, a Judge of a High Court.
(4) The Bench over which the Chairperson presides shall be the Principal Bench and the other Benches shall be known as the Additional Benches.
(5) There shall be constituted by the Chairperson one or more Benches to be called the Mergers Bench or Mergers Benches, as the case may be, exclusively to deal with matters referred to in sections 5 and 6.
(6) The places at which the Principal Bench, other Additional Bench or Mergers Bench shall ordinarily sit, shall be such as the Central Government may, by notification, specify."

³⁷ Prior to omission, Section 23 read as under:-

- " Distribution of business of Commission amongst Benches
(1) Where any Benches are constituted, the Chairperson may, from time to time, by order, make provisions as to the distribution of the business of the Commission amongst the Benches and specify the matters, which may be dealt with by each Bench.
(2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench, the decision of the Chairperson thereon shall be final.
(3) The Chairperson may
(i) transfer a Member from one Bench to another Bench, or
(ii) authorize the Members of one Bench to discharge also the functions of the Members of other Bench:
Provided that the Chairperson shall transfer, with the prior approval of the Central Government, a Member from one Bench situated in one city to another Bench situated in another city.
(4) The Chairperson may, for the purpose of securing that any case or matter which, having regard to the nature of the questions involved, requires or is required in his opinion or under the rules made by the Central Government in this behalf, to be decided by a Bench composed of more than two Members, issue such general or special orders as he may deem fit."

³⁸ Prior to omission Section 24 read as under:

- " Procedure for deciding a case where Members of a Bench differ in opinion
If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it."

³⁹25. [Omitted by the Competition (Amendment) Act, 2007]

⁴⁰[Procedure for inquiry under section 19]

⁴¹26.(1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter:

Provided that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the

³⁹ Prior to omission, Section 25 read as under:

“ Jurisdiction of Bench

An inquiry shall be initiated or a complaint be instituted or a reference be made under this Act before a Bench within the local limits of whose jurisdiction—

- (a) the respondent, or each of the respondents, where there are more than one, at the time of the initiation of inquiry or institution of the complaint or making of reference, as the case may be, actually and voluntarily resides, or carries on business, or personally works for gain; or
- (b) any of the respondents, where there are more than one, at the time of the initiation of the inquiry or institution of complaint or making of reference, as the case may be, actually and voluntarily resides or carries on business or personally works for gain provided that in such case either the leave of the Bench is given, or the respondents who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or
- (c) the cause of action, wholly or in part, arises.

Explanation.—A respondent, being a person referred to in sub-clause (iii) or sub-clause (vi) or sub-clause (vii) or sub-clause (viii) of clause (1) of section 2, shall be deemed to carry on business at its sole or principal place of business in India or at its registered office in India or where it has also a subordinate office at such place.”

⁴⁰ Subs. by Competition (Amendment) Act, 2007 for “Procedure for inquiry on complaints under section 19”

⁴¹ Subs. by Competition (Amendment) Act, 2007 for:

“ Procedure for inquiry on complaints under Section 19

- (1) On receipt of a complaint or a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information, under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter.
- (2) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.
- (3) Where on receipt of a complaint under clause (a) of sub-section (1) of section 19, the Commission is of the opinion that there exists no prima facie case, it shall dismiss the complaint and may pass such orders as it deems fit, including imposition of costs, if necessary.
- (4) The Commission shall forward a copy of the report referred to in sub-section (2) to the parties concerned or to the Central Government or the State Government or the statutory authority, as the case may be.
- (5) If the report of the Director General relates on a complaint and such report recommends that there is no contravention of any of the provisions of this Act, the complainant shall be given an opportunity to rebut the findings of the Director General.
- (6) If, after hearing the complainant, the Commission agrees with the recommendation of the Director General, it shall dismiss the complaint.
- (7) If, after hearing the complainant, the Commission is of the opinion that further inquiry is called for, it shall direct the complainant to proceed with the complaint.
- (8) If the report of the Director General relates on a reference made under sub-section (1) and such report recommends that there is no contravention of the provisions of this Act, the Commission shall invite comments of the Central Government or the State Government or the statutory authority, as the case may be, on such report and on receipt of such comments, the Commission shall return the reference if there is no prima facie case or proceed with the reference as a complaint if there is a prima facie case.
- (9) If the report of the Director General referred to in sub-section (2) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.”

Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

- (3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.
- (4) The Commission may forward a copy of the report referred to in sub section (3) to the parties concerned:

Provided that in case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report referred to in sub-section (3) to the Central Government or the State Government or the statutory authority, as the case may be.

- (5) If the report of the Director General referred to in sub-section (3) recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.
- (6) If, after consideration of the objections and suggestions referred to in sub section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.
- (7) If, after consideration of the objections or suggestions referred to in sub section (5), if any, the Commission is of the opinion that further investigations is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.
- (8) If the report of the Director General referred to in sub-section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.]

Orders by Commission after inquiry into agreements or abuse of dominant position

27. Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:—

- (a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;
- (b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:

⁴²[Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover for each year of the continuance of such agreement, whichever is higher.]

⁴³(c) [Omitted by Competition (Amendment) Act, 2007]

- (d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;
- (e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;;

⁴⁴(f) [Omitted by Competition (Amendment) Act, 2007]

- (g) pass such other ⁴⁵[order or issue such directions] as it may deem fit.

⁴⁶[Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause(b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.]

⁴² Subs. by Competition (Amendment) Act, 2007 for:

“ Provided that in case any agreement referred to in section 3 has been entered into by any cartel, the Commission shall impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty equivalent to three times of the amount of profits made out of such agreement by the cartel or ten per cent. of the average of the turnover of the cartel for the last preceding three financial years, whichever is higher;”

⁴³ Prior to omission, Clause (c) of Section 27 read as under:-

“award compensation to parties in accordance with the provisions contained in section 34;”

⁴⁴ Prior to omission, Clause (c) of Section 27 read as under:-

“recommend to the Central Government for the division of an enterprise enjoying dominant position;”

⁴⁵ Subs. by Competition (Amendment) Act, 2007 for “order”

⁴⁶ Ins. by Competition (Amendment) Act, 2007

Division of enterprise enjoying dominant position

- 28** (1) The ⁴⁷[Commission] may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.
- (2) In particular, and without prejudice to the generality of the foregoing powers, the order referred to in sub-section (1) may provide for all or any of the following matters, namely:—
- (a) the transfer or vesting of property, rights, liabilities or obligations;
 - (b) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
 - (c) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
 - ⁴⁸(d) [Omitted by Competition (Amendment) Act, 2007]
 - (e) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;
 - (f) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;
 - (g) any other matter which may be necessary to give effect to the division of the enterprise.
- (3) Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the division of an enterprise shall not be entitled to claim any compensation for such cesser.

Procedure for investigation of combination

- 29.**(1) Where the Commission is of the ⁴⁹[prima facie] opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within thirty days of the

⁴⁷ Subs. by Competition (Amendment) Act, 2007 for “Central Government, on recommendation under clause(f) of section 27”

⁴⁸ Prior to omission, clause (d) of sub-section(2) of section 28 read as under:-

“the payment of compensation to any person who suffered any loss due to dominant position of such enterprise;”

⁴⁹ Ins. by Competition (Amendment) Act, 2007

receipt of the notice, as to why investigation in respect of such combination should not be conducted.

⁵⁰[1(A)After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.]

(2) The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, ⁵¹[or the receipt of the report from Director General called under sub section (1A), whichever is later] direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.

(3) The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published under sub-section (2).

(4) The Commission may, within fifteen working days from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination.

(5) The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) within fifteen days from the expiry of the period specified in sub-section (4).

(6) After receipt of all information and within a period of forty-five working days from the expiry of the period specified in sub-section (5), the Commission shall proceed to deal with the case in accordance with the provisions contained in section 31.

⁵²**[Procedure in case of notice under sub-section (2) of section 6]**

⁵³**[30.** Where any person or enterprises has given a notice under sub-section (2) of section 6, the Commission shall examine such notice and form its prima facie

⁵⁰ Ins. by Competition (Amendment) Act, 2007

⁵¹ Ins. by Competition (Amendment) Act, 2007

⁵² Subs. by Competition (Amendment) Act, 2007 for "Inquiry into disclosure under sub-section(2) of section 6"

⁵³ Subs. by Competition (Amendment) Act, 2007 for:

"Where any person or enterprise has given a notice under sub-section (2) of section 6. The Commission shall inquire—

(a) whether the disclosure made in the notice is correct;

(b) whether the combination has, or is likely to have, an appreciable adverse effect on competition."

opinion as provided in sub-section (1) of section 29 and proceed as per provisions contained in that section.]

Orders of Commission on certain combinations

- 31.**(1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of section 6.
- (2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.
- (3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination.
- (4) The parties, who accept the modification proposed by the Commission under subsection (3), shall carry out such modification within the period specified by the Commission.
- (5) If the parties to the combination, who have accepted the modification under subsection (4), fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act.
- (6) If the parties to the combination do not accept the modification proposed by the Commission under sub-section (3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under that sub-section.
- (7) If the Commission agrees with the amendment submitted by the parties under subsection (6), it shall, by order, approve the combination.
- (8) If the Commission does not accept the amendment submitted under sub-section (6), then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under sub-section (3).
- (9) If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be deemed to

have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act.

(10) Where the Commission has directed under sub-section (2) that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-section (9), then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that—

- (a) the acquisition referred to in clause (a) of section 5; or
 - (b) the acquiring of control referred to in clause (b) of section 5; or
 - (c) the merger or amalgamation referred to in clause (c) of section 5,
- shall not be given effect to:

Provided that the Commission may, if it considers appropriate, frame a scheme to implement its order under this sub-section.

(11) If the Commission does not, on the expiry of a period of ⁵⁴[two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6], pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission.

Explanation.—For the purposes of determining the period of ⁵⁵[two hundred and ten] days specified in this subsection, the period of thirty working days specified in sub-section (6) and a further period of thirty working days specified in sub-section (8) shall be excluded.

(12) Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties.

