

COMPETITION ACT, 2002
12 of 2003

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COMPETITION ACT, 2002

12 of 2003

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An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:-

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement :-

(1) This Act may be called the Competition Act, 2002 .

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

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

2. Definitions. :-

In this Act, unless the context otherwise requires,-

(a)"acquisition" means, directly or indirectly, acquiring or agreeing to acquire-

(i) shares, voting rights or assets of any enterprise; or

(ii) control over management or control over assets of any enterprise;

(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;

¹ (ba) "Appellate Tribunal" means the Competition Appellate Tribunal established under sub-section (1) of section 53A.

(c) "cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;

(d) "Chairperson" means the Chairperson of the Commission appointed under sub-section (1) of section 9 ;

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

(f) "consumer" means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods

for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;

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

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

Explanation.-For the purposes of this clause,-

(a) "activity" includes profession or occupation;

(b) "article" includes a new article and "service" includes a new service;

(c) "unit" or "division", in relation to an enterprise, includes-

(i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;

(ii) any branch or office established for the provision of any service;

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

(j) "Member" means a Member of the Commission appointed under sub-section (1) of section 9 and includes the Chairperson;

(k) "notification" means a notification published in the Official Gazette;

(l) "person" includes-

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm;

(v) an association of persons or a body of individuals, whether incorporated or not in India or outside India; (vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in Section 617 of the Companies Act, 1956 ;

(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 co-operative societies;

(ix) a local authority;

(x) every artificial juridical person, not falling within any of the preceding sub-clauses;

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

(n) "prescribed" means prescribed by rules made under this Act;

(o) "price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing;

(p) "public financial institution" means a public financial institution specified under section 4A of the Companies Act, 1956, (1 of 1956) and includes a State Financial, Industrial or Investment Corporation;

- (q) "regulations" means the regulations made by the Commission under section 62 ;
- (r) "relevant market" means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;
- (s) "relevant geographical market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;
- (t) "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;
- (u) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;
- (v) "shares" means shares in the share capital of a company carrying voting rights and includes-
- (i) any security which entitles the holder to receive shares with voting rights;
- (ii) stock except where a distinction between stock and share is expressed or implied;
- (w) "statutory authority" means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto;
- (x) "trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services;
- (y) "turnover" includes value of sale of goods or services;
- (z) words and expressions used but not defined in this Act and defined in the Companies Act, 1956 shall have the same meaning respectively assigned to them in that Act.

In section 2, clause (ba) shall be inserted, as follows :- (ba) "Appellate Tribunal" means the Competition Appellate Tribunal established under sub-section (1) of section 53A.' by the COMPETITION (AMENDMENT) ACT 2007.

CHAPTER 2

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

3. Anti-competitive agreements :-

- (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.
- (2) Any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void.
- (3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which-
- (a) directly or indirectly determines purchase or sale prices;
- (b) limits or controls production, supply, markets, technical development, investment or provision of services;
- (c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;
- (d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition: Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

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

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

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

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

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

(5) Nothing contained in this section shall restrict-

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

- (a) the Copyright Act, 1957 (14 of 1957);
- (b) the Patents Act, 1970 (39 of 1970);
- (c) the Trade and Merchandise Marks Act, 1958 or the Trade Marks Act, 1999 (47 of 1999);
- (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);
- (e) the Designs Act, 2000 (16 of 2000);
- (f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);

(ii) the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.

4. Abuse of dominant position. :-

¹"(1) No enterprise or group shall abuse its dominant position.";

(2) There shall be an abuse of dominant position ²"under sub-section (1), if an enterprise or a group"

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

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

Explanation.-for the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or services 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 conditions or prices which may be adopted to meet the competition; or

(b)limits or restricts-

- (i) production of goods or provisions of services or market therefor; 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 ³"in any manner"; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

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

(a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to-

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

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

In section 4, sub-section (1), shall be substituted, the old sub-section are as follows :- "(1) No enterprise shall abuse its dominant position." by the COMPETITION (AMENDMENT) ACT 2007.

In section 4, in sub-section (2), for the words, brackets and figure "under sub-section (1), if an enterprise", the words, brackets and figure "under sub-section (1), if an enterprise or a group" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 4, in sub-section (2), in clause (c), after the word "access", the words "in any manner" shall be inserted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 4, in sub-section (2), in clause (c), after sub-section (2), in the Explanation, clause (c) shall be inserted, by the COMPETITION (AMENDMENT) ACT 2007.

5. Combination. :-

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

1"(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 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

2"(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) acquisition of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if-

(i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,-

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

3"(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 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 or turnover more than six billion US dollars; 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

4(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

(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

⁵ "(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."

Explanation.-For the purposes of this section,-

(a) "control" includes controlling the affairs or management by-

(i) one or more enterprises, either jointly or singly, over another enterprise or group;

(ii) one or more groups, either jointly or singly, over another group or enterprise;

(b) "group" means two or more enterprises which, directly or indirectly, are in a position to-

(i) exercise twenty-six per cent or more of the voting rights in the other enterprise; or

(ii) appoint more than fifty per cent of the members of the board of directors in the other enterprise; or

(iii) control the management or affairs of the other enterprise;

(d) 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 goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of section 3 .

In section 5 , in clause (a), in sub-clause (i), for item (B), the following item shall be substituted, the old sub-section are as follows :- "(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or" by the COMPETITION (AMENDMENT) ACT 2007.

