

## **MONOPOLIES AND RESTRICTIVE TRADE PRACTICES COMMISSION REGULATIONS, 1991**

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### **MONOPOLIES AND RESTRICTIVE TRADE PRACTICES COMMISSION REGULATIONS, 1991**

In exercise of the powers conferred by sections 18 and 66 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and in supersession of the Monopolies and Restrictive Trade Practices Commission Regulations, 1974, except as respects things done or omitted to be done before such supersession, the Monopolies and Restrictive Trade Practices Commission hereby makes the following regulations, namely :-

#### CHAPTER 1 GENERAL

#### **1. Short title and commencement :-**

(1) These regulations may be called the Monopolies and Restrictive Trade Practices Commission Regulations, 1991.

(2) They shall come into force on the date of their publication in the Official Gazette.

## **2. Definitions :-**

(1) In these regulations, unless the context otherwise requires :

(a) "Act" means the Monopolies and Restrictive Trade Practices Act, 1969 ;

(b) "any other person interested" referred to in Section 41 of the Act includes manufacturers, suppliers, wholesalers, retailers and the associations of the traders, consumers, employees or manufacturers and those engaged in the distributive trade.

(c) "Bench" means a Bench of the Commission formed under subsection (2) of Section 16 ;

(d) "Chairman" means the Chairman of the Commission appointed under Section 5 .

(e) "Party" shall include complainant (whether individual consumer or registered consumer's or trade association, Director General, Central or State Government, as the case may be, and shall include a respondent or respondents against whom any enquiry or the proceedings is instituted or relief is sought to be made but shall not include the informant under sub-clause (iv) of clause (a) of section 10 or clause (d) of section 36B :

(f) "Party to an agreement" includes any person deemed to be a party for the purpose of the Act;

(g) reference to "Court", while applying provisions of the Code of Civil Procedure, 1908 (5 of 1908), shall be understood to refer to the Commission and similarly, reference to "plaintiff" or "defendant" shall be understood to refer to appropriate parties before the Commission;

(h) reference to "suits or petitions" while applying the provisions of the Code of Civil Procedure, 1908 , shall be understood to refer to appropriate proceedings under the Act;

(i) "Secretary" means Secretary of the Commission and includes the Deputy Secretary, the Administrative Officer, Joint Director

(Legal) and Deputy Director (Legal) of the Commission;

(j) "Section" means section of the Act.

(2) All words and expressions used and not defined in these regulations but defined in the Act shall have the meanings respectively assigned to them in the Act.

**3. Language of the Commission :-**

The proceedings of the Commission shall be conducted in English or Hindi.

**4. Language of application and reference, etc :-**

No application, reference, document or other papers contained in any language other than English or Hindi shall be accepted by the Commission unless the same is accompanied by a translation thereof in English or Hindi.

**5. Translation of documents :-**

The documents required to be translated into English or Hindi under regulation 4 shall be translated by a person appointed or approved by the Commission : Provided that any translation, which is agreed to by the parties to the proceedings, may be accepted by the Commission in appropriate cases as a true translation.

**6. Commissions Office :-**

The Central Office of the Commission shall open at such times as the Chairman may by general or special order, direct.

**7. Adjournment of hearings :-**

The Commission may, if sufficient cause is shown at any stage of any proceedings, grant time to the parties or any of them and may from time to time adjourn hearing of the proceedings.

**8. Ex parte hearings :-**

Where on the day fixed for hearing or on any other day to which the hearing may be adjourned, if the parties to the proceeding do not appear, the proceedings, unless adjourned by the Commission, shall continue in the absence of such parties, not so appearing.

**9. Pleadings before the Commission :-**

All applications, replies, rejoinders, supplemental pleadings or other documents which are required to be filed before the Commission, shall be typed on one side of the foolscap size paper in double space.

**10. Inspection and certified copies of documents, papers, etc :-**

(1) A party to any proceeding before the Commission may, subject to the provisions of section 17 , section 18 and section 60 on an application made by it in that behalf, addressed to the Secretary, be allowed to inspect or obtain copies of pleadings and other documents or records in the proceedings on payment of fees and charges as may be specified.

(2) The Commission may, subject to the provisions of section 17 , section 18 and section 60 on an application of a person, who is not a party to the proceedings, on sufficient cause shown, allow such person such inspection or to obtain such copies as are mentioned in sub- regulation (1) on payment of such fee as may be prescribed.

(3) An inspection shall be allowed only in the presence of a Gazetted Officer of the Commission, and copies of documents of the proceedings shall not be allowed to be taken but only notes of the inspection may be made.

(4) Copies of the proceedings, required under sub-regulation (1) or (2), may be certified, as true copies, by the Secretary or such other officer, as may be authorised in that behalf by the Commission, on payment of such fee as may be prescribed.

(5) Every duly authorised officer, not below the rank of Under Secretary to the Central Government or State Government or the Director General of Investigation and Registration, shall at all reasonable times, be entitled free of charge inspection of the file of proceedings of the Commission and to take copies or extracts from any document therefrom. The Commission shall furnish such copies or extracts to the aforesaid officers as they may demand in writing.

**11. Reports, orders or judgments of the Commission :-**

(1) Every report, order, or judgment of the Commission shall be signed and dated by the Chairman and Members :

Provided that the Chairman or a member who dissents from the final conclusion shall record his reasons separately under his signature and date.