(13) Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.

(14) Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.

⁵⁴ Subs. by Competition (Amendment) Act, 2007 for:
“ninety working days from the date of publication referred to in sub-section(2) of section 29”

⁵⁵ Subs. by Competition (Amendment) Act, 2007 for “ninety days”

Acts taking place outside India but having an effect on competition in India

32. The Commission shall, notwithstanding that,—

- (a) an agreement referred to in section 3 has been entered into outside India; or
- (b) any party to such agreement is outside India; or
- (c) any enterprise abusing the dominant position is outside India; or
- (d) a combination has taken place outside India; or
- (e) any party to combination is outside India; or
- (f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India,

have power to inquire ⁵⁶[in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 of the Act] into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India ⁵⁷[and pass such orders as it may deem fit in accordance with the provisions of this Act.]

⁵⁸[Power to issue interim orders]

⁵⁹[33. Where during an inquiry, the Commission is satisfied that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.]

⁵⁶ Ins. by Competition (Amendment) Act, 2007

⁵⁷ Ins. by Competition (Amendment) Act, 2007

⁵⁸ Subs. by Competition (Amendment) Act, 2007 for “Power to grant interim relief”

⁵⁹ Subs. by Competition (Amendment) Act, 2007 for:

- “(1) Where during an inquiry before the Commission, it is proved to the satisfaction of the Commission, by affidavit or otherwise, that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, grant a temporary injunction restraining any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary.
- (2) Where during the inquiry before the Commission it is proved to the satisfaction of the Commission by affidavit or otherwise that import of any goods is likely to contravene sub-section (1) of section 3 or subsection (1) of section 4 or section 6, it may, by order, grant a temporary injunction restraining any party from importing such goods until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary and a copy of such order granting temporary injunction shall be sent to the concerned authorities.
- (3) The provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall, as far as may be, apply to a temporary injunction issued by the Commission under this Act, as they apply to a temporary injunction issued by a civil court, and any reference in any such rule to a suit shall be construed as a reference to any inquiry before the Commission.”

⁶⁰34. [Omitted by Competition (Amendment) Act, 2007]

Appearance before Commission

35. A ⁶¹[person or an enterprise] or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

Explanation.—For the purposes of this section,—

- (a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

⁶⁰ Prior to omission, section 34 read as under:-

“ Power to award compensation

- (1) Without prejudice to any other provisions contained in this Act, any person may make an application to the Commission for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of any contravention of the provisions of Chapter II, having been committed by such enterprise.
- (2) The Commission may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise.
- (3) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Commission, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon.”

⁶¹ Subs. by Competition (Amendment) Act, 2007 for “complainant or defendant”

Power of Commission to regulate its own procedure

- ⁶²[36.(1) In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.
- (2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-
- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavit;
 - (d) issuing commissions for the examination of witnesses or documents;
 - (e) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), any public record or document or copy of such of record or document from any office.
- (3) The Commission may call upon such experts, from the field of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary to assist the Commission in the conduct of any inquiry by it.

⁶² Subs. by Competition (Amendment) Act, 2007 for:

- “(1) The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have powers to regulate its own procedure including the places at which they shall have their sittings, duration of oral hearings when granted, and times of its inquiry.
- (2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—
- (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents;
 - (c) receiving evidence on affidavits;
 - (d) issuing commissions for the examination of witnesses or documents;
 - (e) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
 - (f) dismissing an application in default or deciding it ex parte;
 - (g) any other matter which may be prescribed.
- (3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a civil court for the purposes of section 195 (2 of 1974) and Chapter XXVI of the Code of Criminal Procedure, 1973.
- (4) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry or proceeding before it.
- (5) The Commission may direct any person—
- (a) to produce before the Director General or the Registrar or an officer authorised by it, such books, accounts or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;
 - (b) to furnish to the Director General or the Registrar or any officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.
- (6) If the Commission is of the opinion that any agreement referred to in section 3 or "abuse of dominant position referred to in section 4 or the combination referred to in section 5 has caused or is likely to cause an appreciable adverse effect on competition in the relevant market in India and it is necessary to protect, without further delay, the interests of consumers and other market participants in India, it may conduct an inquiry or adjudicate upon any matter under this Act after giving a reasonable oral hearing to the parties concerned.”

(4) The Commission may direct any person:

- (a) to produce before the Director General or the Secretary or an officer authorized by it, such books, or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;
- (b) to furnish to the Director General or the Secretary or any other officer authorized by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.]

⁶³37. [Omitted by Competition (Amendment) Act, 2007]

Rectification of orders

38. (1) With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of this Act.

(2) Subject to the other provisions of this Act, the Commission may make—

- (a) an amendment under sub-section (1) of its own motion;
- (b) an amendment for rectifying any such mistake which has been brought to its notice by any party to the order.

Explanation.— For the removal of doubts, it is hereby declared that the Commission shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

⁶⁴[**Execution of orders of Commission imposing monetary penalty**]

⁶⁵[39.(1)If a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty, in such manner as may be specified by the regulations.

⁶³ Prior to omission, section 37 read as under:-

“ Review of orders of Commission

Any person aggrieved by an order of the Commission from which an appeal is allowed by this Act but no appeal has been preferred, may, within thirty days from the date of the order, apply to the Commission for review of its order and the Commission may make such order thereon as it thinks fit:

Provided that the Commission may entertain a review application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from preferring the application in time:

Provided further that no order shall be modified or set aside without giving an opportunity of being heard to the person in whose favour the order is given and the Director General where he was a party to the proceedings.”

⁶⁴ Subs. by Competition (Amendment) Act, 2007 for “Execution of orders of Commission”

- (2) In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income-tax Act, 1961 (43 of 1961), it may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.
- (3) Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income Tax Act, 1961 (43 of 1961) and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made there under shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income-tax and sums imposed by way of penalty, fine, and interest under the Income-tax Act, 1961 (43 of 1961) and to the Commission instead of the Assessing Officer.

Explanation 1 – Any reference to sub-section (2) or sub-section (6) of section 220 of the income-tax Act, 1961 (43 of 1961), in the said provisions of that Act or the rules made thereunder shall be construed as references to sections 43 to 45 of this Act.

Explanation 2 – The Tax Recovery Commissioner and the Tax Recovery Officer referred to in the Income-tax Act, 1961 (43 of 1961) shall be deemed to be the Tax Recovery Commissioner and the Tax Recovery Officer for the purposes of recovery of sums imposed by way of penalty under this Act and reference made by the Commission under sub-section (2) would amount to drawing of a certificate by the Tax Recovery Officer as far as demand relating to penalty under this Act.

Explanation 3– Any reference to appeal in Chapter XVIIID and the Second Schedule to the Income-tax Act, 1961 (43 of 1961), shall be construed as a reference to appeal before the Competition Appellate Tribunal under section 53B of this Act.]

⁶⁶40. [Omitted by Competition (Amendment) Act, 2007]

⁶⁵ Subs. by Competition (Amendment) Act, 2007 for:

“ Every order passed by the Commission under this Act shall be enforced by the Commission in the same manner as if it were a decree or order made by a High Court or the principal civil court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court, as the case may be, within the local limits of whose jurisdiction,—

(a) in the case of an order against a person referred to in sub-clause (iii) or sub-clause (vi) or subclause (vii) of clause (l) of section 2, the registered office or the sole or principal place of business of the person in India or where the person has also a subordinate office, that subordinate office, is situated;

(b) in the case of an order against any other person, the place, where the person concerned voluntarily resides or carries on business or personally works for gain, is situated, and thereupon the court to which the order is so sent shall execute the order as if it were a decree or order sent to it for execution.”

⁶⁶ Prior to omission, section 40 read as under:-

“ Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission to him on one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908): Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days: Provided further that no appeal shall lie against any decision or order of the Commission made with the consent of the parties.”

CHAPTER V
DUTIES OF DIRECTOR GENERAL

Director General to investigate contravention

- 41.**(1) The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made thereunder.
- (2) The Director General shall have all the powers as are conferred upon the Commission under subsection (2) of section 36.
- (3) Without prejudice to the provisions of sub-section (2), sections 240 and 240A of the Companies Act, 1956 (1 of 1956), so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority, as they apply to an inspector appointed under that Act.

⁶⁷[Explanation.—For the purposes of this section, --

- (a) the words “the Central Government” under section 240 of the Companies Act, 1956 (1 of 1956) shall be construed as “the Commission”;
- (b) the word “Magistrate” under section 240A of the Companies Act, 1956 (1 of 1956) shall be construed as “the Chief Metropolitan Magistrate, Delhi”.]

⁶⁷ Ins. by Competition (Amendment) Act, 2007

CHAPTER VI

PENALTIES

Contravention of orders of Commission

⁶⁸[42.(1)The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.

(2) If any person, without reasonable clause, fails to comply with the orders or directions of the Commission issued under sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.

(3) If any person does not comply with the orders or directions issued, or fails to pay the fine imposed under sub-section (2), he shall, without prejudice to any proceeding under section 39, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this section save on a complaint filed by the Commission or any of its officers authorized by it.]

⁶⁹[Compensation in case of contravention of orders of Commission]

⁷⁰[42A.Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued under sections 27, 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or

⁶⁸ Subs. by Competition (Amendment) Act, 2007 for:

“(1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Commission, or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

(2) The Commission may, while making an order under this Act, issue such directions to any person or authority, not inconsistent with this Act, as it thinks necessary or desirable, for the proper implementation or execution of the order, and any person who commits breach of or fails to comply with, any obligation imposed on him under such direction, may be ordered by the Commission to be detained in civil prison for a term not exceeding one year unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.”

⁶⁹ Ins. by Competition (Amendment) Act, 2007

⁷⁰ Ins. by Competition (Amendment) Act, 2007

granted under this Act or delaying in carrying out such orders or directions of the Commission.]