In section 5,in clause (a), in sub-clause (ii), for item (B), shall be substituted, the old sub-section are as follows :- "(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or" by the COMPETITION (AMENDMENT) ACT 2007.

In section 5, in clause (b),in sub-clause (i), for item (B), shall be substituted, the old sub-section are as follows :- "(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or" by the COMPETITION (AMENDMENT) ACT 2007.

In section 5,in clause (c), in sub-clause (i), for item (B), shall be substituted, the old sub-section are as follows :- "(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or" by the COMPETITION (AMENDMENT) ACT 2007.

In section 5,in clause (c), in sub-clause (ii), for item (B), shall be substituted, the old sub-section are as follows :- "(B) in India or outside India, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars." by the COMPETITION (AMENDMENT) ACT 2007.

6. Regulation of combinations.- :-

(1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

(2)Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, ¹"shall" or its option, 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 ²"thirty days" of-

(a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5 , by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;

(b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section.

³ "(2A) No combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission under sub-section (2) or the Commission has passed orders under section 31, whichever is earlier."

(3) The Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in section 29 , rule 30 and section 31 .

(4) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.

(5) The public financial institution, foreign institutional investor, bank or venture capital fund referred to in sub-section (4), shall, within seven days from the date of the acquisition, file, in the form as may be specified by regulations, with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

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

(a) "foreign institutional investor" has the same meaning as assigned to it in clause (a) of the Explanation to section 115AD of the INCOME TAX ACT, 1961 (43 of 1961);

(b) "venture capital fund" has the same meaning as assigned to it in clause (b) of the Explanation to clause (23FB) of section 10 of the INCOME TAX ACT, 1961 (43 of 1961).

In section 6, in sub-section (2), for the words "may, at his or its option," the word "shall" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 6, in sub-section (2), for the words "seven days", the words "thirty days" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 6, sub-section (2A), shall be inserted, by the COMPETITION (AMENDMENT) ACT 2007.

CHAPTER 3

COMPETITION COMMISSION OF INDIA

7. Establishment of Commission.- :-

(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India".

(2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Commission shall be at such place as the Central Government may decide from time to time.

(4) The Commission may establish offices at other places in India.

8. Composition of Commission.- :-

1

(1) The Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.

(2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.

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

Section 8, shall be substituted, Old Section are as follows :- "8.Composition of Commission:- (1) The Commission shall consist of a Chairperson and not less than two and not more than ten other Members to be appointed by the Central Government: Provided that the Central Government shall appoint the Chairperson and a Member during the first year of the establishment of the Commission. (2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has been, or is qualified to be, a judge of a High Court or has special knowledge of, and professional experience of not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, may be useful to the Commission. (3) The Chairperson and other Members shall be whole-time Members." by the COMPETITION (AMENDMENT) ACT 2007.

9. Selection of Chairperson and other Members.- :-

1

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

(a) the Chief Justice of India or his nominee.....Chairperson;

(b) the Secretary in the Ministry of Corporate Affairs.....Member;

(c) the Secretary in the Ministry of Law and Justice.....Member;

(d) two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy.....Members

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

Section 9, shall be substituted, the old Section are as follows :- "9.Selection of Chairperson and other Members.- The Chairperson and other Members shall be selected in the matter as may be prescribed." by the COMPETITION (AMENDMENT) ACT 2007.

10. Term of office of Chairperson and other Members :-

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

¹ "Provided that the Chairperson or other Members shall not hold office as such after he has attained the age of sixty-five years."

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

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

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

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

In section 10, sub-section (1), for the proviso, shall be substituted, the old sub-section are as follows :- "Provided that no Chairperson or other Member shall hold office as such after he has attained,- (a) in the case of the Chairperson, the age of sixty-seven years; (b) in the case of any other Member, the age of sixty-five years;" by the COMPETITION (AMENDMENT) ACT 2007.

11. Resignation, removal and suspension of Chairperson and other Members.- :-

(1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office: Provided that the Chairperson or a Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

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

(a) is, or at any time has been, adjudged as an insolvent; or

(b) has engaged at any time, during his term of office, in any paid employment; or

(c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or

(d) has acquired such financial or other interest as is likely to effect prejudicially his functions as a Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest; or

(f) has become physically or mentally incapable of acting as a Member.

(3) Notwithstanding anything contained in sub-section (2), no Member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section 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.

12. Restriction on employment of Chairperson and other Members in certain cases.- :-

The Chairperson and other Members shall not, for a period of ¹ "two years" from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory 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).

In section 12 , for the words "one year", the words "two years" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

13. Financial and administrative powers of Member Administration.- :-

¹ The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission:

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

Section 13 shall be substituted, Old Section are as follows :- "13. Financial and administrative powers of Member Administration.- The Central Government shall designate any Member as Member Administration who shall exercise such financial and administrative powers as may be vested in him under the rules made by the Central Government: Provided that the Member Administration shall have authority to delegate such of his financial and administrative powers as he may think fit to any other officer of the commission subject to the condition that such officer shall, while exercising such delegated powers continue to act under the direction, superintendence and control of the Member Administration." by the COMPETITION (AMENDMENT) ACT 2007.

14. Salary and allowance and other terms and conditions of services of Chairperson and other Members.- :-

(1) the Salary, and the other terms and conditions of service of the chairperson and other Members including travelling expenses.