(2) If members of a Bench are equally divided in their opinions, they shall record their views separately under their signatures and date, and then the Chairman, may, if he is not a Member of the

Bench, give his opinion, or if he is a Member of the Bench or otherwise does not want to give opinion, may direct another Member to give his opinion, if deemed necessary, after hearing the parties and thereafter the case will be decided, in accordance with the views of the majority.

(3) Every report that may be required to be submitted to the Central Government under the Act shall be sent to that Government under the signature of the Secretary.

**12. Extension of time prescribed :-**

Any time-limit fixed in these regulations or in any order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged by an order of the Commission.

**13. Effect of non-compliance and application of Code of Civil Procedure to matters not provided :-**

(1) Failure to comply with any requirement of these regulations shall not invalidate any proceedings, merely by reasons of such failure, unless the Commission is of the view that such failure has resulted in miscarriage of justice.

(2) Subject to the provision of sub-section (1) of section 12 , where no specific provision has been made in these regulations, the Code of Civil Procedure, 1908 to the extent, as may be deemed expedient by the Commission, shall apply to the proceedings.

**14. Service of notice or other documents :-**

(1) Every notice or other document, required to be-

(a) served on or delivered to any person, may be sent by registered post, or by courier service, or by speed post addressed to the person or his agent, empowered to accept service, at the address furnished by him for service, or at the place where the person, or his agent ordinarily resides or carries on business or personally works for gain;

(b) delivered to or filed with the Secretary may be sent by registered post to the Secretary.

(2) An acknowledgment purporting to be signed by the addressee or his agent or an endorsement by a postal employee that the addressee or his agent refused to take delivery or certificate of the courier or speed post that the service has been effected, may be

deemed to be a prima facie proof of service.

(3) Any notice or other document, required to be served on or delivered to a trade association may, if the association is not a body corporate, be sent to the Secretary, Manager or other officer of the association.

(4) Every notice or other document, required to be served on the Central Government or the State Government, as the case may be, shall be addressed and sent to the Secretary of the appropriate Ministry or Department and shall be served in the manner specified in clause (b) of sub-regulation (1).

(5) The notice or document in respect of an enquiry may be served-

(a) where the enquiry is against a company or corporation on the Secretary, or on any director, or other principal officer of the company or corporation by leaving it or sending it by post addressed to the company or corporation at the registered office of such company or corporation or at the place where the company/corporation ordinarily carries on business ;

(b) Where the enquiry is against a firm, the notice of enquiry may be served at the principal place at which the partnership business is carried on upon any person having, at the time of service, the control or management of the partnership business or upon any one or more of the partners of the firm ;

(c) on the proprietor in the case of a sole-trading firm.

### **15. Costs :-**

(1) The Commission, in its discretion may, subject to such conditions as may be specified in its order, determine costs of proceedings.

(2) The costs shall be paid within thirty days from the date of the order or within such time as the Commission may, by order, direct.

(3) The order of the Commission, awarding costs, shall be executed in the same manner as the order of a Civil Court and the provisions of Order 21 of the Code of Civil Procedure, 1908 , shall apply to the execution of such order.

### **16. Enforcement of orders passed by the Commission :-**

(1) The Secretary shall ensure enforcement and compliance of the orders passed by the Commission, by the persons concerned, and, if necessary, seek the order of the Commission for such investigation, as may be required, to be carried on by the Director General or any other officer, not below the rank of Assistance Director of the Commission.

(2) The Director General, in appropriate cases, shall bring to the notice of the Commission non-compliance of the orders of the Commission and may seek directions for investigation into such non-compliance.

## CHAPTER 2

### PRELIMINARY INVESTIGATION

#### **17. Order of investigation and its effect :-**

(1) The Commission may, on receipt of a complaint, reference, application or information, or as the case may be, on its own knowledge, in the matter of restrictive or unfair trade practice under clause (a) of section 10 or section 36B , order a preliminary investigation by the Director General or by an officer not below the rank of Assistant Director. Explanation.-Whenever the Commission directs a preliminary investigation into any complaint under sub-clause (i) of clause (a) of section 10 or a preliminary investigation is compulsory required under section 36C in respect of a complaint by any association, such investigation shall be made by the Director General.

(2) Order of investigation by the Commission under sub-regulation (1) shall be deemed to be the commencement of enquiry under the Act.

#### **18. Submission of preliminary Investigation report :-**

The Commission shall direct, by order, the Director General or any officer of the Commission, as the case may be, to complete the preliminary investigation and submit a report (5 copies besides such additional copies as is the number of respondents) within such time as it may fix in the order: Provided that the Commission may, on a request made by the Director General or by the officer of the Commission conducting investigation, extend the time for submission of report.

#### **19. Action on preliminary investigation report :-**

(1) The Commission in its discretion and subject to the provisions

of the Monopolies and Restrictive Trade Practices Rules, 1970, may at any stage of the inquiry, bring on record, the report of the Director General or any officer of the Commission, or as the case may be, any information or other material, collected by the Director General or any officer of the Commission :

Provided that the Commission shall not bring on record such part or parts of the report, information or material, the disclosure of which, in the opinion of the Commission, is not relevant or is not in public interest.

(2) The Director General shall be entitled to reply where the report brought on record is sought to be rebutted by any party.

### **20. Further investigation by the Director General, etc :-**

(1) Where the Commission, on the perusal of a report of the Director General or any officer of the Commission submitted under regulation 18, is of the view that a further investigation is necessary, it may by order direct the Director General or such officer of the Commission to make such further investigation, as the Commission may think necessary, and submit a further report.