Penalty for failure to comply with directions of Commission and Director General

⁷¹[43. If any person fails to comply, without reasonable cause, with a direction given by—

- (a) the Commission under sub-sections (2) and (4) of section 36; or
- (b) the Director General while exercising powers referred to in sub-section (2) of section 41,

such person shall be punishable with fine which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission]

⁷²[**Power to impose penalty for non-furnishing of information on combinations**]

⁷³[43A. If any person or enterprise who fails to give notice to the Commission under sub-section (2) of section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one per cent. of the total turnover or the assets, whichever is higher, of such a combination.]

Penalty for making false statement or omission to furnish material information

44. If any person, being a party to a combination,—

- (a) makes a statement which is false in any material particular, or knowing it to be false; or
- (b) omits to state any material particular knowing it to be material,

such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Commission.

⁷¹ Subs. by Competition (Amendment) Act, 2007 for:

“If any person fails to comply with a direction given by—

(a) the Commission under sub-section (5) of section 36; or

(b) the Director General while exercising powers referred to in sub-section (2) of section 41,

the Commission shall impose on such person a penalty of rupees one lakh for each day during which such failure continues.”

⁷² Ins. by Competition (Amendment) Act, 2007

⁷³ Ins. by Competition (Amendment) Act, 2007

Penalty for offences in relation to furnishing of information

⁷⁴[45.(1) Without prejudice to the provisions of section 44, if a person, who furnishes or is required to furnish under this Act any particulars, documents or any information,—

- (a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or
- (b) omits to state any material fact knowing it to be material; or
- (c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

such person shall be punishable with fine which may extend to rupees one crore as may be determined by the Commission.]

(2) Without prejudice to the provisions of sub-section(1), the Commission may also pass such other order as it deems fit.

Power to impose lesser penalty

46. The Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as it may deem fit, than leviable under this Act or the rules or the regulations:

⁷⁵[Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 has been received before making of such disclosure.]

Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who ⁷⁶[has] made the full, true and vital disclosures under this section.

⁷⁴ Subs. by Competition (Amendment) Act, 2007 for :

“(1) Without prejudice to the provisions of section 44, if any person, who furnishes or is required to furnish under this Act any particulars, documents or any information,—
(a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or
(b) omits to state any material fact knowing it to be material; or
(c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,
the Commission shall impose on such person a penalty which may extend to rupees ten lakhs.”

⁷⁵ Subs. by Competition (Amendment) Act, 2007 for:

“ Provided that lesser penalty shall not be imposed by the Commission in cases where proceedings for the violation of any of the provisions of this Act or the rules or the regulations have been instituted or any investigation has been directed to be made under section 26 before making of such disclosure: “

⁷⁶ Subs. by Competition (Amendment) Act, 2007 for “first”

⁷⁷[Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to cooperate with the Commission till the completion of the proceedings before the Commission.]

Provided also that the Commission may, if it is satisfied that such producer, seller, distributor, trader or service provider included in the cartel had in the course of proceedings,—

- (a) not complied with the condition on which the lesser penalty was imposed by the Commission; or
- (b) had given false evidence; or
- (c) the disclosure made is not vital,

and thereupon such producer, seller, distributor, trader or service provider may be tried for the offence with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.

Crediting sums realised by way of penalties to Consolidated Fund of India

47. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Contravention by companies

- 48.(1) Where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

- (2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or

⁷⁷ Ins. by Competition (Amendment) Act, 2007

other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a)"company" means a body corporate and includes a firm or other association of individuals; and

(b)"director", in relation to a firm, means a partner in the firm.

CHAPTER VII

COMPETITION ADVOCACY

Competition advocacy

- 49.⁷⁸[(1)The Central Government may, in formulating a policy on competition (including review of laws related to competition) or any other matter, and a State Government may, in formulating a policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition and on the receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, or the State Government, as the case may be, which may thereafter take further action as it deems fit.]
- (2) The opinion given by the Commission under sub-section (1) shall not be binding upon the Central Government ⁷⁹[or the State Government, as the case may be] in formulating such policy.
- (3) The Commission shall take suitable measures ⁸⁰[***] for the promotion of competition advocacy, creating awareness and imparting training about competition issues.

⁷⁸ Subs. by Competition (Amendment) Act, 2007 for:

“(1) In formulating a policy on competition (including review of laws related to competition), the Central Government may make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit.”

⁷⁹ Ins. by Competition (Amendment) Act, 2007

⁸⁰ The words “as may be prescribed” omitted by Competition (Amendment) Act, 2007

CHAPTER VIII
FINANCE, ACCOUNTS AND AUDIT

Grants by Central Government

50. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act.

Constitution of Fund

51.(1) There shall be constituted a fund to be called the "Competition Fund" and there shall be credited thereto—

(a) all Government grants received by the Commission;

⁸¹(b) [Omitted by Competition (Amendment) Act, 2007]

(c) the fees received under this Act;

(d) the interest accrued on the amounts referred to in ⁸²[clauses (a) and (c)].

(2) The Fund shall be applied for meeting—

(a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries, allowances and pension payable to the Director General, Additional, Joint, Deputy or Assistant Directors General, the Registrar and officers and other employees of the Commission;

(b) the other expenses of the Commission in connection with the discharge of its functions and for the purposes of this Act.

(3) The Fund shall be administered by a committee of such Members of the Commission as may be determined by the Chairperson.

(4) The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.

Accounts and Audit

52.(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by

⁸¹ Prior to omission, clause (b) of section 51(1) read as under :-
"the monies received as costs from parties to proceedings before the Commission;"

⁸² Subs. by Competition (Amendment) Act, 2007 for "clauses (a) to (c)"

the Central Government in consultation with the Comptroller and Auditor-General of India.

- (2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

Explanation.—For the removal of doubts, it is hereby declared that the orders of the Commission, being matters appealable to the ⁸³[Appellate Tribunal or the Supreme Court], shall not be subject to audit under this section.

- (3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.
- (4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Furnishing of returns, etc., to Central Government

- 53.**(1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues, as the Central Government may, from time to time, require.
- (2) The Commission shall prepare once in every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year and copies of the report shall be forwarded to the Central Government.
- (3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

⁸³ Subs. by Competition (Amendment) Act, 2007 for “Supreme Court”

COMPETITON APPELLATE TRIBUNAL

Establishment of Appellate Tribunal:

53A.(1) The Central Government shall, by notification, establish an Appellate Tribunal to be known as Competition Appellate Tribunal –

- (a) to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under sub-sections (2) and (6) of section 26, section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of the Act;
- (b) to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under sub-section(2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.

(2) The Headquarter of the Appellate Tribunal shall be at such place as the Central Government may, by notification, specify.

Appeal to Appellate Tribunal

53B.(1)The Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order referred to in clause (a) of section 53A may prefer an appeal to the Appellate Tribunal.

(2) Every appeal under sub-section (1) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order made by the Commission is received by the Central Government or the State Government or a local authority or enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.

⁸⁴ “Chapter VIIIA” Inserted by Competition (Amendment) Act, 2007

- (4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.
- (5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

Composition of Appellate Tribunal

53C. The Appellate Tribunal shall consist of a Chairperson and not more than two other members to be appointed by the Central Government.

Qualifications for appointment of Chairperson and Members of Appellate Tribunal

53D.(1)The Chairperson of the Appellate Tribunal shall be a person, who is, or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

- (2) A member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty five years in, competition matters including competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal.

Selection Committee

53E.(1)The Chairperson and members of the Appellate Tribunal shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of –

- (a) the Chief Justice of India or his nominee Chairperson;
- (b) the Secretary in the Ministry of Corporate Affairs..... Member;
- (c) the Secretary in the Ministry of Law and Justice Member.

- (2) The terms of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

Term of office of Chairperson and Members of Appellate Tribunal

53F. The Chairperson or a member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, and shall be eligible for re-appointment:

Provided that no Chairperson or other member of the Appellate Tribunal shall hold office as such after he has attained, -

- (a) in the case of the Chairperson, the age of sixty-eight years;
- (b) in the case of any other member of the Appellate Tribunal, the age of sixty-five years.

Terms and conditions of service of chairperson and Members of Appellate Tribunal

53G(1) The salaries and allowances and other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal shall be such as may be prescribed.

- (2) The salaries, allowances and other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal shall not be varied to their disadvantage after their appointment.

Vacancies

53H. If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Resignation of Chairperson and Members of Appellate Tribunal

53I. The Chairperson or a member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

Member of Appellate Tribunal to act as its Chairperson in certain cases

53J.(1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death or resignation, the senior-most Member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most member or, as the case may be, such one of the Members of the Appellate Tribunal, as the Central Government may, by notification, authorize in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Removal and suspension of Chairperson and Members of Appellate Tribunal

53K.(1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any other member of the Appellate Tribunal, who-

- (a) has been adjudged an insolvent; or
- (b) has engaged at any time, during his terms of office, in any paid employment; or
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has become physically or mentally incapable of acting as such Chairperson or other Member of the Appellate Tribunal; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal; or
- (f) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), no Chairperson or a Member of the Appellate Tribunal shall be removed from his office on the ground specified in clause (e) or clause (f) of sub-section (1) except by an order made by the Central Government after an inquiry made in this behalf by a Judge of the Supreme Court in which such Chairperson or member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Restriction on employment of Chairperson and other Members of Appellate Tribunal in certain cases

53L. The Chairperson and other members of the Appellate Tribunal shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Appellate Tribunal under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government Company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

Staff of Appellate Tribunal

53M.(1)The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence and control of the Chairperson of the Appellate Tribunal.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed.

Awarding compensation

53N.(1)Without prejudice to any other provisions contained in this Act, the Central Government or a State Government or a local authority or any enterprise or any person may make an application to the Appellate Tribunal to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any findings of the Commission or under section 42A or under sub-section(2) of section 53Q of the Act, and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by the Central Government or a State Government or a local authority or any enterprise or any person as a result of any contravention of the provisions of Chapter II, having been committed by enterprise.

(2) Every application made under sub-section (1) shall be accompanied by the findings of the Commission, if any, and also be accompanied with such fees as may be prescribed.

- (3) The Appellate Tribunal may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realisable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise:

Provided that the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

- (4) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Appellate Tribunal, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Appellate Tribunal and the order of the Appellate Tribunal thereon.

