

THE COMPETITION ACT 2002

(AS AMENDED BY THE COMPETITION (AMENDMENT) ACT, 2009)

19.0 INTRODUCTION

Globalisation and progressive liberalization of trade during the last decade opened a widening atmosphere giving rise to certain inevitable tasks and challenges for every country around the globe. It therefore became imperative for many countries to have a new line of rethinking on the existing pattern of policies on trade, customs and usages. The World Trade Organisation's (WTO) treaties and agreements, their implications on trade and commerce have already compelled many countries to review their competitiveness of trade and economic policies not only within their economy but across the frontiers of other countries also. In India, in the recent years, the corporate and economic reforms and policies had pervasive effects on the structure of domestic trade and competition. The law which was originally enacted to deal with market and competition (i.e., the Monopolies and Restrictive Trade Practices Act, 1969) addressed the problems concerning Monopolistic, Restrictive and Unfair Trade Practices only. There was no genesis to a comprehensive competition policy since then. Given the fact that the structure of world economy and trade has taken rapid strides and undergone vast changes, India has been taking adequate steps for integrating itself with the new changes and challenges thereby market functioning, positioning becomes effective and competitive. In this regard, Government constituted a High Level Committee on Competition Policy and Law on 15.19.1999 under the Chairmanship of Mr. S.V.S. Raghavan, to recommend a legislative framework relating to Competition Law including mergers and demergers. The Committee submitted its report on 22nd May 2000. The Government, after considering the report and suggestions from various organizations, institutions and general public, introduced the Competition Bill in the Parliament. This Bill became an Act after receiving assent from the President on 13th January 2003 and a few sections of the Act have already come into force by virtue of two separate Government notifications [i.e., S.O.340 (E) dated 31st March, 2003 and S.O.715 (E) dated 19th June, 2003]. This Act extends to the whole of India except the State of Jammu and Kashmir.

19.2 Corporate and Allied Laws

19.1 WHY MRTP ACT NEEDED A FRESH LOOK?

In the process of liberalization and globalisation of Indian economy, the provisions of the MRTP Act, 1969 became obsolete and therefore needed a fresh look and called for appropriate changes due to the following reasons:

- To reflect post reforms scenario.
- To lay emphasis on substance of competition than on the size.
- To address abuse of dominant position in the market rather than dominance in terms of size etc.
- To be proactive to market competition rather than reactive.
- To provide for effective mechanism to promote competitive markets.
- To address unfair trade practices separately.

19.2 WHAT IS COMPETITION?

A broad definition of Competition is “a situation in a market in which firms or sellers independently strike for the buyers’ patronage in order to achieve a particular business objective, for example profit, sales or market share” (World Bank, 1999). A pre-requisite for a good competition is trade, trade is the unrestricted liberty of every man to buy, sell and barter, when, where and how, of whom and to whom he pleases. For a free market to be in existence the handicap is that for a given distribution of income of those who can pay the highest price will most be able to purchase the goods regardless their relative needs. However, the real culprit is income distribution system and not the competitive system. In an unregulated free market, in certain circumstances it could be of greater benefit to the owner to withhold goods from market in order to extract a higher price. Despite the efforts to regulate prices which have been unsuccessful, the caution in a free market as compared to the problems in an unregulated market can be overcome by posturing competition by which the ultimate *raison de’ etre* of competition, namely the, interest of the consumer can be protected.

19.3 COMPETITION POLICY AND LAW

The Competition Policy is regarded as genus, of which, the Competition Law is specie. Competition Law provides necessary powers to the commission to enforce and implement the Competition Policy. The central economic goal of the Competition Policy is the preservation and promotion of the competitive process. It is a symbolic process, which encourages efficiency in the production and allocation of goods and services over a period of time through its effects on innovation and adjustment to technological change. In conditions of effective competition, competitors will be having equal opportunities to compete for their own economic interest and therefore the quality of their outputs and

resource deployment will be given top priority in order to sustain and succeed in the market by meeting consumers' demand at the lowest possible cost.

19.4 COMPETITION LAWS IN UK AND US

There are three major federal anti-trust laws in United States namely the Sherman Anti-trust Act, the Clayton Act and the Federal Trade Commission Act.

The Sherman Act passed in 1890 was the first Federal Anti-Trust Laws. The Act aimed at restraint of trade and monopolisation of Inter-State and Foreign Commerce.

The Clayton Act is a civil statute (carrying no criminal penalties, was passed in 1914 and significantly amended in 1950). The Act is the result of failure of the Sherman Act to stop the trend towards concentration in the American economy. It attempts to nip monopolise in the bud by specifying practices that monopolists used to gain monopoly power.