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

15. Vacancy, etc., not to invalidate proceedings of Commission,- :-

No act or proceeding of the Commission shall be invalid merely by reason of-

(a) any vacancy in, or any defect in the constitution of, the Commission; or

(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.

16. Appointment of Director-General, etc.- :-

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

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

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

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

(4) The Director General, and Additional, Joint, Deputy and Assistant Directors General or ⁴"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.

In section 16, sub-section (1), shall be substituted, the old sub-section are as follows :- "(1) The Central Government may, by notification, appoint a Director General and as many Additional, Joint, Deputy or Assistant

Directors General or such other advisers, consultants or officers, as it may think fit, for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for the conduct of cases before the Commission and for performing such other functions as are, or may be, provided by or under this Act." by the COMPETITION (AMENDMENT) ACT 2007.

In section 16, in sub-section (2), for the words "such other advisers, consultants and officers," the words "such officers or other employees," shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 16, in sub-section (3), for the words "such other advisers, consultants and officers," the words "such officers or other employees," shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 16, in sub-section (4), for the words "such other advisers, consultants and officers," the words "such officers or other employees," shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

17. Registrar and officers and other employees of Commission.- :-

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

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

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

Section 17 shall be substituted, the old Section are as follows :- "17.Registrar and officers and other employees of Commission.- (1) The Commission may appoint a Registrar and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act. (2) The salaries and allowances payable to and other terms and conditions of service of the Registrar and officers and other employees of the Commission and the number of such officers and employees shall be such as may be prescribed." by the COMPETITION (AMENDMENT) ACT 2007.

CHAPTER 4

DUTIES, POWERS AND FUNCTIONS OF COMMISSION

18. Duties of Commission.- :-

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

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

19. Inquiry into certain agreements and dominant position of enterprise.- :-

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

(a) ¹ "receipt of any information, in such manner and", accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or

(b) a reference made to it by the Central government or a State Government or a statutory authority.

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

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

(a) creation of barriers to new entrants in the market;

(b) driving existing competitors out of the market;

(c) foreclosure of competition by hindering entry into the market;

(d) accrual of benefits to consumers;

(e) improvements in production or distribution of goods or provision of services; or

(f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

(4) The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:-

(a) market share of the enterprise;

(b) size and resources of the enterprise;

- (c) size and importance of the competitors;
- (d) economic power of the enterprise including commercial advantages over competitors;
- (e) vertical integration of the enterprises or sale or service network of such enterprises;
- (f) dependence of consumers on the enterprise;
- (g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
- (h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
- (i) countervailing buying power;
- (j) market structure and size of market;
- (k) social obligations and social costs;
- (l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have appreciable adverse effect on competition;
- (m) any other factor which the Commission may consider relevant for the inquiry.

(5) For determining whether a market constitutes a "relevant market" for the purposes of this Act, the Commission shall have due regard to the "relevant geographical market" and "relevant product market".

(6) The Commission shall, while determining the "relevant geographical market", have due regard to all or any of the following factors, namely:-

- (a) regulatory trade barriers;
- (b) local specification requirements;
- (c) national procurement policies;
- (d) adequate distribution facilities;
- (e) transport costs;
- (f) language;
- (g) consumer preferences;
- (h) need for secure or regular supplies or repair after-sales services.

(7) The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely:-

- (a) physical characteristics or end-use of goods;
- (b) price of goods or service;
- (c) consumer preferences;
- (d) exclusion of in-house production;
- (e) existence of specialised producers;
- (f) classification of industrial products.

In section 19, in sub-section (1), in clause (a), for the words "receipt of a complaint," the words "receipt of any information, in such manner and" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

20. Inquiry into combination by Commission.- :-

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

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

(2) The Commission shall, on receipt of a notice under sub-section (2) of section 6¹ [***], inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.

(3) Notwithstanding anything contained in section 5, the Central Government shall, on the expiry of a period of two years from the date of commencement of this Act and thereafter every two years, in consultation with the

Commission, by notification, enhance or reduce, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, the value of assets or the value of turnover, for the purposes of that section.

(4) For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely: -

- (a) actual and potential level of competition through imports in the market;
- (b) extent of barriers to entry to 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.

In section 20, in sub-section (2), the words, brackets and figures "or upon receipt of a reference under sub-section (1) of section 21" shall be omitted, by the COMPETITION (AMENDMENT) ACT 2007.

21. Reference by statutory authority.- :-

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

¹"Provided that any statutory authority, may, suo motu, make such a reference to the Commission."

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

In section 21, in sub-section (1), the following proviso shall be inserted, namely: "Provided that any statutory authority, may, suo motu, make such a reference to the Commission."; by the COMPETITION (AMENDMENT) ACT 2007.

In section 21, sub-section (2), shall be substituted, the old sub-section are as follows :- " (2) On receipt of a reference under sub-section (1), the Commission shall, after hearing the parties to the proceedings, give its opinion to such statutory authority which shall thereafter pass such order on the issues referred to in that sub-section as it deems fit: Provided that the Commission shall give its opinion under this section within sixty days of receipt of such reference." by the COMPETITION (AMENDMENT) ACT 2007.