Explanation.—For the removal of doubts, it is hereby declared that—

- (a) an application may be made for compensation before the Appellate Tribunal only after either the Commission or the Appellate Tribunal on appeal under clause (a) of sub-section(1) of section53A of the Act, has determined in a proceeding before it that violation of the provisions of the Act has taken place, or if provisions of section 42A or sub-section(2) of section 53Q of the Act are attracted.
- (b) enquiry to be conducted under sub-section(3) shall be for the purpose of determining the eligibility and quantum of compensation due to a person applying for the same, and not for examining afresh the findings of the Commission or the Appellate Tribunal on whether any violation of the Act has taken place.

Procedures and powers of Appellate Tribunal

- 53O.**(1)The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Appellate Tribunal shall have power to regulate its own procedure including the places at which they shall have their sittings.
- (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of

Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

- a) summoning and enforcing the attendance of any person and examining him on oath;
 - b) requiring the discovery and production of documents;
 - c) receiving evidence on affidavit;
 - d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
 - e) issuing commissions for the examination of witnesses or documents;
 - f) reviewing its decisions;
 - g) dismissing a representation for default or deciding it ex parte;
 - h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte;
 - i) any other matter which may be prescribed.
- (3) Every proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 (2 of 1974) and Chapter XXVI of the Code of Criminal Procedure, 1973.

Execution of orders of Appellate Tribunal

53P.(1) Every order made by the Appellate Tribunal shall be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send, in case of its inability to execute such order, to the court within the local limits of whose jurisdiction,-

- a) in the case of an order against a company, the registered office of the company is situated; or
 - b) in the case of an order against any other person, place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.
- (2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Contravention of orders of Appellate Tribunal

53Q.(1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable for a penalty of not exceeding rupees one crore or imprisonment for a term up to three years or with both as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence punishable under this sub-section, save on a complaint made by an officer authorized by the Appellate Tribunal.

(2) Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise contravening, without any reasonable ground, any order of the Appellate Tribunal or delaying in carrying out such orders of the Appellate Tribunal.

Vacancy in Appellate Tribunal not to invalidate acts or proceedings

53R. No act or proceeding of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the constitution of the Appellate Tribunal.

Right to legal representation

53S.(1) A person preferring an appeal to the Appellate Tribunal may either appear in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

(2) The Central Government or a State Government or a local authority or any enterprise preferring an appeal to the Appellate Tribunal may authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before the Appellate Tribunal.

(3) The Commission may authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorized may present the case with respect to any appeal before the Appellate Tribunal.

Explanation – The expressions “chartered accountant” or “company secretary” or “cost accountant” or “legal practitioner” shall have the meanings respectively assigned to them in the Explanation to section 35.

Appeal to Supreme Court

53T. The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them;

Provided that the Supreme court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

Power to Punish for contempt

53U. The Appellate Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971) shall have effect subject to modifications that,--

- (a) the reference therein to a High Court shall be construed as including a reference to the Appellate Tribunal;
- (b) the references to the Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officer as the Central Government may, by notification, specify in this behalf.]

CHAPTER IX
MISCELLANEOUS

Power to exempt

- 54.** The Central Government may, by notification, exempt from the application of this Act, or any provision thereof, and for such period as it may specify in such notification—
- (a) any class of enterprises if such exemption is necessary in the interest of security of the State or public interest;
 - (b) any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries;
 - (c) any enterprise which performs a sovereign function on behalf of the Central Government or a State Government:

Provided that in case an enterprise is engaged in any activity including the activity relatable to the sovereign functions of the Government, the Central Government may grant exemption only in respect of activity relatable to the sovereign functions.

Power of Central Government to issue directions

- 55.(1)** Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this subsection.

- (2) The decision of the Central Government whether a question is one of policy or not shall be final.

Power of Central Government to supersede Commission

56.(1) If at any time the Central Government is of the opinion—

- (a) that on account of circumstances beyond the control of the Commission, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or
- (b) that the Commission has persistently made default in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Commission or the administration of the Commission has suffered; or
- (c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Commission for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Commission to make representations against the proposed supersession and shall consider representations, if any, of the Commission.

(2) Upon the publication of a notification under sub-section (1) superseding the Commission,—

- (a) the Chairperson and other Members shall as from the date of supersession, vacate their offices as such;
- (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Government may specify in this behalf;
- (c) all properties owned or controlled by the Commission shall, until the Commission is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under subsection (1), the Central Government shall reconstitute the Commission by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

- (4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Restriction on disclosure of information

57. No information relating to any enterprise, being an information which has been obtained by or on behalf of ⁸⁵[the Commission or the Appellate Tribunal] for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.

⁸⁶[Chairperson, Members, Director General, Secretary, officers and other employees, etc., to be public servants]

- ⁸⁷[58. The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Secretary and officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).]

Protection of action taken in good faith

59. No suit, prosecution or other legal proceedings shall lie against the Central Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director- General, Additional, Joint, Deputy or Assistant Directors General or ⁸⁸[the Secretary or officers or other employees of the Commission or the Chairperson, Members, officers and other employees of the Appellate Tribunal] for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

⁸⁵ Subs. by Competition (Amendment) Act, 2007 for “the Commission”

⁸⁶ Subs. by Competition (Amendment) Act, 2007 for “Members, Director General, Registrar, officers and other employees, etc. of Commission to be public servants”

⁸⁷ Subs. by Competition (Amendment) Act, 2007 for :

“ The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Registrar and officers and other employees of the Commission shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).”

⁸⁸ Subs. by Competition (Amendment) Act, 2007 for “the Registrar or officers or other employees of the Commission”

Act to have overriding effect

60. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Exclusion of jurisdiction of civil courts

61. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the ⁸⁹[Commission or the Appellate Tribunal] is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Application of other laws not barred

62. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Power to make rules

- 63.(1) The Central Government may, by notification, make rules to carry out the provisions of this Act;
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
- ⁹⁰[(a) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of Section 9;]
 - (b) the form and manner in which and the authority before whom the oath of office and of secrecy shall be made and subscribed to under sub-section (3) of section 10;
 - ⁹¹(c) [Omitted by Competition (Amendment) Act, 2007.
 - (d) the salary and the other terms and conditions of service including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities to be provided to the Chairperson and other Members under sub-section (1) of section 14;

⁸⁹ Subs. by Competition (Amendment) Act, 2007 for “Commission”

⁹⁰ Subs. by Competition (Amendment) Act, 2007 for:

“the manner in which the Chairperson and other Members shall be selected under section 9;”

⁹¹ Prior to omission, clause (c) of sub-section(2) of section 63 read as under:-

“the financial and administrative powers which may be vested in the Member Administration under section 13;”

- ⁹²[(da) the number of Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner in which such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees may be appointed under sub-section (1A) of section 16;]
- (e) the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General or ⁹³[such officers or other employees] under sub-section (3) of section 16;
- (f) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or ⁹⁴[such officers or other employees] under sub-section (4) of section 16;
- (g) the salaries and allowances and other terms and conditions of service of the ⁹⁵[Secretary] and officers and other employees payable, and the number of such officers and employees under sub-section (2) of section 17;
- ⁹⁶(h) [Omitted by Competition (Amendment) Act, 2007]
- ⁹⁷(i) [Omitted by Competition (Amendment) Act, 2007]
- ⁹⁸(j) [Omitted by Competition (Amendment) Act, 2007]
- (k) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 52;
- (l) the time within which and the form and manner in which the Commission may furnish returns, statements and such particulars as the Central Government may require under sub-section (1) of section 53;
- (m) the form in which and the time within which the annual report shall be prepared under sub-section (2) of section 53;
- ⁹⁹[(ma) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of section 53B and the fees payable in respect of such appeal;

⁹² Ins. by Competition (Amendment) Act, 2007

⁹³ Subs. by Competition (Amendment) Act, 2007 for “such other advisers, consultants or officers”

⁹⁴ Subs. by Competition (Amendment) Act, 2007 for “such other advisers, consultants or officers”

⁹⁵ Subs. by Competition (Amendment) Act, 2007 for “Registrar”

⁹⁶ Prior to omission, clause (h) of sub-section(2) of section 63 read as under:-

“ for securing any case or matter which requires to be decided by a Bench composed of more than two Members under sub-section (4) of section 23;”

⁹⁷ Prior to omission, clause (i) of sub-section(2) of section 63 read as under:-

“any other matter in respect of which the Commission shall have power under clause (g) of sub-section (2) of section 36;”

⁹⁸ Prior to omission, clause (j) of sub-section(2) of section 63 read as under:-

“ the promotion of competition advocacy, creating awareness and imparting training about competition issues under sub-section (3) of section 49;”

- (mb) the term of the Selection Committee and the manner of selection of panel of names under sub-section(2) of section 53E;
 - (mc) the salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 53G;
 - (md) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 53M;
 - (me) the fee which shall be accompanied with every application made under sub-section (2) of section 53N;
 - (mf) the other matters under clause (i) of sub-section(2) of section 53O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit;]
 - ¹⁰⁰[(n)the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal shall be dealt with by the Commission or the Appellate Tribunal, as the case may be, under the fourth proviso to sub-section(2) of section 66 ;]
 - (o) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.
- (3) Every notification issued under sub-section(3) of section 20 and section 54 and every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule, or both Houses agree that the notification should not be issued or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule, as the case may be.