The Federal Trade Commission Act, 1914 prohibits unfair methods of competition in Inter-State Commerce but carries no criminal penalties. However, there was Federal Trade Commission to monitor violations of the Act. Thus, in US basically anti-trust laws protect competition by ensuring free and open competition, which bring benefits to consumers by way of lower prices, new and better products.

The UK Competition Act, 1988 which came into force in March 1, 2000 is based upon the Competition Law of the European Commission. The Act prohibited agreements, which have the object of preventing, restricting or distorting competition which directly or indirectly fix prices, trading conditions, limit or control production, markets or sources of supply.

The Enterprise Act introduced the next major reform of UK Competition Law, 2002 which concentrated on a new regime for the assessment of mergers and markets in the UK. The third and final stage of reform process in the UK Competition Law will be the implementation of European Commission, which is a radical modernisation of UK's Competition Policy. To regulate the competition and its practices, most of the countries have the competition authority commonly known as the Competition Commission.

19.5 COMPETITION ACT, 2002 AND FURTHER AMENDMENTS

The Competition Act, 2002 intends 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. The renewed efforts of the Government in implementing a Competition Act, 2002 is a laudable step in the right direction and a new beginning in the frontiers of India's Competition Policy towards harmonizing international trade and policy. The Act was

19.4 Corporate and Allied Laws

amended in 2007. The Act, 2002 inter alia provides

(A) establishment of the Competition Commission of India, which shall be an expert body and would function as a market regulator for preventing and regulating anti-competitive practices in the country in accordance with the provisions of the Act and it would also have advisory and advocacy functions in its role as a regulator which can also impose penalty in certain cases specified in the Act.

(B) 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 made or order passed by the Competition Commission and to adjudicate claims on compensation and for passing 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.

Section 66 of the Act provides for repeal of the MRTP Act, 1969 and dissolution of MRTP Commission. However the MRTPC was allowed to exercise jurisdiction and powers under the repealed Act for a period of two years. In respect of cases relating to unfair trade practices it shall be transferred to the National Commission under the Consumer Protection Act, 1986. Section 66 of the Act was brought into force on 1st September, 2009. Since MRTPC was became non-functional due to vacancy at the post of Chairman and Members, and also Competition Appellate Tribunal was not having adequate workload, it was felt necessary by the **Government to promulgate the Competition (Amendment) Ordinance, 2009 on 14th October, 2009 so as to transfer immediately the cases pending with the MRTPC to the Competition Appellate Tribunal and National Commission.** The Competition (Amendment) Ordinance is repealed with the passing of the Competition (Amendment) Act, 2009 which came into force on 14th October, 2009.

The effects of the Ordinance/Amendment Act, 2009 is that

1. All cases pertaining to Monopolistic Trade Practices (MTP) or Restricted Trade Practices (RTP) [including such cases in which Unfair Trade Practice (UTP) has also been alleged] and all cases pertaining to UTP referred to in clause (X) of subsection (1) of section 36A of the MRTP Act, 1969 shall be transferred to the Competition Appellate Tribunal with immediate effect. [Sub-sections (3) and (5) of section 66 of the Act.
2. All investigations or proceedings, other than those relating to UTP and all investigations or proceedings relating to UTP referred to in clause (X) of sub-section (1) of section 36A of the MRTP Act, 1969, pending before the Director General of Investigation and Registration [DG (I&R)], shall be transferred to the Competition Commission of India with immediate effect. [Sub-sections (6) and (8) of section 66 of the Act].

3. All cases, investigations or proceedings pertaining to UTP defined under section 36A of the MRTP Act, 1969, except those referred to in clause (X) of subsection (1) of section 36A of the MRTP Act, 1969, shall be transferred to the National Commission constituted under the Consumer Protection Act, 1986 with immediate effect. [Sub-sections (4) and (7) of section 66 of the Act

19.6 MRTP ACT, 1969 & COMPETITION ACT, 2002

The following are the basic differences between MRTP and Competition Act:

S.No.	The MRTP Act, 1969	The Competition Act, 2002
1.	It is based on the pre-liberalization and globalisation era.	It is based on the post-reforms scenario.
2.	The objective of the Act is to <i>prevent concentration of economic power</i> to common detriment to control of monopolies, prevention of monopolistic and restrictive trade practices.	The objective of the Act is <i>prevent practices having adverse effect on competition</i> and to promote as well as sustaining the competition to protect consumer interests at market place and ensuring freedom of trade.
3.	It lists out <i>14 offences</i> , which are against the principle of natural justice.	It recognizes only <i>four offences</i> , which are deemed to be against the principle of natural justice.
4.	MRTP Commission has the <i>power to pass only "Cease" and "desist" orders.</i>	The Competition Commission can pass an order to prevent and punish such of those activities, which abuses competition.
5.	The MRTP Act did not provide for the formation of fund for its activities.	The Competition Act provides competition fund for promotion of competition advocacy and creation of awareness about competitive issues and training as may be prescribed in its rules.
6.	Entity having status of <i>dominant position is itself considered as bad.</i>	The entity having dominant position is not considered as bad. Whereas <i>abuse of dominant position</i> affecting consumer interest is considered as immoral.
7.	In general registration of agreements	It does not lay down any such

19.6 Corporate and Allied Laws

	was mandatory.	requirement for registration of agreements.
8.	The definition of 'group' was wider.	The 'group' definition has been simplified.
9.	The size of the firm, is the factor for determining dominance etc.,	It focuses on the firm's structure not on size factor.
19.	MRTP Commission role was only advisory.	Competition Commission can initiate <i>suo motu</i> proceedings and levy penalties.
11.	MRTP Commission dealt with the unfair trade practices.	The cases relating to unfair trade practices will be transferred to Consumer Courts.
12.	Focussed on consumer interest at large.	Focuses on public at large.
13.	The Chairman of the MRTP Commission was appointed by Central Government.	The Chairman of the Commission will be appointed by a committee consisting of retired judiciary, person having professional expertise in various fields of trade commerce, industry, finance etc.

19.7 MAIN INGREDIENTS OF COMPETITION LAW

The focus of the new law is towards the following areas affecting competition namely:

- (a) *Prohibition of certain agreements, which are considered to be anti-competitive in nature.* Such agreements [namely tie in arrangements, exclusive dealings (supply and distribution), refusal to deal and resale price maintenance] shall be presumed as anti-competitive if they cause or likely to cause an appreciable adverse effect on competition within India.
- (b) *Abuse of dominant position* by imposing unfair or discriminatory conditions or limiting and restricting production of goods or services or indulging in practices resulting in denial of market excess or through in any other mode are prohibited.
- (c) *Regulation of combinations* which cause or likely to cause an appreciable adverse affect on competition within the relevant market in India is also considered to be void.

19.8 DEFINITIONS

Acquisition [Section 2(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;

Agreement [Section 2(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;

The objective of the Competition Policy is to promote efficiency and maximising the welfare of nation and to create a contusive business environment, which promotes healthy market competition. An agreement which prohibits an enterprise or person or their association for entering into an agreement in respect of production, supply, distribution, storage, acquisition or control of boosts or services, which causes are likely to cause an appreciable adverse affect on competition. Such agreements entered in contravention of the above are void. These agreements are presumed to have an appreciable adverse affect on competition.

Agreements may be horizontal agreements and vertical agreements. Horizontal agreements referred to agreements among competitors and vertical agreements to an actual or potential relationship buying or selling to each other. Horizontal agreements relating to prices quantities, bids and market sharing are particularly anti-competitive. Vertical agreements like tie in arrangements; exclusive supply/distribution agreements and refusal to deal are also generally anti-competitive. Section 3 of the Competition Act, 2002 regulates and prohibits all types of agreements, which have the effect to restrict competition, and prevents those, which have such likely effect.

Here horizontal agreements are those agreements among competitors operating at the same level in the economic process i.e. enterprises engaged in the same activity. For example, the agreements between producers or between whole sellers or between retailers, dealing in similar kind of products.

Vertical agreements are those agreements between Non-competing undertakings operating at different levels of manufacturing and distribution process. For example, the agreements between manufacturers of components, manufacturers of products, between producers and whole-sellers or between producers, whole-sellers and retailers.

Horizontal agreements or agreement between two or more enterprises that are at the

19.8 Corporate and Allied Laws

same stage of the production chain and in the same market. Horizontal agreements and membership of cartels lead to unreasonable restrictions of competition and may be presumed to have an appreciable adverse effect on competition.

Vertical agreements are agreements between enterprises that are at different stages or levels of the production chain and therefore in different markets. An example of this would be an agreement between a producer and a distributor. This includes, Tie in arrangements, Exclusive Supply Agreements, Exclusive Distribution Agreements, Refusal to Deal and Resale Price Maintenance (RPM).