22. Benches of Commission.- :-

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

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

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

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

Section 22 shall be substituted, the old Ssection are as follows :- "22. Benches of Commission.- (1) The jurisdiction,

powers and authority of the Commission may be exercised by Benches thereof. (2) The Benches shall be constituted by the Chairperson and each Bench shall consist of not less than two Members. (3) Every Bench shall consist of at least one Judicial Member. Explanation.-For the purposes of this sub-section, "Judicial Member" means a Member who is, or has been, or is qualified to be, a Judge of a High Court. (4) The Bench over which the Chairperson presides shall be the Principal Bench and the other Benches shall be known as the Additional Benches. (5) There shall be constituted by the Chairperson one or more Benches to be called the Merger Bench or Mergers Benches, as the case may be, exclusively to deal with matters referred to in sections 5 and 6. (6) The places at which the Principal Bench, other Additional Bench or Mergers Bench shall ordinarily sit shall be such as the Central Government may, by notification, specify." by the COMPETITION (AMENDMENT) ACT 2007.

23. Distribution of business amongst Commission and Benches.- :-

1 [*]**

Section 23 shall be omitted, Old Section is as follows : "23. Distribution of business amongst Commission and Benches.- (1) Where any Benches are constituted, the Chairperson may, from time to time, by order, make provisions as to the distribution of the business of the Commission amongst the Benches and specify the matters, which may be dealt with by each Bench. (2) If any question arises as to whether any matter falls within the purview of the business allocated to a Bench, the decision of the Chairperson thereon shall be final. (3) The Chairperson, may- (i) transfer a Member from one Bench to another Bench; or (ii) authorise the Members of one Bench to discharge also the functions of the Members of other Bench: Provided that the Chairperson shall transfer, with the prior approval of the Central Government, a Member from one Bench situated in one city to another Bench situated in another city. (4) The chairperson may, for the purpose of securing that any case or matter which, having regard to the nature of the questions involved, requires or is required in his opinion or under the rules made by the Central Government in this behalf, to be decided by a Bench composed of more than two Members, issue such general or special orders as he may deem fit." by the COMPETITION (AMENDMENT) ACT 2007.

24. Procedure for deciding a case where Members of a Bench differ in opinion.- :-

1 [*]**

Section 24 shall be omitted, Old Section is as follows : "24. Procedure for deciding a case where Members of a Bench differ in opinion.- If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it." by the COMPETITION (AMENDMENT) ACT 2007.

25. Jurisdiction of Bench.-An inquiry shall be initiated or a complaint be instituted or a reference be made under this Act before a Bench within the local limits of whose jurisdiction- :-

1 [*]**

Section 25 shall be omitted, Old Section is as follows : "25. Jurisdiction of Bench.-An inquiry shall be initiated or a complaint be instituted or a reference be made under this Act before a Bench within the local limits of whose jurisdiction- (a) the respondent, or each of the respondents, where there are more than one, at the time of the initiation of inquiry or institution of the complaint or making of reference, as the case may be, actually and voluntarily resides, or carries on business, or personally works for gain; or (b) any of the respondents, where there are more than one, at the time of the initiation of the inquiry or institution of complaint or making of reference, as the case may be, actually and voluntarily resides or carries on business or personally works for gain provided that in such case either the leave of the Bench is given, or the respondents who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises. Explanation.-A respondent, being a person referred to in sub-clause (iii) or sub-clause (vi) or sub-clause (vii) or sub-clause (viii) of clause (1) of section 2, shall be deemed to carry on business at its sole or principal place of business in India or at its registered office in India or where it has also a subordinate office at such place." by the COMPETITION (AMENDMENT) ACT 2007.

26. Procedure for inquiry on complaints under section 19.- :-

1 [*]**

Section 26 shall be omitted, Old Section is as follows : "26. Procedure for inquiry on complaints under section 19.- (1) On receipt of a complaint or a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information, under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter. (2) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission. (3) Where on receipt of a complaint under clause (a) of sub-section (1) of section 19, the Commission is of the opinion that there exists no prima facie case, it shall dismiss the complaint and may pass such orders as it deems fit, including imposition of costs, if necessary. (4) The Commission shall forward a copy of the report referred to in sub-section (2) to the parties concerned or to the Central Government or the State Government or the statutory authority, as the case may be. (5) If the report of the Director General relates on a complaint and such report recommends that there is no contravention of any of the provisions of this Act, the complainant shall be given an opportunity to rebut the findings of the Director General. (6) If, after hearing the complainant, the Commission agrees with the recommendation of the Director General, it shall dismiss the complaint. (7) If, after hearing the complainant, the Commission is of the opinion that further inquiry is called for, it shall direct the complainant to proceed with the complaint. (8) If the report of the Director General relates on a reference made under sub-section (1) and such report recommends that there is no contravention of the provisions of this Act, the Commission shall invite comments of the Central Government or the State Government or the statutory authority, as the case may be, on such report and on receipt of such comments, the Commission shall return the reference if there is no prima facie case or proceed with the reference as a complaint if there is a prima facie case. (9) If the report of the Director General referred to in sub-section (2) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act." by the COMPETITION (AMENDMENT) ACT 2007.

27. Orders by Commission after inquiry into agreements or abuse of dominant position.- :-

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:

¹Provided 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.";

²(c)[***]

(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;

³(f)[***]

(g) pass such other ⁴order or issue such directions" as it may deem fit.

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

In Section 27 clause (b) in proviso shall be inserted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 27, clauses (c) shall be omitted, Old clause is as follows : "(c) award compensation to parties in accordance with the provisions contained in section 34;" by the COMPETITION (AMENDMENT) ACT 2007.