(2) Where on the perusal of a report under regulation 18 or sub-regulation (1) of this regulation, or both, as the case may be, the Commission is of the opinion that no prima facie case is made out for the issuance of notice enquiry in respect of all or any of the allegations, it may drop the proceedings in respect of all or, as the case may be, any of the allegations:

Provided that where investigation has been made on the basis of a complaint, reference or application under section 10 or section 36B or section 31 , the Commission shall give the complainant, the concerned Government or, as the case may be, the Director General, but not the informant under sub-clause (iv) of clause (a) of section 10 or clause (d) of section 36-B, an opportunity of being heard before passing order to drop the proceedings in respect of all or any of the allegations : Provided further that subject to the provisions of section 60 , the registered consumer association or trade association or a consumer, who has filed the complaint, on the basis of which an investigation has been made, may be supplied with a copy of the preliminary investigation report for the purpose of enquiry under the Act.

### **21. Enquiry on the basis of preliminary investigation report :-**

Where the Commission after considering the report under regulation 18 or sub- regulation (1) of regulation 20, or, both as

the case may be, is of the opinion that an enquiry must be held into a restrictive trade practice or an unfair trade practice, it shall so order and such enquiry shall be held in accordance with the procedure laid down in Chapters IX and X of these regulations.

**22. Enquiry into monopolistic trade practice on the basis of preliminary investigation report :-**

Where the Commission after considering the report under regulation 18, or sub-regulation (1) of regulation 20, or both, as the case may be, as prima facie of the view that an enquiry shall be held into a monopolistic trade practice under clause (b) of section 10, the procedure, as laid down for restrictive trade practice in Chapter IX, shall, mutatis mutandis, be followed. After enquiry, the Commission shall proceed as provided in section 31 of the Act.

CHAPTER 3

DUTIES AND FUNCTIONS OF THE DIRECTOR GENERAL

**23. To represent the Commission before Supreme Court or High Court :-**

In the event of an appeal under section 55, or application for grant of special leave to appeal under article 136 of the Constitution, or a writ petition under article 226 or 32 of the Constitution, the Director General shall represent the Commission before the Supreme Court or the High Court, as the case may be, except in those cases, where the Director General has himself filed an appeal or special leave to appeal against an order of the Commission.

**24. Filing of application before the Director General :-**

The applications filed before the Director General under sub-section (3) of section 36 shall be accompanied by five additional copies thereof, besides as many additional copies, as is the number of respondents.

**25. Filing of application by Director General for seeking directions of Commission :-**

Where the Director General files an application for seeking any directions of the Commission for disposing of any application under sub-section (3) of section 36, he shall make an application along with four extra copies thereof to that effect and such an application shall contain information and be accompanied by the following documents :

(a) a copy of the application of the party concerned ;

(b) a copy of agreement in (quadruplicate) ; and

(c) comments of the Director General on the application.

**26. Disposal of the Director Generals application by the Commission :-**

On the receipt of application under regulation 25, the Commission may, if it considers necessary, give the applicant an opportunity of being heard. The Director General shall also be heard in such proceedings and for this purpose intimation about the date of hearing shall be sent to him.

CHAPTER 4

ENQUIRIES AND INVESTIGATIONS BY OFFICERS OF THE COMMISSION

**27. Mode of Investigations :-**

(1) Without prejudice to the provisions of regulations 17, 18, 19 and 20 the Commission may, at any time, direct the Director General or any one or more of its officers, not below the rank of Assistant Director, to (a) study, (b) investigate and report; or furnish any information in respect of any trade practice, which constitute or contribute to monopolistic, restrictive or unfair trade practice in any trade or are alleged to have been practised by any producer, distributor, dealer, agriculturist, processor, miner or investor in respect of any application or reference under section 61 or Chapters III, IV, V and VI of the Act, and for this purpose, the Commission may give to the Director General or such officer or officers of the Commission any direction as it may deem fit and may fix time, within which the report is to be submitted or information furnished. If any such report or information appears to the Commission to be insufficient, the Commission may give directions for a further or supplementary report or information thereon.

(2) The provisions of regulations 19 and 20 shall, mutatis mutandis, apply to the report furnished or as the case may be, the information, material and evidence, if any, collected under sub-regulation (1) for the purpose of any action proposed to be taken thereon.

CHAPTER 5

PROCEDURE FOR REFERENCE UNDER CHAPTERS III AND III-A OF THE ACT BY THE GOVERNMENT

**28. References received under sections 21, 22, 23, 27 and**

## **27-A of the Act :-**

(1) Where a reference is received by the Commission from the Central Government, under section 21 , section 22 , section 23 , section 27 and section 27A , the Commission may publish short particulars concerning the reference by way of a notice in such daily newspapers for inviting comments regarding the proposal within such time as may be mentioned in the notice. The comments shall be sent to the Commission in quadruplicate and the person sending the comments shall state whether he would like to participate in the public hearing before the Commission.

(2) In case of references under Section 27 or section 27A , the Commission shall, after such investigation as it deems fit, formulate its tentative opinion. It shall, thereafter, furnish to the owner of the undertaking concerned a copy of the reference and its tentative opinion. The owner of the undertaking(s) concerned, may, within such time as the Commission may fix in each case, file a statement of its objections and/or suggestions to or in respect of the tentative opinion.