Appellate Tribunal [Section 2 (ba)]

It means the Competition Appellate Tribunal established under sub-section (1) of Section 53A. [Inserted by the Competition (Amendment) Act, 2007]

Cartel [Section 2(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;

The term cartel like agreement has been given an inclusive meaning. Thus an association for the welfare of the trade or formed for any other purpose not mentioned in the aforesaid definition will not be a cartel. It is only when an association, by agreement amongst themselves, limits control or attempts to control the production, distribution, sale or price of, or, trade in goods or provision of services, that it will be a cartel.

Chairperson [Section 2(d)]

"Chairperson" means the Chairperson of the Commission appointed under sub-section (1) of section 8;

Commission [Section 2(e)]

"Commission" means the Competition Commission of India established under sub-section (1) of section 7;

Consumer [Section 2(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;

It is noteworthy that the definition of consumer is substantially the same has given to the expression under Section 2(d) of the consumer protection Act, 1986. The difference is that under clause (i), in the Competition Act, it uses the words “whether such purchase of goods is for the resale of for any commercial purpose or for personal use” in places of the words “but does include a person who obtains such goods for resale of for any commercial purpose”, as in the Consumer Protection Act. Likewise, in clause (ii), the words used in the Competition Act are “whether such hiring or availing of services is for any commercial purpose or for personal use” in place of the words “but does not include a person who avails of such services for any commercial purpose” as in the Consumer Protection Act. Thus, the interpretation of “consumer” in the Consumer Protection Act will be the same as in Competition Act. In the latter, “consumer” will also include a person who purchases goods for resale or for any commercial purpose or for personal use.

Director General [Section 2(g)]

"Director General" means the Director General appointed under sub-section (1) of section 16(1) and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section;

Enterprise [Section 2(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.

For the purposes of this clause,—

- (a) "activity" includes profession or occupation;
- (b) "article" includes a new article and "service" includes a new service;

19.10 Corporate and Allied Laws

- (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;

Here, the Departments of Central Government is also considered as an enterprise. Hence, it can sue and sued by others as a juristic person for its right and legal remedies. However, such Central Government Departments having sovereign functions of the Government, which includes activities relating to atomic energy, currency, defence and space, are excluded from this definition of an enterprise.

Goods [Section 2(i)]

"Goods" means goods as defined in the Sale of Goods Act, 1930 (8 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;

Section 2(7) of the Sale of Goods Act, 1930 defines goods as "every kind of movable property other than actionable claims and money; and include stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale",

Member [Section 2(j)]

"Member" means a Member of the Commission appointed under sub-section (l) of section 8 and includes the Chairperson;

Notification [Section 2(k)]

"Notification" means a notification published in the Official Gazette;

Person [Section 2(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 judicial person, not falling within any of the preceding sub-clauses;

Practice [Section 2(m)]

"Practice" includes any practice relating to the carrying on of any trade by a person or an enterprise;

Prescribed [Section 2(n)]

"Prescribed" means prescribed by rules made under this Act;

Price [Section 2(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;

Public [Section 2(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;

Regulations [Section 2(q)]

"Regulations" means the regulations made by the Commission under section 64;

Relevant Market [Section 2(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;

It includes all reasonable substitutable goods or services of all competitors. The determination of the relevant market is a crucial aspect. In wider sense relevant market means that the Government or a private have greater difficulty in demonstrating expected anti-competitive affect from a challenged merger.

Relevant Geographic Market [Section 2(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

19.12 Corporate and Allied Laws

or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;

The Relevant Geographic Market is not a broad in sense. It could be drawn as narrowly as one metropolitan area or as broad as the nation as a whole. It is the geographic area in which a sole supplier of the product could profitably increase its price without causing outside suppliers to sell in that particular area.

Relevant Product Market [Section 2(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;

It is an area in which the sellers of particular product or service providers operate. This type of market may be local, national, or international. It involves identification of geographical areas within which competition take place.

Service [Section 2(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;

Shares [Section 2(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;

Statutory Authority [Section 2(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;

Trade [Section 2(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;

Turnover [Section 2(y)]

"Turnover" includes value of sale of goods or services;

Words and Expressions [Section (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**

Anti competitive agreements (Section 3)

It shall not be lawful for any enterprise or association of enterprises or person or association of enterprises or persons or association of persons to 'enter' into an agreement in respect of production, supply, storage, distribution, acquisition or control of goods or provision of service, which causes or is likely to cause an appreciable adverse effect on competition within India. All such agreements entered into in contravention of the aforesaid prohibition shall be void.

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, shall be presumed to have an appreciable adverse effect on Competition, 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.

However, 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, shall not be considered to be an anti-competitive agreement.

19.14 Corporate and Allied Laws

Bid-rigging

"Bid rigging" means any agreement, between enterprises or persons 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.