Power to make regulations

64.(1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

⁹⁹ Ins. by Competition (Amendment) Act, 2007

¹⁰⁰ Subs. by Competition (Amendment) Act, 2007 for:

“ the manner in which the monies transferred to the Central Government shall be dealt with by that Government under the fourth proviso to sub-section (2) of section 66;”

- (2) In particular, and without prejudice to the generality of the foregoing provisions, such regulations may provide for all or any of the following matters, namely:—
- (a) the cost of production to be determined under clause (b) of the Explanation to section 4;
 - (b) the form of notice as may be specified and the fee which may be determined under sub-section(2) of section 6;
 - (c) the form in which details of the acquisition shall be filed under subsection(5) of Section 6;
 - ¹⁰¹[(d) the procedures to be followed for engaging the experts and professionals under sub-section(3) of section 17;
 - (e) the fee which may be determined under clause (a) of sub-section(1) of section 19;
 - (f) the rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section(1) of section 22;
 - (g) the manner in which penalty shall be recovered under sub-section(1) of section 39;
 - (h) any other matter in respect of which provision is to be, or may be, made by regulations.]
- (3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

Power to remove difficulties

65.(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty:

¹⁰¹ Subs. by Competition (Amendment) Act, 2007 for:

“ (d) the fee which may be determined under clause (a) of sub-section (1) of section 19;
(e) any other matter in respect of which provision is to be, or may be, made by regulations.”

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and saving

66.¹⁰²[(1)The Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under sub-section(1) of section 5 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved:

Provided that, notwithstanding anything contained in this sub-section, the Monopolies and Restrictive Trade Practices Commission established under sub section(1) of section 5 of the repealed Act, may continue to exercise jurisdiction and power under the repealed Act for a period of two years from the date of the commencement of this Act in respect of all cases or proceedings (including complaints received by it or references or applications made to it) filed before the commencement of this Act as if the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) had not been repealed and all the provisions of the said Act so repealed shall mutatis mutandis apply to such cases or proceedings or complaints or references or applications and to all other matters.

Explanation: For the removal of doubts, it is hereby declared that nothing in this proviso shall confer any jurisdiction or power upon the Monopolies and Restrictive Trade Practices Commission to decide or adjudicate any case or proceeding arising under the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) on or after the commencement of this Act.

(1A)The repeal of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) shall, however, not affect,-

- (a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or
- (c) any penalty, confiscation or punishment incurred in respect of any contravention under the Act so repealed; or
- (d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, confiscation or punishment as aforesaid, and

¹⁰² Subs. by Competition (Amendment) Act, 2007 for :

“ (1)The Monopolies and Restrictive Trade Practices Act, 1969 is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the said Act (hereinafter referred to as the repealed Act) (54 of 1969) shall stand dissolved.”

any such proceeding or remedy may be instituted, continued or enforced, and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.]

- (2) On the dissolution of the Monopolies and Restrictive Trade Practices Commission, the person appointed as the Chairman of the Monopolies and Restrictive Trade Practices Commission and every other person appointed as Member and Director General of Investigation and Registration, Additional, Joint, Deputy, or Assistant Directors General of Investigation and Registration and any officer and other employee of that Commission and holding office as such immediately before such dissolution shall vacate their respective offices and such Chairman and other Members shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of term of their office or of any contract of service:

Provided that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission appointed on deputation basis to the Monopolies and Restrictive Trade Practices Commission, shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be:

¹⁰³[Provided further that the Director-General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission, employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Competition Commission of India or the Appellate Tribunal, in such manner as may be specified by the Central Government, with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Competition Commission of India or the Appellate Tribunal, as the case may be, and shall continue to do so unless and until his employment in the Competition Commission of India or the Appellate Tribunal, as the case may be, is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Competition Commission of India or the Appellate Tribunal, as the case may be.]

¹⁰³ Subs. by Competition (Amendment) Act, 2007 for:

“Provided further that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission, employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government:”

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947(14 of 1947), or in any other law for the time being in force, the transfer of the services of any Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee, employed in the Monopolies and Restrictive Trade Practices Commission, to ¹⁰⁴[the Competition Commission of India or the Appellate Tribunal], as the case may be, shall not entitle such Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

Provided also that where the Monopolies and Restrictive Trade Practices Commission has established a provident fund, superannuation, welfare or other fund for the benefit of the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or the officers and other employees employed in the Monopolies and Restrictive Trade Practices Commission, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to ¹⁰⁵[the Competition Commission of India or the Appellate Tribunal, as the case may be, shall, out of the monies standing] on the dissolution of the Monopolies and Restrictive Trade Practices Commission to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and vest in, ¹⁰⁶[the Competition Commission of India or the Appellate Tribunal as the case may be, and such monies which stand so transferred shall be dealt with by the said Commission or the Tribunal, as the case may be, in such manner as may be prescribed.]

¹⁰⁷[(3)All cases pertaining to monopolistic trade practices or restrictive trade practices pending (including such cases, in which any unfair trade practice has also been alleged), before the Monopolies and Restrictive Trade Practices Commission shall , after the expiry of two years referred to in the proviso to sub-section (1) stand transferred to the Appellate Tribunal and shall be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed.]

(4) Subject to the provisions of sub-section(3), all cases pertaining to unfair trade practices other than those referred to in clause (x) of sub-section(1) of section

¹⁰⁴ Subs. by Competition (Amendment) Act, 2007 for “the Central Government”

¹⁰⁵ Subs. by Competition (Amendment) Act, 2007 for “the Central Government shall, out of the monies standing”

¹⁰⁶ Subs. by Competition (Amendment) Act, 2007 for:

“ the Central Government and such monies which stand so transferred shall be dealt with by the said Government in such manner as may be prescribed.”

¹⁰⁷ Subs. by Competition (Amendment) Act, 2007 for:

“ All cases pertaining to monopolistic trade practices or restrictive trade practices pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act, including such cases, in which any unfair trade practice has also been alleged, shall, on such commencement, stand transferred to the Competition Commission of India and shall be adjudicated by that Commission in accordance with the provisions of the repealed Act as if that Act had not been repealed.”

36A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and pending before the Monopolies and Restrictive Trade Practices Commission¹⁰⁸[on or before the expiry of two years referred to in the proviso to sub-section (1)], shall, stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 (68 of 1986) and the National Commission shall dispose of such cases as if they were cases filed under that Act:

Provided that the National Commission may, if it considers appropriate, transfer any case transferred to it under this sub-section, to the concerned State Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986) and that State Commission shall dispose of such case as if it was filed under that Act.

¹⁰⁹[(5)All cases pertaining to unfair trade practices referred to in clause (x) of sub-section(1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 and pending before the Monopolies and Restrictive Trade Practices Commission shall, after the expiry of two years referred to in the proviso to sub-section(1) stand transferred to the Appellate Tribunal and the Appellate Tribunal shall dispose of such cases as if they were cases filed under that Act.]

(6) All investigations or proceedings, other than those relating to unfair trade practices, pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

(7) All investigations or proceedings, relating to unfair trade practices, other than those referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969(54 of 1969) and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 (68 of 1986) and the National Commission may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

(8) All investigations or proceedings relating to unfair trade practices referred to in clause (x) of subsection (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969(54 of 1969), and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission

¹⁰⁸ Subs. by Competition (Amendment) Act, 2007 for “on or before the commencement of this Act shall, on such commencement”

¹⁰⁹ Subs. by Competition (Amendment) Act, 2007 for:

“ All cases pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India shall dispose of such cases as if they were cases filed under that Act..”

of India and the Competition Commission of India may conduct or order for conduct of such investigation in the manner as it deems fit.

(9) Save as otherwise provided under sub-sections (3) to (8), all cases or proceedings pending before the Monopolies and Restrictive Trade Practices Commission shall abate.

(10) The mention of the particular matters referred to in sub-sections (3) to (8) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.

STATEMENT OF OBJECTS AND REASONS

The Competition Act was enacted in 2002 keeping in view the economic development that resulted in opening up of the Indian economy, removal of controls and consequent economic liberalization which required that the Indian economy be enabled to allow competition in the market from within the country and outside. The Competition Act, 2002 (hereinafter referred to as the Act) provided for the establishment of a Competition Commission, (the Commission) to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India, and for matters connected therewith or incidental thereto.

2. The Competition Commission of India was established on the 14th October, 2003 but could not be made functional due to filing of a writ petition before the Hon'ble Supreme Court. While disposing of the writ petition on the 20th January, 2005, the Hon'ble Supreme Court held that if an expert body is to be created by the Union Government, it might be appropriate for the Government to consider the creation of two separate bodies, one with expertise for advisory and regulatory functions and the other for adjudicatory functions based on the doctrine of separation of powers recognised by the Constitution. Keeping in view the judgment of the Hon'ble Supreme Court, the Competition (Amendment) Bill, 2006 was introduced in Lok Sabha on the 9th March, 2006 and the same was referred for examination and report to the Parliamentary Standing Committee. Taking into account the recommendations of the Committee, the Competition (Amendment) Bill, 2007 is being introduced.

3. The Competition (Amendment) Bill, 2007, *inter alia*, provides for the following:-

(a) the Commission shall be an expert body which would function as a market regulator for preventing and regulating anti-competitive practices in the country in accordance with the Act and it would also have advisory and advocacy functions in its role as a regulator;

(b) for mandatory notice of merger or combination by a person or enterprise to the Commission within thirty days and to empower the Commission for imposing a penalty of up to one per cent. of the total turnover or the assets, whichever is higher, on a person or enterprise which fails to give notice of merger or combination to the Commission;

(c) for establishment of the Competition Appellate Tribunal, which shall be a three member *quasi judicial* body headed by a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission;

(d) for adjudication by the Competition Appellate Tribunal of claims on compensation and passing of orders for the recovery of compensation from any

enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Act;

(e) for implementation of the orders of the Competition Appellate Tribunal as a decree of a civil court;

(f) for filing of appeal against the orders of the Competition Appellate Tribunal to the Supreme Court;

(g) for imposition of a penalty by the Commission for contravention of its orders and in certain cases of continued contravention a penalty which may extend to rupees twenty-five crores or imprisonment which may extend to three years or with both as the Chief Metropolitan Magistrate, Delhi may deem fit, may be imposed.

4. The Bill also aims at continuation of the Monopolies and Restrictive Trade Practices Commission (MRTPC) till two years after constitution of Competition Commission, for trying pending cases under the Monopolies and Restrictive Trade Practices Act, 1969 after which it would stand dissolved. The Bill also provides that MRTPC would not entertain any new cases after the Competition Commission is duly constituted. Cases still remaining pending after this two year period, would be transferred to Competition Appellate Tribunal or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 9th August, 2007.