(3) The Commission may address letters to the applicant, concerned Government Department and such other persons, calling for such particulars and information, as in the opinion of the Commission may be relevant to the reference received by the Commission. The replies to such letters to the Commission shall be furnished in quadruplicate.

(4) The Commission may call the applicant concerned, owner of the undertaking(s), any government official and any other person, for such discussion as it may consider necessary for the enquiry.

(5) The Commission may visit such establishment, including that of the applicant, or concerned owner of the undertaking(s) and hold discussions with their representatives, if in the opinion of the Commission such visits and discussions may be useful for the enquiry.

(6) The Commission may depute such of its officers and staff to such places and to meet such persons, as it may deem appropriate, for enquiries and discussions, relevant to the reference and take into consideration the reports of such officers.

(7) The applicant, the concerned owner of the undertakings, the persons, who have sent their comments and expressed their desire

to participate in the public hearing and such other persons as the Commission may determine, shall be intimated about the date of public hearing not less than 21 days before the date fixed for hearing. The persons, who have sent their comments and an intimation that they would like to participate in the public hearing shall file with the Commission, not less than 10 days before the date of public hearing, a statement containing the submissions that they wish to make at the public hearing.

(8) Subject to the provisions of section 17 and section 18 the Commission shall hear the persons, to whom an intimation of the public hearing is sent under sub-regulation (7). The Commission may, if it considers necessary, examine witnesses, including experts in any field. The persons so examined may, at the discretion of the Commission, be cross-examined by any of the parties to whom an intimation of public hearing is sent.

(9) In an enquiry to be made by the Commission under this regulation, the Central Government shall be entitled to be represented by such officer as it may depute. The persons concerned, appearing in person or represented by a counsel specifically authorised by them to act on their behalf, may be heard.

#### CHAPTER 6

#### ENQUIRIES UNDERCLAUSE (B) OF SECTION 10 AND SUB-SECTION (4) OF SECTION 37

#### **29. 29 :-**

In the case of a reference under section 31 of the Act or upon its own knowledge and information under clause (b) of section 10 in respect of monopolistic trade practice, the Commission shall direct investigation to be carried out by the Director (Investigation and Enforcement) of the Commission and on receipt of preliminary investigation report, it may proceed with the enquiry and for that purpose such procedure be followed mutatis mutandis as is laid down under Chapter IX of these regulations. After such enquiry the Commission shall proceed in accordance with the provisions of section 31 .

#### CHAPTER 7

#### CONSULTATIONS UNDERSECTIONS 24, 27 AND 27-A AND REFERENCES UNDER SECTION 61

#### **30. 30 :-**

Where the Central Government required the Commission to make a

report under section 61 or where the Central Government consults it under section 24 , section 27 or section 27A , the Commission may decide the procedure to be followed in accordance with the circumstances of each case. For the purpose of making a report in such cases, the Commission may employ such experts as it may consider necessary.

#### CHAPTER 8

#### MINIMUM RESALE PRICE MAINTENANCE (EXEMPTION) APPLICATIONS

#### **31. Exemption from sections 39 to 40 :-**

The Director General or any other person interested who wishes to make a reference to the Commission under section 41 for exemption from the operation of section 39 and section 40 , shall make an application in writing, clearly stating :-

(a) the nature of interest claimed by the applicant that entitles him to make the reference;

(b) the class of goods to which it relates and the sub-classes thereof, if any ;

(c) the trade name or names, or trademark or marks by which name or mark the goods are identified in the market :

(d) the names and addresses of other persons, dealing in the class of goods for which application is being made before the Commission, as far as the applicant can furnish such information :  
and

(e) the clause or clauses of sub-section ( 1 ) of section 41 on which reliance is placed for making application and the reasons in support of the same.

#### **32. Application to contain necessary evidence :-**

The application referred to in regulation 31 shall be supported by evidence regarding facts mentioned therein and be verified.

#### **33. Application by more than one person :-**

Where more than one person deals with similar class of goods for which exemption under section 41 is sought, the application may be made jointly by such persons.

#### **34. Common application :-**

A common application may be made for a number of classes of goods appearing to be closely related. However the Commission may ask the applicants to make separate applications, if the

Commission during the course of considering such application, comes to the conclusion that separate applications are necessary or desirable.

**35. Separate application for each class of goods :-**

Where an exemption is sought in respect of more than one class of goods that are not closely related, a separate application shall be made in respect of each class of such goods.

**36. Issue of notice, etc :-**

(1) On receipt of an application under regulation 31 if the Secretary is of the opinion that there is no prima facie substance in the application, he may place the same before the Commission for preliminary hearing and inform the applicants and the Director General of the date of such hearing. The Commission may, after hearing the applicants and the Director General, reject the application.

(2) The Secretary shall, in respect of applications which are not rejected in limine, give notice to the concerned parties and shall also give public notice by advertisement in such daily newspaper or newspapers as may be decided by the Commission by a general or special order. The notice shall briefly state the relevant details including the class or classes of goods in respect of which the application is made and the names and complete addresses of the parties making the application.

(3) The Secretary shall send a copy of the notice to the Secretary of the Ministry or Department, dealing with the subject-matter of application, informing him that the Ministry or Department may, if it so desires, send its comments to the Commission regarding the subject-matter of the application.