Agreement at different stages in different markets

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 shall be a void agreement causes or is likely to cause an appreciable adverse effect on Competition in India including—

- (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.

Restriction of rights under some Acts

Nothing contained in this section shall restrict 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);

Prohibition of export of rights

Nothing contained in this section shall restrict 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.

Abuse of dominant position (Section 4)

Sub-section (1), prohibits abuse of dominant position by any enterprise or group. Such abuse of dominant position by an enterprise or a group, *inter alia*, includes -

- (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,
"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.
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 therefore; or
 - (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
- (c) indulges in practice or practices resulting in denial of market access 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. 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;

19.16 Corporate and Allied Laws

Combination (Section 5)

The Section 5 deals with combination of enterprises and persons. 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
 - (B) 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 atleast 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) 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 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) 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 dollars; or including at least rupees fifteen hundred crores in India

- (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) 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) 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) in India or outside India, the assets of the value of more than two billion US dollars including at least rupees fifteen hundred crores in India or turnover more than six billion US dollars including at least rupees five hundred crores in India.

Explanations:

(a) Control

"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;

19.18 Corporate and Allied Laws

(b) Group

"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 percent, of the members of the board of directors in the other enterprise; or
- (iii) control the management or affairs of the other enterprise;

(c) Determination of value of Assets-

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 section 3(5).

Regulation of combinations (Section 6)

As per this section, 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. (Sub-section 1).

Any person or enterprise, who or which proposes to enter into a combination, may, at his or its option 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 30 days of—

- (a) approval of the proposal relating to merger or amalgamation, referred to in section 5(c), 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 section 5(a) or acquiring of control referred to in Section 5(b).

No combination shall come into effect until 210 days have passed from the day on which the notice has been given to the Commission or Commission has passed order under section 31 whichever is earlier

The Commission shall, after receipt of notice deal with such notice in accordance with the provisions contained in sections 29, 30 and 31. (Sub-section 3).

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. (Sub-section 4).

The public financial institution, foreign institutional investor, bank or venture capital fund, 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. (Sub-section 5).

Explanations.—

- (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) which is as under:

The expression "Foreign Institutional Investor" means such investor as the Central Government may, by notification in the official gazette specify in this behalf.

- (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) which is as follows:

"venture capital fund" means such fund-

- (i) operating under a trust deed registered under the provisions of the Registration Act, 1908 (16 of 1908) or operating as a venture capital scheme made by the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);
- (ii) which has been granted a certificate of registration under the Securities and Exchange Board of India Act, 1992 (15 of 1992), and regulations made thereunder;
- (iii) which fulfils the conditions as may be specified, with the approval of the Central Government, by the Securities and Exchange Board of India, by notification in the Official Gazette, in this behalf;"

19.20 Corporate and Allied Laws

CHAPTER III

COMPETITION COMMISSION OF INDIA

Establishment of Commission (Section 7)

The Section 7 provides for the establishment of the Competition Commission of India. The Commission shall be a body corporate by the aforesaid name having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and shall sue or be sued. The place of head office of the Commission shall be decided by the Central Government. Further, the Commission may establishment offices at other places in India.

Composition of Commission (Section 8)

The Commission shall consist of the Chairperson and not less than two and not more than six other Members, as may be specified by the Central Government. The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of any such professional experience of not less than 15 years in international trade, economics, business, commerce, law, finance, accounting, management, industry, public affairs or competition matters, including competition law and policy, which is the opinion of the Central Government may be useful to the Commission. The Chairperson and other members shall be whole time members.

Selection Committee for Chairperson and other Members of the commission (Section 9)

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. |

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 (Section 10)

The Chairperson and every other Member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment. However, no Chairperson or other Member shall hold office as such after he has attained the age of sixty-five years.

As per sub-section 2, any 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.

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 (sub-section 3).

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 accordance with the provisions of this Act to fill such vacancy, enters upon his office (Sub-section 4).

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 (Sub-section 5).

Resignation, removal and suspension of Chairperson and other members (Section 11)

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

As per Sub-section 2, 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

19.22 Corporate and Allied Laws

- (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.

According to Sub-section 3, no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of sub-section 2, 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 (Section 12)

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.

However, 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.

Administrative powers of Chairperson (Section 13)

The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission. The Chairperson may also 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 (Section 14)

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 and the same shall not be varied to their disadvantage after their appointment.

Vacancy, etc. not to invalidate proceedings of Commission (Section 15)

Any act or proceeding of the Commission shall not be invalidated merely on the ground of:

- (a) any vacancy in, or any defect in the constitution of, the Commission; or
- (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. (Section 16)

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.

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.