In section 27, clauses (f) shall be omitted, old clause is as follows : "(f) recommend, to the Central Government for the division of an enterprise enjoying dominant position;" by the COMPETITION (AMENDMENT) ACT 2007.

In section 27, in clause (g), for the word "order", the words "order or issue such directions" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 27, after clause (g), proviso shall be inserted , by the COMPETITION (AMENDMENT) ACT 2007.

28. Division of enterprise enjoying dominant position.- :-

(1) The ¹"Commission", may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.

(2) In particular, and without prejudice to the generality of the foregoing powers, the order referred to in sub-section (1) may provide for all or any of the following matters, namely:-

(a) the transfer or vesting of property, rights, liabilities or obligations;

(b) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;

(c) the creation, allotment, surrender or cancellation of any shares, stocks or securities;

² (d)[***]

(e) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;

(f) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;

(g) any other matter which may be necessary to give effect to the division of the enterprise.

(3) Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the division of an enterprise shall not be entitled to claim any compensation for such cesser.

In section 28, in sub-section (1), for the words, brackets, letter and figures "Central Government, on recommendation under clause (f) of section 27", the word "Commission" shall be substituted , by the COMPETITION (AMENDMENT) ACT 2007.

In section 28, clause (d) of sub-section (2) shall be omitted, Old clause is as follows : "(d) the payment of compensation to any person who suffered any loss due to dominant position of such enterprise;" by the COMPETITION (AMENDMENT) ACT 2007.

29. Procedure for investigation of combinations.- :-

(1) Where the Commission is of the ¹"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.

²(1A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct."

(2) The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, ³ ""or the receipt of the report from Director General called under sub-section (1A), whichever is later" direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.

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

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

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

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

In section 29, in sub-section (1), after the words "Where the Commission is of the", the words "prima facie" shall be inserted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 29, sub-section (1A) inserted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 29, in sub-section (2), after the words "parties to the combination", the words, brackets, figure and letter "or the receipt of the report from Director General called under sub-section (1A), whichever is later" shall be inserted, by the COMPETITION (AMENDMENT) ACT 2007.

30. Inquiry into disclosures under sub-section (2) of section 6.- :-

¹ Where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall examine such notice and form its prima facie opinion as provided in sub-section (1) of section 29 and proceed as per provisions contained in that section.

Section 30 shall be substituted, old Section is as follows : "30.Inquiry into disclosures under sub-section (2) of section 6.-Where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall require (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." by the COMPETITION (AMENDMENT) ACT 2007.

31. Orders of Commission on certain combinations.- :-

(1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of section 6 .

(2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.

(3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination.

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

(5) If the parties to the combination, who have accepted the modification under sub-section (4), fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act.

(6) If the parties to the combination do not accept the modification proposed by the Commission under sub-section (3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under that sub-section.

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

(8) If the Commission does not accept the amendment submitted under sub-section (6), then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under sub-section (3).

(9) If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act.

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

(a) the acquisition referred to in clause (a) of section 5 ; or

(b) the acquiring of control referred to in "clause (b) of section 5 ; or

(c) the merger or amalgamation referred to in clause (c) of section 5 , shall not be given effect to:

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

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

Explanation-For the purposes of determining the period of ² "two hundred and ten" 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.

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

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

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

section 31, in sub-section (11), for the words, brackets and figures "ninety working days from the date of publication referred to in sub-section (2) of section 29", the words, brackets and figures "two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 31, in sub-section (11), in the Explanation, for the words "ninety working", the words "two hundred and ten" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

32. Acts taking place outside India but having an effect on competition in India.- :-

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 ¹"in accordance with the provisions contained in section 19 , section 20 , section 26 , section 29 and section 30 of the Act" into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India ² "and pass such orders as it may deem fit in accordance with the provisions of this Act".

In section 32, in clause (f) after the words "have power to inquire", the words and figures "in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 of the Act" shall be inserted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 32, in clause (f) ,after the words "relevant market in India", occurring at the end, the words "and pass such orders as it may deem fit in accordance with the provisions of this Act" shall be inserted, by the COMPETITION (AMENDMENT) ACT 2007.

33. Power to grant interim relief.- :-

¹ 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.

In Section 33, shall be substituted , old Section is as follows : "33.Power to grant interim relief.-(1) Where during an inquiry before the Commission, it is proved to the satisfaction of the Commission, by affidavit or otherwise, that an act in contravention of sub-section (1) of section 3 or sub- section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, grant a temporary injunction restraining any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary. (2) Where during an inquiry before the Commission it is proved to the satisfaction of the Commission by affidavit or otherwise that import of any goods is likely to contravene of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6, it may, by order, grant a temporary injunction restraining any party from importing such goods until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary and a copy of such order granting temporary injunction shall be sent to the concerned authorities. (3) The provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of CivilProcedure, 1908 (5 of 1908), shall, as far as may be, apply to a temporary injunction issued by the Commission under this Act, as they apply to a temporary injunction issued by a civil court, and any reference in any such rule to a suit shall be construed as a reference to any inquiry before the Commission." by the COMPETITION (AMENDMENT) ACT 2007.