**37. Representations :-**

Representations, opposing or supporting the reference, shall be filed before the Commission within 30 days of the publication of the public notice in the daily newspapers and shall state the nature of the interest of the party making representation and whether he supports or opposes the maintenance of minimum re-sale price in respect of all or any of the goods to which the notice relates. Such representations shall comply with the other requirements of regulation 58 and shall be verified in the manner laid down in regulation 49.

### **38. Preliminary hearing :-**

(1) After the expiry of the time-limit for filing the representations under regulation 37 the Commission shall fix a date for the preliminary hearing. The applicant who had filed the reference before the Commission shall state his case indicating broadly as to what would be his submissions before the Commission. During the course of hearing, the applicant shall be served with the copies of the representations received in response to the public notice, and he shall file his reply within 14 days of the service of such notice on him.

(2) If, during the course of the preliminary hearing, it appears to the Commission that the prayer made in the reference and the circumstances of the case are substantially similar to those considered in some earlier proceedings disposed of by it, it may direct that the reference be disposed of summarily.

(3) Where the applicant or any respondent applies to the Commission for an order that any proceedings pending before the Commission be consolidated and heard together, the two proceedings may, if the Commission so directs, be consolidated and heard together.

### **39. Investigation by Director General, etc., regarding applications filed by any other person interested :-**

(1) After the hearing under regulation 38 and after taking into account the representations received, the Commission may, if it thinks necessary refer the matter to the Director General or any other officer of the Commission for investigation in such manner as it may, by order, direct.

(2) The Director General or any other officer of the Commission not below the rank of Assistant Director shall make a report containing the findings of his investigation to the Commission within 90 days from the date of direction for investigation or within the period as the Commission may extend.

### **40. Directions :-**

After receipt of the report of the Director General or any other officer of the Commission and after taking into account the submissions made by the parties to the proceedings during the course of the preliminary hearing and those contained in the representations received and the replies filed by the applicant,

under regulation 37, the Commission-

(a) shall determine which of the persons, who have filed representations before the Commission, in response to the public notice may be permitted to take part or represented in the proceedings before it;

(b) may, by order, direct that some or all of the persons who have filed representations before it shall be represented by such common representative, as it may deem fit;

(c) may, by order, direct that the reference may be so amended to include therein or to exclude therefrom any goods or in any other manner as it may deem fit ;

(d) may give such other directions as it may think fit including :-

(i) the amendment of the notice of hearing or any representation, answer or reply;

(ii) the supply of further and better particulars ;

(iii) the delivery of interrogatories ;

(iv) the admission of any facts or documents ;

(v) the discovery or further discovery of any documents and inspection thereof;

(vi) the admission of any document in evidence ;

(vii) the mode in which evidence is to be given

(viii) the taking and recording of any evidence including the appointment of a Commissioner for the purpose ; and

(ix) an investigation of the cost in respect of any class of goods, in producing or supplying any goods or in applying any process of manufacture to goods and the manner in which the result of such investigation is to be brought before the Commission at the final hearing.

**41. Service of notice of hearing :-**

The Secretary shall serve a copy of the hearing notice, not less than 21 days a notice in writing to the applicants and the persons entitled to take part in the proceedings by virtue of directions given under items (a) and (b) of regulation 40 and such a notice shall, in the case of persons entitled to take part in the proceedings under

such direction be accompanied by a copy or copies of the reference.

**42. Final hearing :-**

The hearing regarding these references shall be held in accordance with regulation 70.

**43. Interlocutory order :-**

Where a direction has been given under regulation 38 for the determination of the reference in a summary way or for consolidation the Commission may at the hearing unless it is satisfied that the relevant facts and circumstances of the reference differ in some material respect from the facts and circumstances considered in the reference-

(a) make an order on the application in a summary way without hearing evidence, or on such evidence, whether oral or documentary, as it may think fit ; and

(b) by order give any directions, which the Commission should have given under- section 41 , if the issue had been determined after a final hearing, or defer the making of any such order giving any direction until all other issues in the proceedings have been disposed of.

**44. Final order :-**

After hearing the applicants and the persons who have filed representations before the Commission and have been permitted to take part in the proceedings, and after examination of such witnesses as may be called upon by the Commission it shall pass final orders on the application/applications. A copy of such order duly authenticated by the Secretary and bearing the seal of the Commission shall be served on the applicant and other persons permitted to take part in the proceedings.

CHAPTER 9

PROCEEDINGS UNDER SECTION 37 OF THE ACT

**45. Complaint under section 10(a)(i) :-**

(1) A complaint under sub-clause (i) of clause (a) of section 10 of the Act shall contain the facts complained of which constitute restrictive trade practice.

(2) A complaint by any trade association or any registered consumer association shall be signed and verified by any office bearer of the association who is authorised in writing by the

President of that association and a complaint by an individual consumer shall be signed and verified by such consumer in the manner prescribed in regulation 49.

**46. Reference by Government :-**

A reference made by the Central Government or a State Government under sub- clause (ii) of clause (a) of section 10 shall, similarly, contain the facts which constitute a restrictive trade practice, and be signed and verified in the manner prescribed in regulation 49.

**47. Application by Director General :-**

An application under sub-clause (iii) of clause (a) of section 10 by the Director General shall contain the facts, which constitute a restrictive trade practice and if it is in relation to any agreement registrable under section 33 of the Act shall set-out such portions of the agreement as may be necessary to bring out the facts complained of and be signed and verified by the Director General in the manner prescribed in regulation 49.