PREM CHAND GUPTA.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. 5/18/2006-IGC, dated the 20th August, 2007 from Shri Prem Chand Gupta, Minister of Corporate Affairs to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Competition (Amendment) Bill, 2007, recommends introduction of the Bill under article 117(1) of the Constitution and also recommends the consideration of the Bill under article 117(3) of the Constitution.

Notes on Clauses

Clause 2. —This clause seeks to amend section 2 of the Competition Act, 2002 relating to definitions. It is proposed to define the expression “Appellate Tribunal” used in the Bill.

Clause 3. —This clause seeks to amend section 4 of the Competition Act, 2002 relating to abuse of dominant position. The existing provisions of section 4 applies only to an enterprise and not to the group of enterprises. Clause (c) of sub-section (2) of section 4 states that there shall be an abuse of dominant position if an enterprise indulges in practice or practices resulting in denial of market access.

It is proposed to amend the provisions of section 4 so as to make it applicable to group of enterprises also. It is also proposed to amend clause (c) of sub-section (2) of said section so as to insert the words “in any manner”. This amendment is clarificatory in nature.

Clause 4. —This clause seeks to amend section 5 of the Competition Act, 2002 relating to combination.

Under the existing provisions of section 5, there is no specific provision regarding local nexus for foreign entities which are parties to combinations.

It is proposed to substitute item (B) in sub-clause (i) and item (B) in sub-clause (ii) of clause (a) of section 5 to provide for a local nexus for combinations involving foreign entity and an Indian entity. A threshold value of local assets and operations in terms of asset value of at least rupees 500 crores and turnover of atleast rupees 1500 crores, is proposed for operations in India in addition to the existing global asset or turnover limits provided in the Act.

Clause 5. —This clause seeks to amend section 6 of the Competition Act, 2002 relating to regulation of combinations.

Under the existing provisions of section 6, it is voluntary for a person or enterprise to give notice of the formation of combination within seven days to the Commission.

It is proposed to amend sub-section (2) of section 6 so as to provide for mandatory notice of combinations to the Commission within thirty days. It is also proposed to add subsection (2A) providing that no combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission or the Commission has passed orders under section 31, whichever is earlier.

Clause 6. —This clause seeks to substitute section 8 of the Competition Act, 2002 relating to composition of Competition Commission of India.

The new clause provides that the Commission shall consist of a Chairperson and not less than two and not more than six other Members instead of ten Members as provided for under the existing provisions of section 8, to be appointed by the Central Government. It also proposes to remove from eligibility requirement that the person who has been or is qualified to be a Judge of a High Court, and to omit the special knowledge of, and professional experience of administration or in any other matter from the qualifications for appointment as Chairperson or any other Member.

Clause 7. —This clause seeks to substitute section 9 of the Competition Act, 2002 relating to selection of Chairperson and other Members of the Competition Commission of India.

Under the existing provisions, the Chairperson and other Members shall be selected in the manner as may be prescribed by the rules made by the Central Government. The Competition Commission of India (Selection of Chairperson and other Members of the Commission) Rules, 2003 made under this section provide for selection of the Chairperson and other Members by a Selection Committee consisting of (a) a person, who has been a retired judge of the Supreme Court or a High Court or a retired Chairperson of a Tribunal established or constituted under an Act of Parliament or a distinguished jurist or a Senior Advocate for five years or more – as Member, (b) a person who has special knowledge of, and professional experience of twenty-five years or more in international trade, economics, business, commerce or industry – as Member, (c) a person who has special knowledge of, and professional experience of twenty-five years or more in accountancy, management, finance, public affairs or administration – as Member nominated by the Central Government.

The new clause provides that the Chairperson and other Members of the Competition Commission of India shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of (a) the Chief Justice of India or his nominee— as Chairperson, (b) the Secretary in the Ministry of Corporate Affairs – as Member, (c) the Secretary in the Ministry of Law and Justice—as Member and (d) two experts of repute having special knowledge in specified fields – as Member.

It also provides that the term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

Clause 8.—This clause seeks to amend section 10 of the Competition Act, 2002 relating to term of office of Chairperson and other Members of the Competition Commission of India.

Under the existing provisions contained in section 10, no Chairperson of the

Competition Commission of India shall hold office as such after he has attained the age of sixty-seven years and no other Member shall hold office as such after he has attained the age of sixty-five years.

It is proposed to amend the said section 10 to provide that the Chairperson or other Member shall not hold office as such after he has attained the age of sixty-five years.

Clause 9.—This clause seeks to amend section 12 of the Competition Act, 2002 relating to restriction on employment of Chairperson and other Members of the Competition Commission of India in certain cases.

Under the existing provisions contained in the said section, the Chairperson and other Members shall not, for a period of one year from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act. However, this provision does not apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State, or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

It is proposed to amend the said section so as to increase the said period of restriction on employment of Chairperson and other Members of the Competition Commission of India from one year to two years.

Clause 10.—This clause seeks to substitute section 13 of the Competition Act, 2002 relating to financial and administrative powers of Member Administration.

Under the existing provisions contained in the said section, the Central Government is to designate any Member as Member Administration who shall exercise such financial and administrative powers as are vested in him under the rules.

It is proposed to substitute the said section 13 by a new section to provide that the Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission. However, the Chairperson may delegate such of his powers relating to administrative matters of the Commission, as he may think fit to any other Member or officer of the Commission.

Clause 11.—This clause seeks to amend section 16 of the Competition Act, 2002 relating to appointment of Director General, etc.

Under the existing provisions contained in the said section, the Central Government can appoint a Director General and as many Additional, Joint, Deputy or Assistant Director General or such other advisers, consultants or officers, as it may think fit, for the purposes of assisting the Commission in conducting inquiry into

contravention of any of the provisions of the Act and for the conduct of cases before the Commission and for performing such other functions as are, or may be, provided by or under the Act.

It is proposed to amend the said section so as to, *inter alia*, omit the “advisers” and “consultants” from the scope of section 16 and therefore the Central Government would not appoint “advisers” and “consultants” in the Competition Commission of India. The power to engage the “advisers”, and “consultants” is proposed to be conferred upon the Competition Commission of India.

Clause 12.—This clause seeks to substitute section 17 of the Competition Act, 2002 relating to Registrar and officers and other employees of the Competition Commission of India by a new section.

Under the existing provisions contained in the said section, the Commission may appoint a Registrar and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

It is proposed to substitute said section so as to confer power upon the Commission to appoint a Secretary instead of Registrar in addition to officers and other employees in the discharge of its functions under the said Act and also proposed to confer power on the Commission to engage such experts and professionals of integrity and outstanding ability who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission.

Clause 13.—This clause seeks to amend section 19 of the Competition Act, 2002 relating to inquiry into certain agreements and dominant position of enterprise.

Under the existing provisions contained in clause (a) of sub-section (1) of said section, the Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on receipt of a complaint.

It is proposed to amend said section so as to substitute “receipt of a complaint”, by the words “receipt of any information, in such manner” to enable the Commission to inquire into any alleged contravention on receipt of any information instead of receipt of a complaint.

Clause 14. —This clause seeks to amend sub-section (2) of section 20 of the Competition Act, 2002 relating to inquiry into combination by the Commission.

Under the existing provisions contained in sub-section (2) of section 20, the Commission shall, upon receipt of a reference under sub-section (1) of section 21, inquire whether the combination referred to in the reference is likely to cause an appreciable adverse effect on competition in India.

It is proposed to amend the said sub-section (2) so as to delete the provision of inquiry on a reference from a statutory authority as the reference has been made on an issue, which is under consideration of the statutory authority.

Clause 15.—This clause seeks to amend sub-sections (1) and (2) of section 21 of the Competition Act, 2002 relating to reference by statutory authority.

Under the existing provisions contained in sub-section (1) of said section where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take, is or would be, contrary to any of the provisions of the Act then such statutory authority may make a reference in respect of such issue to the Commission. Under the existing sub-section (2), on receipt of a reference from a statutory authority, the Commission shall, after hearing the parties to the proceedings, give its opinion to such statutory authority which shall thereafter pass such order on the issues referred to in that sub-section as it deems fit.

It is proposed to add a proviso to said sub-section (1) so as to provide that any statutory authority may *suo motu* make a reference to the Commission. It is also proposed to amend sub-section (2) so as to provide that the statutory authority on the opinion of the Commission shall give its findings recording reasons therefor.

Clause 16.—This clause seeks to insert a new section 21A regarding reference by Commission.

This new section provides for making of a reference by the Commission to statutory authorities on an issue raised in any matter before it or *suo motu*. The statutory authority shall be duty bound to give its opinion within sixty days to the Commission and the Commission shall consider the opinion of the statutory authority and give its findings recording reasons therefor.

Clause 17.—This clause seeks to substitute section 22 of the Competition Act, 2002 relating to Benches of the Competition Commission of India.

Under the existing provisions contained in the said section, the jurisdiction, powers and authority of the Commission may be exercised by Benches thereof.

It is proposed to substitute the said section for the meetings of the Competition Commission of India. It, *inter alia*, provides that the Commission shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by the regulations. It also provides that all questions which come up before any meeting of the Commission shall be decided by a majority of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote. It also provides that the quorum for such meeting shall be three Members.

Clause 18. —This clause seeks to omit sections 23, 24 and 25 of the Competition Act, 2002 relating to distribution of business of the Competition Commission of India amongst Benches, procedure for deciding a case where Members of a Bench differ in opinion and jurisdiction of Bench.

Clause 19. —This clause seeks to substitute section 26 of the Competition Act, 2002 relating to procedure for enquiry on complaints under section 19.