Every Additional, Joint, Deputy and Assistant Directors General or 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.

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

The Director General and Additional, Joint, Deputy and Assistant Directors General or 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.

Registrar and officers and other employees of Commission (Section 17)

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.

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.

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.

CHAPTER IV

DUTIES, POWERS AND FUNCTIONS OF COMMISSION

Duties of Commission (Section 18)

This section provides that it shall be the duty of the Commission to eliminate practices having adverse effect on competition, to promote and sustain competition in markets in India, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India. 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 (Section 19)

The Commission is empowered into any alleged contravention of the provisions contained in section 3(1) or section 4(1) either on its own motion or on:—

- (a) 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.

Powers and Functions of the Commission

1. **Appreciable Adverse effect:** The Commission shall, while determining whether an agreement has 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;
 - (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.
2. **Dominant position of enterprise:** 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.
- (3) Relevant Market:** 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".
- (4) Relevant Geographic Market:** 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;

19.26 Corporate and Allied Laws

- (g) consumer preferences;
- (h) need for secure or regular supplies or rapid after-sales services.

(5) Relevant Product Market: While determining the "relevant product market", the Commission shall 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 (Section 20)

The Commission may, upon its own knowledge or information relating to acquisition referred to in section 5(a) or acquiring of control referred to in section 5(b) 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.

Further, the Commission shall not initiate any inquiry after the expiry of one year from the date on which such combination has taken effect.

The Commission shall, on receipt of a notice under section 6(2) 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.

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.

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

Reference by statutory authority (Section 21)

It provides that 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. Also any statutory authority may sub notice make such a reference to the commission. On receipt of a reference 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.

Reference by Commission (Section 21 A)

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. The Commission, may, suo motu, make such a reference to the statutory authority. On receipt of a reference 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.

19.28 Corporate and Allied Laws

Meetings of Commission (Section 22)

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. 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. 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.

Procedure for inquiry under Section 19 (Section 26)

This section lays down the detailed procedure for any inquiry initiated *suo motu* by the Commission and various complaints and references referred to in section 19 of the Act.

The detailed procedure is as follows:

- (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: 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 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 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 to the parties concerned. 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 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 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 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 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 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 (Section 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. 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.]
- (c) Omitted.
- (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:
- (f) Omitted
- (g) pass such other order as it may deem fit.

19.30 Corporate and Allied Laws

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

Division of enterprise enjoying dominant position (Section 28)

The 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. The order 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;
- (d) Omitted.
- (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.

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 (Section 29)

- (1) **Notice to parties:** Where the Commission is of the 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 receipt of the notice, as to why investigation in respect of such combination should not be conducted. 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) **Directions to parties to publish details:** 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, or the receipt of the report from the Director General 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 (Sub-section 2).
- (3) **Invitation to affected party:** 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.
- (4) **Additional information:** The Commission may, within fifteen working days from the expiry of the period specified before, call for such additional or other information as it may deem fit from the parties to the said combination. The additional or other information called for by the Commission shall be furnished by the parties to the combination within fifteen days from the expiry of the above specified period. After receipt of all information and within a period of forty-five working days from the expiry of the period for additional information, the Commission shall proceed to deal with the case of accordance within the provisions contained in Section 31.

Procedure in case of notice under sub-section 2 of section 6 (Section 30)

Where any person or enterprise has given a notice under 6(2), the Commission shall inquire such notice and form its prime facia opinion and proceed as per provisions contained in Section 29.

- (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.

Orders of Commission on certain combinations (Section 31)

The Commission can issue orders on certain combinations.

- (1) **Approval of combination (Sub-section 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 of section 6(2) (Sub-section 1).

19.32 Corporate and Allied Laws

- (2) **Direction:** 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 (Sub-section 2).
- (3) **Modification:** 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 (Sub-section 3). The parties, who accept the modification proposed by the Commission under sub-section (3), shall carry out such modification within the period specified by the Commission (Sub-section 4).

If the parties to the combination, who have accepted the modification, 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 (Sub-section 5).

(4) Amendment to modification

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 (6). If the Commission agrees with the amendment submitted by the parties under sub-section (6), it shall, by order, approve the combination (Sub-section 7). 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) (Sub-section 8).

(5) Consequence of non-acceptance of the modification

If the parties fail to accept the modification proposed by the Commission within thirty working days as referred above 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 (Sub-section 9).

As per Sub-section 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 the Commission may, if it considers appropriate, frame a scheme to implement its order.