**48. Copies of complaint, reference, etc :-**

The original complaint, reference or the application, as the case may be, referred to in regulations 45 to 47, shall be accompanied by four copies thereof for the Commission's record and such additional number of copies thereof, as may be necessary, for being served on respondents or other interested parties referred to in the respective complaint, reference or application.

**49. Signing of the pleading, etc., to be filed before the Commission :-**

All complaints, references, applications, statements of the case and other pleadings to be filed before the Commission, shall be signed by the parties or their duly authorised representatives and verified. The person verifying shall specify, by reference to the numbered paragraphs, what he verifies on his own knowledge and what he verifies on information, received and believed to be true. The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

**50. Proceedings before the Commission :-**

If on receipt of a complaint, reference or application or information under clause (a) of section 10 of the Act, and on consideration of any evidence on record or preliminary investigation report, if any, the Commission is of the opinion that there are sufficient grounds

to issue a process, requiring the attendance of the person or persons complained against, such a process shall be issued and it will be called Notice of Enquiry.

**51. Notice of Enquiry :-**

(1) The notice of enquiry referred to in regulation 50 shall be accompanied by:-

(i) in the case of complaint under sub-clause (i) of clause (a) of section 10 of the Act, a copy of such complaint ;

(ii) in the case of reference under sub-clause (ii) of clause (a) of section 10 of the Act, a copy of such reference ;

(iii) in the case of an applications under sub-clause (iii) of clause (a) of section 10 of the Act, a copy of such applications; and

(iv) in case of an enquiry under sub-clause (iv) of clause (a) of section 10 of the Act, a concise statement of material facts on which the notice is based, or a copy of the preliminary investigation report or relevant extract thereof.

(2) A combined notice under two or more sub-clauses of clause (a) of section 10 of the Act may be directed to be issued together by the Commission.

(3) Every such notice shall specify the date and place of hearing before the Commission.

**52. Notice may relate to a number of agreements or trade practices :-**

A notice may relate to one agreement or to a number of agreements, or one trade practice or to number of trade practices appearing to the Commission to be related in such a way as to make it desirable that they should be considered in the same proceedings.

**53. Notice to bear the Commissions seal :-**

A notice shall bear the Commission's seal and be signed by the Secretary and when returned after service shall be filed by the Secretary.

**54. Service of Notice :-**

Subject to regulation 57, the Commission shall cause a copy of the notice to be served on such parties, as the Commission may decide and such of those parties, as the Commission may direct, shall be

respondents to the proceedings.

**55. Service of notice on a trade association :-**

The Commission may, if it thinks fit, serve a copy of notice on any trade association whose members or any of whose members are parties to any agreement or are alleged to be guilty of a trade practice to which the notice relates, and the trade association may, if the Commission so directs, be made a respondent to the proceedings, without prejudice to any application under regulation 57 for the representation of members of the association by the association.

**56. Publication of notice of enquiry and orders passed by the Commission :-**

(1) Short particulars regarding enquiry by the Commission and orders passed by the Commission may be published at such time and in such manner and in such daily newspapers, by the Secretary as the commission may by any general or special order, direct.

(2) The Secretary may also issue a press release in such a manner as he may deem fit, or as directed by the Commission.

**57. Persons having common interest :-**

(1) Where there are a number of persons having common interest, whether as complainants, respondents or as parties who are served with notice under regulations 50, 53, 54 or 55, the Commission may, by order, direct that any particular complaint, respondent or party shall appear in the proceedings on behalf of or for the benefit of all persons having common interest and the Commission shall, in such a case, give notice of proceedings to all such persons having common interest either by personal service, or, where the persons to be served are in large numbers or for any other cause such personal service is not reasonably practicable, by public advertisement, as the Commission may in each case direct.

(2) Any person on whose behalf or for whose benefit any party appears in the proceedings may apply to the Commission to be made a party to the proceedings.

(3) The Commission shall, in such cases, determine as to who shall bear the costs of any of the public advertisements or personal service.

**58. Appearance of parties :-**

(1) A respondent on whom a notice has been served and who wishes to be heard in the proceedings shall, not less than 10 days before the date of hearing specified in the notice, enter appearance in the office of the Commission by delivering to the Secretary with a copy to the Director General, a memorandum with five additional copies, indicating that he wants to be heard in the proceedings and containing the name of his advocate or the name and full official and residential address of his authorised representative and duly authorised to accept service of process.

(2) The advocate or authorised representative named by the respondent shall file vakalatnama/power of attorney at the time of appearance. Explanation.-An authorised representative shall either be a member of the Institute of Chartered Accountants of India, the Institute of Costs and Works Accountants of India, or the Institute of Company Secretaries of India or a person holding qualification of post-graduate or higher qualification in Commerce or Economics or Management and furnish his full official and residential addresses :

Provided that in the event of misconduct, the Commission may disallow any of the aforesaid authorised representatives to appear before the Commission.

#### **59. Reply to the notice :-**

(1) Every respondent who has entered appearance shall, while entering appearance, deliver to the Secretary a reply to the notice (five copies besides as many copies as in the number of respondents) which shall include-

(a) particulars of each of the circumstances contained in section 38 of the Act on which he intends to rely ; and

(b) particulars of the facts and matters alleged by him to entitle him to reply on section 38 .

(2) Where the respondent relies on any document (whether in his possession or power or not) as evidence in support of his reply, he shall enter such document in a list to be added or annexed to the reply. Where any such document is not in the possession or power of the respondent, he shall, if possible, state in whose possession or power it is. The respondent shall also send or supply copy of reply to the notice of enquiry to the complainant (whether individual or registered consumer association or trade association) along with a

copy of list of documents relied upon.