34. Power to award compensation.- :-

¹ [***]

Section 34 shall be omitted , Omitted section is as follows : "34.Power to award compensation.-(1) Without prejudice to any other provisions contained in this Act, any person may make an application to the Commission for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of any contravention of the provisions of Chapter II, having been committed by such enterprise. (2) The Commission may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realised from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprise. (3) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Commission, make an application under that sub- section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order 1 of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon." by the COMPETITION (AMENDMENT) ACT 2007.

35. Appearance before Commission.- :-

A ¹ "person or an enterprise" or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

Explanation.-For the purposes of this section,-

(a)"chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c)"cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d)"legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

In section 35 , for the words "complainant or defendant", the words "person or an enterprise" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

36. Power of Commission to regulate its own procedure.- :-

¹

(1) In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.

(2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

(d) issuing commissions for the examination of witnesses or documents;

(e) requisitioning, subject to the provisions of section 123 of the Indian Evidence Act, 1872 and section 124 of the Indian Evidence Act, 1872(1 of 1872), any public record or document or copy of such record or document from any office.

(3) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry by it.

(4) The Commission may direct any person -

(a) to produce before the Director General or the Secretary or an officer authorised by it, such books or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;

(b) to furnish to the Director General or the Secretary or any other officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person as may be required for the purposes of this Act."

Section 36 shall be substituted, old section are as follows :- "36. Power of Commission to regulate its own procedure.-(1) The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have powers to regulate its own procedure including the places at which they shall have their sittings, duration of oral hearings when granted, and times of its inquiry. (2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:- (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovering and production of documents; (c) receiving evidence on affidavits; (d) issuing commissions for the examination of witnesses or documents; (e) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office; (f) dismissing an application in default or deciding it ex-parte; (g) any other matter which may be prescribed. (3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974). (4) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry or proceeding before it. (5) The Commission may direct any person- (a) to produce before the Director General or the Registrar or an officer authorised by it, such books, accounts or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act; (b) to furnish to the Director General or the Registrar or any officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act. (6) If the Commission is of the opinion that any agreement referred to in section 3 or abuse of dominant position referred to in section 4 or the combination referred to in section 5 has caused or is likely to cause an appreciable adverse effect on competition in the relevant market in India and it is necessary to protect, without further delay, the interest of consumers and other market participants in India, it may conduct an inquiry or adjudicate upon any matter under this Act after giving a reasonable oral hearing to the parties concerned." by the COMPETITION (AMENDMENT) ACT 2007.

37. Review of orders of Commission.- :-

1 [***]

Section 37 shall be omitted, old section are as follows :- "37. Review of orders of Commission.- Any person aggrieved by an order of the Commission from which an appeal is allowed by this Act but no appeal has been preferred, may, within thirty days from the date of the order, apply to the Commission for review of its order and the Commission may make such order thereon as it thinks fit: Provided that the Commission may entertain a review application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from preferring the application in time: Provided further that no order shall be modified or set aside without giving an opportunity of being heard to the person in whose favour the order is given and the Director General where he was a party to the proceedings." by the COMPETITION (AMENDMENT) ACT 2007.

38. Rectification of orders.- :-

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

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

(a) an amendment under sub-section (1) of its own motion;

(b) an amendment for rectifying any such mistake which has been brought to its notice by any party to the order.

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

39. Execution of orders of Commission.- :-

1

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

(2) In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the INCOME TAX ACT, 1961(43 of 1961), it may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.

(3) Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the INCOME TAX ACT, 1961(43 of 1961) and the provisions contained in section 221, section 222, section 223, section 224, section 225, section 226, section 227, section 228A, section 229, section 231 and section 232 of the said Act and the Second Schedule to that Act and any rules made thereunder 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 and to the Commission instead of the Assessing Officer.

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

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

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

Section 39 shall be substituted, old section are as follows :- "39.Execution of orders of Commission.-Every order passed by the Commission under this Act shall be enforced by the Commission in the same manner as if it were a decree or order made by a High Court or the principal civil court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court, as the case may be, within the local limits of whose jurisdiction,- (a) in the case of an order against a person referred to in sub-clause (iii) or sub-clause (vi) or sub-clause (vii) of clause (1) of section 2, the registered office or the sole or principal place of business of the person in India or where the person has also a subordinate office, that subordinate office, is situated; (b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated, and thereupon the court to which the order is so sent shall execute the order as if it were a decree or order sent to it for execution." by the COMPETITION (AMENDMENT) ACT 2007.

40. Appeal.- :-

1 [***]

Section 40 shall be omitted, omitted section are as follows :- "40.Appeal.-Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission to him on one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908): Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days: Provided further that no appeal shall lie against any decision or order of the Commission made with the consent of the parties." by the COMPETITION (AMENDMENT) ACT 2007.

CHAPTER 5 DUTIES OF DIRECTOR GENERAL

41. Director-General to investigate contraventions.- :-

(1) The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made thereunder.

(2) The Director-General shall have all the powers as are conferred upon the Commission under sub-section (2) of section 36 .

(3) Without prejudice to the provisions of sub-section (2), section 240 of the Companies Act, 1956 and section 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.

1 Explanation.-For the purposes of this section,-

(a) \the words "the Central Government" under section 240 of the Companies Act, 1956 (1 of 1956) shall be construed as "the Commission";

(b) \the word "Magistrate" under section 240A of the Companies Act, 1956 (1 of 1956) shall be construed as "the

Chief Metropolitan Magistrate, Delhi"

In section 41, in sub-section (3) ,Explanation shall be inserted, by the COMPETITION (AMENDMENT) ACT 2007.