(6) Deemed approval by Commission

If the Commission does not, on the expiry of a period of 210 days from the date of notice given to the commission referred to in sub-section (2) section 29(2), pass an order or issue direction in accordance with the provisions of sub-section (1) or (2) or (7), the combination shall be deemed to have been approved by the Commission. For the purpose of determining the period of 210 days specified in this sub-section, 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. 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 (Sub-section 12).

(7) Consequence of a combination declared void by Commission

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 (Sub-section 13). As in Sub-section 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.

Acts taking place outside India but having an effect on competition in India (Section 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 in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 the Act into such agreement or abuse of dominant position or combination if

19.34 Corporate and Allied Laws

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 and pass such orders as it may deem fit in accordance with the provisions of this Act.

Power to grant interim relief (Section 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.

Power to award compensation (Section 34)

- (1) **Application:** 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 (Sub-section 1).
- (2) **Compensation:** 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 (Sub-section 2).
- (3) **Application in representative capacity:** 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 (Sub-section 3).

Appearance before Commission (Section 35)

A 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.

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.

Power of Commission to regulate its own procedure (Section 36)

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.

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.

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.

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;

19.36 Corporate and Allied Laws

- (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.

Review of orders of Commission (Section 37)

Omitted by the Competition (Amendment) Act, 2007

Rectification of orders (Section 38)

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.

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.

However, the Commission shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

Execution of orders of Commission imposing monetary penalty (Section 39)

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 maybe specified by the regulations.

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.

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 XVIID 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.

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.

(Section 40)

Omitted by the Competition (Amendment) Act, 2007



CHAPTER V
DUTIES OF DIRECTOR GENERAL

Director General to investigate contravention (Section 41)

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. The Director General shall have all the powers as are conferred upon the Commission under section 36(2). Without prejudice to the provisions of sections 240(2) 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.

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”.

CHAPTER VI

PENALTIES

Contravention of orders of Commission (Section 42)

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. 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.

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. 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.

Compensation in case of contravention of orders of Commission (Section 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 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 (Section 43)

If any person fails to comply with a direction given by the Commission under of section 36(2) and (4); or (b) the Director General while exercising powers referred to in sub-section (2) of section 41(2) the Commission shall impose on such person a penalty of rupees one lakh for each day during which such failure continues. Subject to a maximum of rupees one crore.

Power to impose penalty for non-furnishing of information or combinations (Section 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 (Section 44)

If any person, being a party to a combination makes a statement which is false in any material particular, or knowing it to be false; or 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.

Penalty for offences in relation to furnishing of information (Section 45)

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. 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 (Section 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.

However, lesser penalty shall not be imposed by the Commission in cases where report of investigation directed under Section 26 has been received before making such disclosure.

Further, 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 first made the full, true and vital disclosures under this section.

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.

19.40 Corporate and Allied Laws

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 (Section 47)

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

Contravention by companies (Section 48)

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.

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 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.

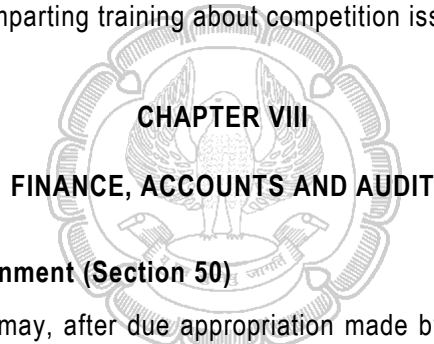
For the purposes of this section,—

- (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 (Section 49)

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. The opinion given by the Commission under sub-section (1) shall not be binding upon the Central Government in formulating such policy. The Commission shall take suitable measures, or the State Government, for the promotion of competition advocacy, creating awareness and imparting training about competition issues.



Grants by Central Government (Section 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 (Section 51)

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;
- (b) Omitted;
- (d) the fees received under this Act;
- (e) the interest accrued on the amounts referred to in clauses (a) and (c).

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

19.42 Corporate and Allied Laws

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.

The Fund shall be administered by a committee of such Members of the Commission as may be determined by the Chairperson. 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 (Section 52)

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

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.

However, the orders of the Commission, being matters appealable to the Appellate Tribunal or Supreme Court, shall not be subject to audit under this section.

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.

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 (Section 53)

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.

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. A copy of the report received shall be laid, as soon as may be after it is received, before each House of Parliament.

CHAPTER VIII A

COMPETITION APPELLATE TRIBUNAL

Establishment of Appellate Tribunal (Section 53A)

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.

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

Appeal to Appellate Tribunal (Section 53B)

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. 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. 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.