(3) The document which ought to be entered in the list referred to in sub-regulation (2) and is not so entered, shall not, without the leave of the Commission, be received in evidence on behalf of the respondent.

(4) The Secretary shall, as soon as may be, furnish copy or copies to the Director General or other parties concerned, including the complainant, in case copies have not been supplied to any one of them by the respondent.

#### **60. Notice for inspection of documents by Director General**

**:-**

Every respondent shall, within seven days after receiving notice in that behalf from the Director General, produce for his inspection the documents or such of them as may be specified in the notice and shall permit him to make copies thereof: Provided that nothing herein contained shall effect the right of the respondent to claim, for reasons to be stated privilege for any of the said documents.

#### **61. Filing of pleadings :-**

No pleading, subsequent to the reply, shall be presented except by the leave of the Commission upon such terms as the Commission may think fit; but the Commission may, at any time, require a pleading or rejoinder or a supplemental pleading from any of the parties and fix a time for presenting the same.

#### **62. The Commission may strike out the whole or part of the pleadings :-**

The Commission may, on the application of the party, strike out the whole or any part of the reply, rejoinder, pleading or supplemental pleading, which appears to the Commission liable to be struck out in accordance with the provisions of Rule 16 of Or.6 of the Code of Civil Procedure, 1908, and in that event, allow further time for the delivery of the reply, rejoinder, pleading or supplemental pleading,

#### **63. Amendments in proceedings :-**

(1) The Commission may, at any time, amend, any defect or error in any proceeding including notice of enquiry and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or dependent on such proceedings.

(2) The Commission may, at any time or stage of the proceedings,

allow any party to alter or amend his reply to the notice of enquiry, rejoinder, pleading or supplemental pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy.

#### **64. Joinder of the parties :-**

(1) Any party to the proceedings may, at any time, apply to the Commission (with four additional copies of the application) for an order that any person, not already a party, be added as a party to the proceedings and shall give notice of application to all other parties and to the persons sought to be added.

(2) The Commission may, at any stage of the proceedings either of its own motion or on the application of any parties to the proceedings on such terms as may appear to the Commission just and equitable, order that the name of any parties improperly joined be struck out, and the name of any person who ought to have been joined or whose presence before the Commission may be necessary in order to enable the Commission, effectively and completely to adjudicate upon and settle all questions involved in the proceedings be added.

(3) Where any party is added or name of the parties is struck out the pleading, unless the Commission otherwise directs, be amended in such manner as may be necessary.

(4) The provisions of Or.1 of the Code of Civil Procedure, 1908, shall apply mutatis mutandis to these proceedings.

(5) Any complainant, applicant or Government authority who makes a complaint, application or reference under sub-clauses (i) to (iii) of clause (a) of section 10 of the Act, as the case may be, shall be a party and shall be entitled to participate, file pleadings and be heard. He shall also be entitled to copies of application, if any, pleadings, filed by the Director General or any other person, during the proceedings of the enquiry. An informant may, at the discretion of the Commission, be heard in the proceedings, if he makes a request in that behalf and the Secretary may, and if so directed by the Commission shall, furnish to him or in a copy of the documents filed with him under regulations 45, 46, 47, 58, 59 and 63.

#### **65. Application for directions :-**

(1) On the date of hearing, the Commission may, either suo motu or on an application by any party, give such directions, as it may think fit, with regard to the following matters :-

(a) the amendment of the notice of enquiry or any representation, answer or reply;

(b) the delivery of further and better particulars;

(c) the delivery of interrogatories ;

(d) the admission of any facts or documents;

(e) the discovery or further discovery of any documents and inspection thereof;

(f) the admission, in evidence of any document ;

(g) the mode in which evidence is to be given ;

(h) the taking and recording of any event including the appointment of a Commissioner for that purpose;

(i) the investigating of the cause in respect of any class of goods, in producing or supplying any goods or in applying any process of manufacture to goods and the manner in which the result of such investigation is to be brought before the Commission at the final hearing ; and

(j) any other matter as may be considered necessary or proper for the purpose of enquiry.

(2) In any enquiry, where issues have been framed on any question of law or fact and the Director General, the complainant or the person making the reference, as the case may be, has not filed the list of documents on which he relies, he shall file the list on the date, when the issues are framed or within such time as the Commission may direct.

#### **66. Admission of documents by a party in enquiry proceedings :-**

(1) Any party to the enquiry may call upon any other party to the enquiry to admit within fifteen days from the date of the service of notice of enquiry any documents relevant to the enquiry.

(2) Where a party unreasonably neglects or refuses to admit documents after the service on him of the notice to admit

documents, the Commission may direct him to pay costs to the other party by way of compensation.

**67. Interlocutory applications :-**

Except where these regulations otherwise provide or the Commission otherwise directs, every interlocutory application shall be made on not less than seven days notice to every other party concerned in the subject-matter of the application and the notice shall include particulars of the directions or orders to be sought.

**68. Proving of facts :-**

All facts required to be proved at the hearing shall, unless they are admitted, be proved as under :-

(1) by oral examination, cross examination and examination of witnesses or by affidavits in accordance with Or.19 of the Code of Civil Procedure, 1908 read with section 12(1)(c) of the Act; and

(2) by documentary evidence consisting of original or authenticated copies of documents, entries in the books or authenticated copies thereof or film audio or video tapes.