CHAPTER 6
PENALTIES

42. Contravention of orders of Commission.- :-

1

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

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

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

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

In section 42, shall be substituted, Old section are as follows :- "42.Contravention of orders of Commission.-(1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Commission, or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs. (2) The Commission may, while making an order under this Act, issue such directions to any person or authority, not inconsistent with this Act, as it thinks necessary or desirable, for the proper implementation or execution of the order, and any person who commits breach of, or fails to comply with, any obligation imposed on him under such direction, may be ordered by the Commission to be detained in civil prison for a term not exceeding one year unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs." by the COMPETITION (AMENDMENT) ACT 2007.

43. Penalty for failure to comply with directions of Commission and Director General.- :-

1 If any person fails to comply, without reasonable cause, with a direction given by

(a) the Commission under sub-sections (2) and (4) of section 36 ; or

(b) the Director General while exercising powers referred to in sub-section (2) of section 41 , such person shall be punishable with fine which may extend to rupees one lakh for each day during which such failure continues subject to a maximum of rupees one crore, as may be determined by the Commission.

section 43 shall be substituted, Old section are as follows :- "43.Penalty for failure to comply with directions of Commission and Director General.-If any person fails to comply with a direction given by- (a) the Commission under sub-section (5) of section 36; or (b) the Director general while exercising powers referred to in sub- section (2) of section 41, the Commission shall impose on such person a penalty of rupees one lakh for each day during which such failure continues." by the COMPETITION (AMENDMENT) ACT 2007.

44. Penalty for making false statement or omission to furnish material information.- :-

If any person, being a party to a combination,-

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

(b) omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Commission.

45. Penalty for offences in relation to furnishing of information.- :-

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

(a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or

(b) omits to state any material fact knowing it to be material; or

(c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid, such person shall be punishable with fine which may extend to rupees one crore as may be determined by the Commission.

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

In section 45,for sub-section (1) shall be substituted, Old sub-section are as follows :- " (1)Without prejudice to the provisions of section 44, if any person, who furnishes or is required to furnish under this Act any particulars,

documents or any information,- (a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or (b) omits to state any material fact knowing it to be material; or (c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid, the Commission shall impose on such person a penalty which may extend to rupees ten lakhs." by the COMPETITION (AMENDMENT) ACT 2007.

46. Power to impose lesser penalty.- :-

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, distributors, trader or service provider a lesser penalty as it may deem fit, than leviable under this Act or the rules or the regulations:

¹"Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 has been received before making of such disclosure:"

Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who ²"has" made the full, true and vital disclosures under this section:

³ Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to co-operate with the Commission till the completion of the proceedings before the Commission :

Provided also that the Commission may, if it is satisfied that such producer, seller, distributor, trader or service provider included in the cartel had in the course of proceedings, (a) not complied with the condition on which the lesser penalty was imposed by the Commission; or (b) had given false evidence; or (c) the disclosure made is not vital and thereupon such producer, seller, distributor, trader or service provider may be tried for the offence with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person have been liable, had lesser penalty not been imposed.

In section 46, for the first proviso, shall be substituted, Old proviso are as follows :- "Provided that lesser penalty shall not be imposed by the Commission in cases where proceedings for the violation of any of the provisions of this Act or the rules or the regulations have been instituted or any investigation has been directed to be made under section 26 before making of such disclosure:" by the COMPETITION (AMENDMENT) ACT 2007.

In section 46, in the second proviso, for the word "first", the word "has" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 46, after the second proviso, third proviso shall be inserted, by the COMPETITION (AMENDMENT) ACT 2007.

47. Crediting sums realised by way of penalties to Consolidated Fund of India.- :-

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

48. Contravention by companies.- :-

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

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

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act, or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purposes of this section,-

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

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

CHAPTER 7 COMPETITION ADVOCACY

49. Competition advocacy.- :-

¹(1)The Central Government may, in formulating a policy on competition (including review of laws related to competition) or on any other matter, and a State Government may, in formulating a policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition and on the receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, or the State Government, as the case may be, which may thereafter take further action as it deems fit.

(2) The opinion given by the Commission under sub-section (1) shall not be binding upon the Central Government² or the State Government, as the case may be, "in formulating such policy.

(3) The Commission shall take suitable measures,³ [***] , for the promotion of competition advocacy, creating awareness and imparting training about competition issues.

In section 49, for sub-section (1), shall be substituted, Old sub-section are as follows :- "(1) In formulating a policy on competition (including receive of laws related to competition), the Central Government may make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit." by the COMPETITION (AMENDMENT) ACT 2007.

In section 49, for sub-section (2), after the words "Central Government", the words "or the State Government, as the case may be," shall be inserted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 49, in sub-section (3), the words, "as may be prescribed," shall be omitted, by the COMPETITION (AMENDMENT) ACT 2007.

CHAPTER 8

FINANCE, ACCOUNTS AND AUDIT

50. Grants by Central Government.- :-

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.

51. Constitution of Fund.- :-

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

(a) all Government grants received by the Commission;

¹(b)[***]

(c) the fees received under this Act;

(d) the interest accrued on the amounts referred to in ² "clauses (a) and (c)".

(2) The Fund shall be applied for meeting-

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

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

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

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

In section 51, in sub-section (1), clause (b) shall be omitted , by the COMPETITION (AMENDMENT) ACT 2007.