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

19.44 Corporate and Allied Laws

appealed against. The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal. 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 (Section 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 (Section 53D)

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. 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 (Section 53E)

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. |

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 (Section 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:.. No Chairperson or other member of the Appellate Tribunal shall hold office as such after he has attained, -

- in the case of the Chairperson, the age of sixty-eight years;
- 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 (Section 53G)

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. 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 (Section 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 (Section 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. 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 (Section 53J)

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. 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 (Section 53K)

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

19.46 Corporate and Allied Laws

- (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.

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 (Section 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 (Section 53M)

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

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. 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.

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

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 section 53A 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 (Section 53O)

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

19.48 Corporate and Allied Laws

Government, the Appellate Tribunal shall have power to regulate its own procedure including the places at which they shall have their sittings. 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 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.

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 (Section 53P)

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.

The Appellate Tribunal may ~~also~~ 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 (Section 53Q)

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. 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. 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 (Section 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 (Section 53S)

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. 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. 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.

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 (Section 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

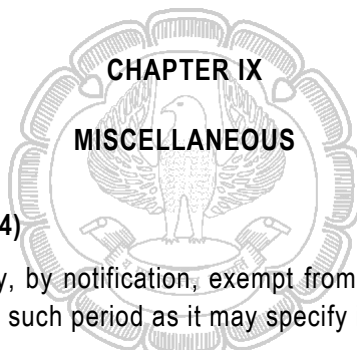
19.50 Corporate and Allied Laws

within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them. 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 (Section 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.



Power to exempt (Section 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 (Section 55)

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. However,

the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section. 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 (Section 56)

As per sub-section 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 super session and shall consider representations, if any, of the Commission. Sub-section 2 provides 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 super session, 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 its 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.

According to Sub-section 3, on or before the expiration of the period of super session 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. Sub-section 4 provides 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.

19.52 Corporate and Allied Laws

Restriction on disclosure of information (Section 57)

No information relating to any enterprise, being an information which has been obtained by or on behalf of the Commission 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.

Chair person, Members, Director General, Registrar, officers and other employees, etc. of Commission to be public servants (Section 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 (Section 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 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.

Act to have overriding effect (Section 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 (Section 61)

This section provides 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.

Application of other laws not barred (Section 62)

This section seeks to provide that the provisions of this legislation 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 (Section 63)

The Central Government may, by notification, make rules to carry out the provisions of this Act. 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:—

- (a) the term of the selection committee and the manner of selection of panel of names under section 9(2) ;

- (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;
- (c) Omitted by the 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;
- (e) the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General or such other advisers, consultants or officers under sub-section (3) of section 16;
- (f) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or such other advisers, consultants or officers under sub-section (4) of section 16;
- (g) the salaries and allowances and other terms and conditions of service of the Registrar and officers and other employees payable, and the number of such officers and employees under sub-section (2) of section 17;
- (h) Omitted by the Competition (Amendment) Act, 2007
- (i) Omitted by the Competition (Amendment) Act, 2007
- (j) Omitted by the 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;
- (n) [(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;
- [(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.

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

19.54 Corporate and Allied Laws

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 (Section 64)

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

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 sub-section (5) of Section 6;
- (d) the procedures to be following for engaging the experts and professionals under section 17 (3)
- (e) any other matter in respect of which provision is to be, or may be, made by regulations.

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 (Section 65)

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. However, no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act. 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 (Section 66)

The Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under section 5(1) of the said Act shall stand dissolved.

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 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.

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. 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:

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

19.56 Corporate and Allied Laws

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.

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 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.

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, on the commencement of the Competition (Amendment) Act, 2009 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.

All cases pertaining 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 and pending before the Monopolies and Restrictive Trade Practices Commission immediately before the commencement of the Competition (Amendment) Act, 2009 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. Further that all the cases relating to the unfair trade practices pending, before the National Commission under this sub-section, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President, shall, on and from that date, stand transferred to the Appellate Tribunal and be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed.

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 and that State Commission shall dispose of such case as if it was filed under that Act.

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, on the commencement of the Competition (Amendment) Act, 2009 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. For the removal of doubts, it is hereby declared that all cases referred to in this sub-section, sub-section (4) and sub-section (5) shall be deemed to include all applications made for the losses or damages under section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as it stood before its repeal.

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.

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

19.58 Corporate and Allied Laws

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 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 of India and the Competition Commission of India may conduct or order for conduct of such investigation in the manner as it deems fit. Further, that all investigations or proceedings, relating to unfair trade practices pending before the National Commission, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President shall, on and from that date, stand transferred to the Appellate Tribunal and the Appellate Tribunal may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit. All cases or proceedings pending before the Monopolies and Restrictive Trade Practices Commission shall abate.

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.