**69. Scientific, technical and statistical information :-**

In case of scientific, technical or statistical information relevant to the proceeding, the same may, by the permission of the Commission, be proved by production of specified scientific, technical, economic or trade publication or work of reference, containing such information.

**70. Final hearing :-**

The final hearing shall take place in the open court : Provided that if the Commission is satisfied that it is in the public interest that the hearing or part thereof should not take place in open court or that evidence may be given as to a secret process of manufacture or as to the presence, or absence, or situation of any mineral or other deposits or as to any similar matter the publication of which is likely to damage substantially the legitimate business interest of any person, it shall and may in any other case in which it appears proper to the Commission to do so, order that the hearing or such part thereof as the Commission may direct, shall take place in camera.

**71. Determination of issue in a summary way :-**

If on the hearing of an application it appears to the Commission that the relevant provisions of the agreement or any other facts or

circumstances relating to the agreement or to a trade practice or practices, are substantially similar to those considered in previous proceedings before the Commission; it may direct that the issue be referred for determination in a summary way.

**72. Directions in case of determination of Issues in a summary way :-**

Where a direction has been given under regulation 71, the Commission may at the hearing, unless it is satisfied that the relevant provisions of the agreement or trade practice or practices or the circumstances of the case differ in some material respects from the provisions or trade practice or practices, and circumstances considered in the previous proceedings:-

(a) determine the issue in a summary way without hearing the evidence or on such evidence whether oral or documentary as it may think fit ; and

(b) by order give any direction, which the Commission could have given under section 37 of the Act if the issue had been determined after final hearing in the ordinary way or defer making of any such order giving any direction until all other issues in the proceedings have been disposed of.

**73. Calling of comments on complaints :-**

The Commission may, in its discretion, instead of directing investigation or instituting enquiry straightaway, on a complaint under section 10(1)(i) or section 36B(a) or information under Section 10(a)(iv) or section 36B(d) of the Act, send a copy of the complaint or information to the person against from whom the same is made calling for comments for enabling it to either do the needful as desired by the complainant or informant or send his own version. The Commission may, thereafter on receipt of the reply or after expiry of the time fixed for sending the comments, proceed with the complaint or information in accordance with the provisions of the Act and the regulations.

**74. Final Orders :-**

After hearing the complainant or the applicant or any Government authorities making a reference, or the Director General, as the case may be, and the respondents and other persons who have filed representations before the Commission and who have been permitted to take part in the proceedings and after examination of such witnesses as called upon by the Commission, it shall pass final

orders on the complaint, application, reference, etc. A copy of such order duly authenticated by the Secretary and bearing the seal of the Commission shall be served on the complainant, applicant. Government authorities making the reference, the respondent, as also on such other Government authorities and other persons permitted to take part in the proceedings.

#### CHAPTER 10

##### PROCEEDINGS UNDER SECTION 36D OF THE ACT

#### **75. Inquiries into unfair trade practices :-**

The procedure laid down in Chapter IX of these regulations for inquiries into restrictive trade practices shall, mutatis mutandis, apply to the inquiries into unfair trade practices under section 36D of the Act, subject to the modification that-

(i) reference to sub-clauses (i) to (iv) of clause (a) of section 10 of the Act shall be construed as a reference to the corresponding clauses (a) to (d) of Section 36B , and

(ii) reference to section 37 of the Act shall be construed as a reference to section 36D of the Act.

#### CHAPTER 11

##### APPLICATIONS UNDER SECTIONS 12A AND 12B

#### **76. Temporary Injunction :-**

Every application under section 12A of the Act for issuance of a temporary injunction shall be supported by an affidavit of the person making the application stating the facts which constitute monopolistic, restrictive or unfair trade practice and the circumstance whereby it is intended to be proved that the said trade practice is likely to affect the public interest or the interest of any trader or traders generally, or any consumer or consumers generally. The application shall be accompanied by five extra copies and one additional copy for each respondent. The application shall be filed with the Secretary who shall forthwith place the application before the Commission for disposal.

#### **77. Application for compensation :-**

(1) Every application made under section 12B of the Act for compensation shall be supported by an affidavit of the person making the application in the form appended to these regulations stating the particulars and the extent of the loss or damage caused as a result of the alleged monopolistic, restrictive or unfair trade

practice and also stating that he has not filed any application either before the Commission or before any authority under the Consumer Protection Act, 1986 and be filed with the Secretary with five extra copies and one additional copy for each respondent.

(2)The Commission may, before making any order under section 12A or section 12B of the Act, direct the Director General to make such investigation as may be deemed necessary into the allegations and submit a report thereon.

#### CHAPTER 12

#### AMENDMENT OR REVOCATION OF ORDER

#### **78. Review application :-**

An application under sub-section (2) of section 13 of the Act shall contain facts or the reasons as to why the order sought to be reviewed is liable to be altered, modified or set aside. It shall be supported by an affidavit. No order shall be changed, altered, modified or set aside without an opportunity of being heard, having been given to the person in whose favour the order is (sic) and the Director General.

#### **79. Rectification of errors :-**

Any clerical or arithmetical mistakes in any proceedings, amendment of proceedings, declaration or order of the Commission or error therein arising from any accidental slip or omission may, at any time, be corrected by the Commission either on its own motion or on the application of any party and the provisions of sections 152 and Section 153 of the Code of Civil Procedure, 1908 shall be applicable in this respect.