It is proposed to provide that on receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the matter. It also provides that on receipt of reference under the above provision, if the Commission is of the opinion that there exists no *prima facie* case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be. The Director General on receipt of direction under the above provision shall submit a report on his findings within such period as may be specified by the Commission. The Commission may forward a copy of the report to the parties concerned. It also provides that if the report of the Director General recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General. It provides that if the Commission agrees to the recommendations of the Director General, it shall close the matter and pass such order as it deems fit and communicate its order to the authorities mentioned. It further provides that after consideration of the objections or suggestions referred to above, if any, the Commission is of the opinion that further investigation is called for, it may direct for further investigation. It further provides that if the report of the Director General recommends that there is contravention of any of the provisions of the Act and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of the Act. It is also proposed to provide that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

Clause 20. —This clause seeks to amend section 27 of the Competition Act, 2002 relating to orders by Commission after inquiry into agreements or abuse of dominant position.

The existing provisions contained in the said section, *inter alia*, confer power upon the Commission to pass orders awarding compensation to parties in accordance with the provisions contained in section 34.

The power to award compensation is proposed to be conferred upon the Appellate Tribunal by new section 53N proposed to be inserted by clause 43 of the Bill. It is, therefore, proposed to omit clauses (c) and (f) of section 27 which confer powers on the Commission to pass orders awarding compensation.

It is also proposed to add a proviso to this section providing that if the Commission comes to a finding that an enterprise, in contravention to section 3 or section 4 of the Act, is a member of a group as defined in clause (b) of the *Explanation* to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass any orders against such members of the group.

Clause 21. —This clause seeks to amend section 28 of the Competition Act, 2002 relating to division of enterprise enjoying dominant position.

Under the existing provisions contained in the said section the Central Government can, on recommendation of the Commission, order division of enterprise enjoying dominant position.

It is proposed to amend section 28 so as to confer said power upon the Commission to order division of an enterprise instead of the Central Government to order the division.

Clause 22. —This clause seeks to amend section 29 of the Competition Act, 2002 relating to procedure for investigation of combinations.

It is, *inter alia*, proposed to insert a new sub-section (1A) to provide that the Commission may, after receipt of the response of the parties to the combination under subsection (1), call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.

Clause 23. —This clause seeks to substitute section 30 of the Competition Act, 2002 relating to inquiry into disclosures under sub-section (2) of section 6.

Under the existing provisions contained in the said section, where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall inquire, (a) whether the disclosure made in the notice is correct, (b) whether the combination has, or is likely to have, an appreciable adverse effect on competition.

It is proposed to substitute section 30 so as to provide that where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall examine such notice and form its *prima facie* opinion and proceed in accordance with the provisions of section 29.

Clause 24.—This clause seeks to amend sub-section (11) of section 31 of the Competition Act, 2002 relating to orders of Commission on certain combinations.

Under the existing provisions contained in the said sub-section (11) the combination is deemed to have been approved by the Commission if the Commission does not pass orders on expiry of a period of ninety working days from the date of publication referred to in sub-section (2) of section 29.

It is proposed to provide for deemed approval for the combination if the Commission does not pass orders in two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6. This amendment is consequential in nature.

Clause 25. —This clause seeks to amend section 32 of the Competition Act, 2002 relating to acts taking place outside India but having an effect on competition in India. The proposed amendment is clarificatory in nature.

Clause 26. —This clause seeks to substitute section 33 of the Competition Act, 2002 relating to power to grant interim relief.

The existing provisions of section 33 provides that where during an inquiry before the Commission it is proved to the satisfaction of the Commission that an act in contravention of sections 3, 4 and 6 has been committed, the Commission may by order grant a temporary injunction restraining any party from carrying on such act. It also provides that where during the inquiry before the Commission, if the Commission is satisfied that import of any goods is likely to contravene sections 3, 4 and 6 it may, by order, grant a temporary injunction restraining any party from importing such goods until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary and a copy of such order granting temporary injunction shall be sent to the concerned authorities. It further provides that the provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, apply to a temporary injunction issued by the Commission under this Act, as they apply to temporary injunction issued by a civil court.

The proposed section 33 provides that where during an inquiry, the Commission is satisfied that an act in contravention of sections 3, 4 and 6 has been committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party.

Clause 27. —This clause seeks to omit section 34 of the Competition Act, 2002 relating to power to award compensation.

The power to award compensation is proposed to be conferred upon the Appellate Tribunal by new section 53N proposed to be inserted by clause 43 of the Bill. It is, therefore, proposed to omit aforesaid section 34 conferring power upon the Competition Commission of India to award compensation.

Clause 28. —This clause seeks to amend section 35 of the Competition Act, 2002 relating to appearance before the Competition Commission of India.

Under the existing provisions contained in the said section, a complainant or defendant or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

It is proposed to amend the said section so as to substitute the words “person or an enterprise”, for the words “complainant or defendant” for appearance before the Commission.

Clause 29. —This clause seeks to substitute section 36 of the Competition Act, 2002 relating to power of Commission to regulate its own procedure.

The existing section 36 confer powers upon the Commission, *inter alia*, to dismiss an application in default or deciding it *ex parte* or exercise power in respect of any other matter which may be prescribed. It also provides that every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

It is proposed to substitute the said section so as to provide that the Commission may direct any person to produce before the Director General or Secretary or an officer authorized by it the books or other documents, being documents relating to any trade, in the custody or under the control of such person for the purpose of examination under the Act and also that the Commission may direct any person to furnish to the Director General or Secretary or any officer authorised by it, such other information as may be in his position in relation to the trade carried on by such person as required for the purpose of this Act.

Clause 30. —This clause seeks to omit section 37 of the Competition Act, 2002 relating to review of orders of the Competition Commission of India.

Clause 31. —This clause seeks to substitute section 39 of the Competition Act, 2002 relating to execution of orders of the Competition Commission of India.

The existing section provides that every order passed by the Commission under this Act shall be enforced by the Commission in the same manner as if it were a decree or order made by a High Court or the principal civil court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court, as the case may be.

It is proposed to substitute said section, *inter alia*, to provide that if a person fails to pay any monetary penalty imposed on him under the Act, the Commission shall proceed to recover such penalty, in the manner as may be specified by regulations. Sub-section (2) of proposed section provides that in a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under the Competition Act, 2002 in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under the Income-tax Act, 1961 for recovery of the penalty as tax due under the said Act. It is also proposed to provide that any reference made by the Commission under sub-section (2) would amount to drawing of a certificate by the Tax Recovery Officer as far as demand relating to penalty under this Act and any reference to appeal in Chapter XVIII and the Second Schedule of the Income-tax Act, 1961, shall be construed as a reference to appeal before the Competition Appellate Tribunal under section 53B of this Act.

Clause 32. —This clause seeks to omit section 40 of the Competition Act, 2002 relating to appeal.

Under the existing provisions contained in the said section, any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission to him on one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

It is proposed to insert, by clause 43 of the Bill, new sections 53B and 53T to provide filing of appeal from any direction, decision or order referred to in clause (a) of new section 53A to the Appellate Tribunal and filing of an appeal to the Supreme Court from any decision or order of the Appellate Tribunal. Omission of section 40 is therefore consequential in nature.

Clause 33.—This clause seeks to amend section 41 of the Competition Act, 2002 relating to Director General to investigate contraventions.

The existing sub-section (3) of section 41 provides that, without prejudice to the provisions of sub-section (2), sections 240 and 240A of the Companies Act, 1956, so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority, as they apply to an inspector appointed under that Act.

It is proposed to add an *Explanation* to sub-section (3) of section 41 to provide that the words “the Central Government” under section 240 of the Companies Act, 1956 shall be construed as “the Commission” and the word “Magistrate” under section 240A of the Companies Act, 1956 shall be construed as “the Chief Metropolitan Magistrate, Delhi”.

Clause 34.—This clause seeks to substitute section 42 of the Competition Act, 2002 relating to contravention of orders of the Competition Commission of India.

Under the existing provisions contained in the said section if any person contravenes, without any reasonable ground, any order of the Commission, or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakh.

It is proposed to substitute the said section so as to provide that if any person, without reasonable cause fails to comply with the orders or directions issued under the sections specified therein, he shall be punishable with fine which may extend to rupees one lakh for each day subject to a maximum of rupees ten crore as the Commission may determine. It also provides that if any person does not comply with the orders or directions issued under this section, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to rupees twenty-five crore or with both as the Chief Metropolitan Magistrate, Delhi may deem fit. It further provides that the Chief Metropolitan Magistrate, Delhi may pass such orders as it may deem fit on a complaint filed before it by the Commission for non-compliance of its orders.

Clause 35.—This clause seeks to insert a new section 42A regarding compensation in case of contravention of orders of Commission.

The proposed new section provides that any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission.

Clause 36. —This clause seeks to substitute section 43 of the Competition Act, 2002 relating to penalty for failure to comply with the directions of the Competition Commission of India and Director General of the Commission. The new section seeks to provide that a penalty which may extend to rupees one lakh for each day subject to a maximum of rupees one crore may be imposed on the person who, without reasonable cause, fails to comply with the directions given by the Commission and the Director General issued under the specified sections.

Clause 37.—This clause seeks to insert a new section 43A regarding power to impose penalty for non-furnishing of information on combinations.

The new section seeks to empower the Commission for imposing a penalty on the person or enterprise for not giving the notice to the Commission about the combination under sub-section (2) of section 6. This insertion is consequential in nature.

Clause 38.—This clause seeks to substitute sub-section (1) of section 45 of the Competition Act, 2002 regarding penalty for offences in relation to furnishing of information.

The existing provision provides for imposition of a penalty on a person, which may extend to rupees ten lakh, for furnishing documents or making statements which he knows and has reasons to believe to be false.

It is proposed to provide for imposition of a fine which may extend to rupees one crore, as the Commission may determine, on a person for furnishing documents or making statements which he knows and has reason to believe to be false.

Clause 39.—This clause seeks to amend section 46 of the Competition Act, 2002 relating to power to impose lesser penalty.

Under the existing provisions of the said section the Competition Commission of India has been conferred power to impose lesser penalty in the circumstances mentioned in that section. The first proviso to said section provides that the Commission shall not impose lesser penalty in cases where proceedings, for the violation of any of the provisions of this Act or the rules or the regulations, have been instituted or any investigation has been directed to be made under section 26 before making of such disclosure.

It is proposed to substitute said first proviso to provide that the Commission shall not impose lesser penalty in cases where the report of investigation directed under section 26 has been received before making of such disclosure. It is also proposed to amend second proviso so as to provide for lesser penalty upon a person who discloses the information about a cartel. It is also proposed to add a third proviso to the said section providing that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to co-operate with the Commission till the completion of the proceedings before the Commission.

Clause 40.—This clause seeks to amend section 49 of the Competition Act, 2002 relating to Competition advocacy.

Under the existing provisions contained in sub-section (1) of the said section the Central Government may, in formulating a policy on competition (including review of laws related to competition), make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit. The existing sub-section (2) provides that the opinion given by the Commission shall not be binding upon the Central Government in formulating such policy. The existing sub-section (3) provides that the Commission shall take suitable measures, for the promotion of competition advocacy, creating awareness and imparting training about competition issues in the manner as may be prescribed by rules.

It is proposed to amend sub-section (1) of the said section so as to enable the Central Government to make reference to the Commission on any other matter also apart from the existing proviso of making a reference on policy on competition (including review of laws related to competition) and also to enable the State Government to make a reference to the Commission in formulating a policy on competition or on any other matter. It is also proposed to amend sub-section (2) of the said section to provide that the opinion of the Commission shall not be binding on State Government as well as the Central Government. It is further proposed to amend sub-section (3) of the said section to provide that the Commission shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues in the manner as may be decided by the Commission and not as may be prescribed by rules.

Clause 41. —This clause seeks to amend section 51 of the Competition Act, 2002 relating to constitution of fund.

The provisions contained in clause (b) of sub-section (1) of the said section, *inter alia*, provide that the monies received as costs from parties to proceedings before the Commission shall be credited to the “Competition Fund” constituted by that section.

It is proposed to omit said clause (b).

Clause 42. —This clause seeks to amend section 52 of the Competition Act, 2002 relating to accounts and audit.

The *Explanation* to the existing sub-section (2) of the said section clarified that the orders of the Commission, being matters appealable to the Supreme Court, shall not be subject to audit under this section.

It is proposed to amend the said *Explanation* so as to provide that the orders of the Commission, being matters appealable to the Competition Appellate Tribunal shall also not be subject to audit under this section.

Clause 43. —This clause seeks to insert new Chapter VIII A to the Competition Act, 2002 relating to establishment of Competition Appellate Tribunal.

The new Chapter VIII A contains provisions for (a) establishment of Appellate Tribunal, (b) appeal to Appellate Tribunal, (c) composition of Appellate Tribunal, (d) qualifications for appointment of Chairperson and Members of Appellate Tribunal, (e) Selection Committee, (f) term of office of Chairperson and Members of Appellate Tribunal, (g) terms and conditions of service of Chairperson and Members of Appellate Tribunal, (h) vacancies, (i) resignation of Chairperson and Members, (j) Member of Appellate Tribunal to act as Chairperson in certain cases, (k) removal and suspension of chairperson and Members of Appellate Tribunal, (l) restriction on employment of Chairperson and other Members in certain cases, (m) staff of Appellate Tribunal, (n)

Procedure for awarding compensation, (o) procedure and powers of Appellate Tribunal, (p) execution of orders of Appellate Tribunal, (q) contravention of orders of Appellate Tribunal, (r) vacancy in Appellate Tribunal not to invalidate acts or proceedings, (s) right to legal representation, (t) appeal to the Supreme Court and (u) power to punish for contempt.

Clause 44.—This clause seeks to amend section 57 of the Competition Act, 2002 relating to restriction on disclosure of information.

It is proposed to bring the Appellate Tribunal also within the scope of section 57 of the Competition Act, 2002 consequent to the proposal to insert a new Chapter VIII-A *vide* clause 43 of the Bill. The proposed amendment is consequential in nature.

Clause 45.—This clause seeks to amend section 58 of the Competition Act, 2002 relating to Members, Director General, Registrar, officers and other employees, etc., of the Competition Commission of India.

Under the existing provisions contained in the said section, the Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Registrar and officers and other employees of the Commission shall be deemed, while acting or purporting to act in pursuance of any of the provisions of the Competition Act, 2002, to be public servants within the meaning of section 21 of the Indian Penal Code. Clause 12 of the Bill proposes to confer power upon the Commission to appoint a Secretary instead of Registrar. Clause 43 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 to establish the Competition Appellate Tribunal. Hence, it is proposed to bring the Secretary, officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal within the scope of section 58 of the Competition Act, 2002. The proposed amendment is consequential in nature.

Clause 46.—This clause seeks to amend section 59 of the Competition Act, 2002 relating to protection of action taken in good faith.

Under the existing provisions contained in the said section, no suit, prosecution or other legal proceedings can lie against the Central Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director General, Additional, Joint, Deputy or Assistant Directors General or Registrar or officers or other employees of the Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Clause 12 of the Bill proposes to confer power upon the Commission to appoint a Secretary instead of Registrar. Clause 43 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 proposing to establish the Competition Appellate Tribunal. It is proposed to bring the Secretary, officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the

Appellate Tribunal within the scope of the aforesaid section. The proposed amendment is consequential in nature.

Clause 47.—This clause seeks to amend section 61 of the Competition Act, 2002 relating to exclusion of jurisdiction of civil courts.

Under the existing provisions contained in the said section, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Clause 43 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 proposing to establish the Competition Appellate Tribunal. It is proposed to exclude the jurisdiction of civil courts in respect of any matter in which the Commission or Appellate Tribunal is empowered to determine. The proposed amendment is consequential in nature.

Clause 48. —This clause seeks to amend section 63 of the Competition Act, 2002 relating to power to make rules.

It is proposed to amend said section so as to confer powers upon the Central Government to make rules in respect of certain matters specified in that section and to make certain other amendments which are consequential in nature.

Clause 49.—This clause seeks to amend section 64 of the Competition Act, 2002 relating to power to make regulations by the Competition Commission of India.

It is proposed to amend said section 64 so as to confer powers upon the Competition Commission of India to make regulations in respect of certain matters specified in the said section.

Clause 50. —This clause seeks to amend section 66 of the Competition Act, 2002 relating to repeal and saving.

Under the existing provisions, the Monopolies and Restrictive Trade Practices Act, 1969 is proposed to be repealed and upon such repeal, the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the repealed Act shall stand dissolved. Sub-sections (2) to (10) of the aforesaid section deals with the matters arising out of such repeal.

It is proposed to amend said section 66 so as to provide that the Monopolies and Restrictive Trade Practices Commission may continue to exercise jurisdiction and powers under the Monopolies and Restrictive Trade Practices Act, 1969 for a period of two years from the date of bringing into force of section 66 of the Competition Act, 2002 only in respect of cases or proceedings filed before such commencement. It further

provides for the transfer of pending cases after the two years period to the Appellate Tribunal or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases. It also provides that the staff of the Monopolies and Restrictive Trade Practices Commission who has been employed on regular basis by the Monopolies and Restrictive Trade Practices Commission shall, on its dissolution, become employees of the Competition Commission or the Appellate Tribunal in the manner as may be specified by the Central Government.

FINANCIAL MEMORANDUM

Clause 43 of the Bill seeks to establish a Competition Appellate Tribunal with a Chairperson and up to two Members, along with associated staff, whose expenses would be paid from the Consolidated Fund of India. However, clause 6 of the Bill seeks to reduce the strength of the Competition Commission from ten additional Members to six additional Members. Clause 17 of the Bill further provides for Commission to function as a collegium and not through Benches, leading to absence of need for provision of offices to these Benches, and the need for branches of Director General's office at these Benches.

2. The expenditure to be incurred on creation of the Competition Appellate Tribunal would be rupees 109.61 lakh per annum. However, there would be a decrease in expenditure up to an extent of rupees 222.39 lakh in a year due to reduction of strength of Competition Commission of India from ten additional members to six additional members, and by removal of the concept of Benches functioning at different locations, and their associated Director General subordinate offices. Thus, there would be an overall saving of rupees 112.78 lakh per annum.

3. Thus, there would not be any additional financial outgo due to the changes proposed in the amendment Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 48 of the Bill seeks to amend section 63 of the Competition Act, 2002. This clause empowers the Central Government to make rules, by notification, to carry out the provisions of the proposed legislation. The matters in respect of which such rules may be made are specified therein. These matters relate to, *inter alia*, provide for (a) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 9; (b) the number of Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner in which such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees may be appointed under sub-section (1A) of section 16; (c) the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General or such officers or other employees under sub-section (3) of section 16; (d) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or such officers or other employees under subsection (4) of section 16; (e) the salaries and allowances payable to, and other terms and conditions of service of, the Secretary and officers and other employees of the Commission and the number of such officers and other employees under sub-section (2) of section 17; (f) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of section 53B and the fees payable in respect of such appeal; (g) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 53E; (h) the salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 53G; (i) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 53M; (j) the fee which shall be accompanied with every application made under sub-section (2) of section 53N; (k) the other matters under clause (i) of sub-section (2) of section 53-O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure while trying a suit; (l) the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal, as the case may be, shall be dealt with by the Commission or the Appellate Tribunal under the fourth proviso to sub-section (2) of section 66.

2. Clause 49 of the Bill seeks to amend section 64 of the Competition Act, 2002. This clause empowers the Competition Commission of India to make regulations, by notification, to carry out the purposes of the proposed legislation. The matters in respect of which such regulations may be made are specified therein. These matters relate to, *inter alia*, (a) the procedure to be followed for engaging the experts and professionals under sub-section (3) of section 17; (b) the manner and fee which may be determined under clause (a) of subsection (1) of section 19; (c) the rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 22; (d) the manner in which penalty shall be recovered under sub-section (1) of section 39; (e) any other matter in respect of which provision is to be, or may be, made by regulations.

3. The rules made by the Central Government and the regulations made by the Competition Commission of India shall be laid, as soon as may be after they are made, before each House of Parliament.

4. The matters in respect of which rules and regulations may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power involved is of a normal character.