In section 51, in sub-section (1), in clause (d) words "clauses (a) and (c)" shall be substituted , by the COMPETITION (AMENDMENT) ACT 2007.

52. Accounts and audit.- :-

(1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

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

Explanation.-For the removal of doubts, it is hereby declared that the orders of the Commission, being matters appealable to the ¹ "Appellate Tribunal or the Supreme Court", shall not be subject to audit under this section.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

In section 52, in sub-section (2), in the Explanation, for the words "Supreme Court", the words "Appellate Tribunal or the Supreme Court" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

53. Furnishing of returns, etc., to Central Government. :-

(1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues, as the Central Government may, from time to time, require.

(2) The Commission shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

CHAPTER 9 **MISCELLANEOUS**

54. Power to exempt.- :-

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 enterprise 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 relating to the sovereign functions of the Government, the Central government may grant exemption only in respect of activity relating to the sovereign functions.

55. Power of Central Government to issue directions.- :-

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

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

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

56. Power of Central Government to supersede Commission.- :-

(1) If at any time the Central Government is of the opinion-

(a) that on account of circumstances beyond the control of the Commission, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Commission has persistently made default in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Commission or the administration of the Commission has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification and for reasons to be specified therein, supersede the Commission for such period, not exceeding six months, as may be specified in the notification:

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

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

(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the central government may specify in this behalf;

(c) all properties owned or controlled by the Commission shall, until the Commission is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section

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

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

57. Restriction on disclosure of information.- :-

No information relating to any enterprise, being an information which has been obtained by or on behalf of the ¹ "the Commission or the Appellate Tribunal" for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.

In section 57, for the words "the Commission", the words "the Commission or the Appellate Tribunal" shall be substituted by the COMPETITION (AMENDMENT) ACT 2007.

58. Members, Director General, Registrar, Officers and employees, etc., of Commission to be public servants.- :-

¹ 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.

Section 58 shall be substituted, Old Section are as follows :- "58. Members, Director General, Registrar, Officers and employees, etc., of Commission to be public servants.- The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Registrar and other officers and employees of the Commission shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860)." by the COMPETITION (AMENDMENT) ACT 2007.

59. Protection of action taken in good faith.- :-

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 ¹ "the Secretary or officers or other employees of the Commission or the Chairperson, Members, officers and other employees of the Appellate Tribunal" for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

In section 59, for the words "the Registrar or officers or other employees of the Commission", the words "the Secretary or officers or other employees of the Commission or the Chairperson, Members, officers and other employees of the Appellate Tribunal" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

60. Act to have overriding effect.- :-

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

61. Exclusion of jurisdiction of civil courts.- :-

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the ¹ "Commission or the Appellate Tribunal" is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

In section 61, for the word "Commission", the words "Commission or the Appellate Tribunal" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

62. Application of other laws not barred.- :-

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

63. Power to make rules.- :-

(1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

¹(a) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 9 ;

(b) the form and manner in which and the authority before whom the oath of office and of secrecy shall be made and subscribed to under sub-section (3) of section 10 ;

²(c)[***]

(d) the salary and the other terms and conditions of service including travelling expenses, houses 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 ;

3(da) the number of Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner in which such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees may be appointed under sub-section (1A) of section 16 ;

(e) the salary, allowances and other terms and conditions of service of the Director General, Additional , Joint Deputy or Assistant Directors General or **4**"such officers or other employees" under sub- section (3) of section 16 ;

(f)the qualifications for appointment of the Directors-General, Additional, Joint, Deputy or Assistant Directors-General or **5**"such officers or other employees" under sub-section (4) of section 16 ;

(g)the salaries and allowances and other terms and conditions of service of the **6**"Secretary" and officers and other employees payable, and the number of such officers and employees under sub-section (2) of section 17 ;

7(h)[***]

8(i)[***]

9(j)[***]

(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 ;

10(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;

(mb) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 53E ;

(mc) the salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 53G ;

(md) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 53M ;

(me) the fee which shall be accompanied with every application made under sub-section (2) of section 53N ;

(mf) the other matters under clause (i) of sub-section (2) of

11 (n) the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal shall be dealt with by the Commission or the Appellate Tribunal, as the case may be, under the fourth proviso to sub-section (2) of section 66 .

(o) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

(3) Every notification issued under sub-section (3) of section 20 and section 54 and every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each Houses of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule, or both Houses agrees 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.

In section 63, in sub-section (2), clause (a), shall be substituted, Old clause are as follows :- "(a) the manner in which the Chairperson and other Members shall be selected under section 9;" by the COMPETITION (AMENDMENT) ACT 2007.

In section 63, in sub-section (2), clause (c), shall be omitted, Omitted clause are as follows :- "(c) the financial and administrative powers which may be vested in the Member Administration under section 13;" by the COMPETITION (AMENDMENT) ACT 2007.

In section 63, in sub-section (2), clause (da) inserted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 63, in sub-section (2), in clause (e), for the words "such other advisers, consultants or officers", the words "such officers or other employees" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 63, in sub-section (2), in clause (f), for the words "such other advisers, consultants or officers", the words "such officers or other employees" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 63, in sub-section (2), in clause (g), for the word "Registrar", the word "Secretary" shall be substituted, substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 63, in sub-section (2), in clause (h), shall be omitted, omitted clause is as follows :- "(h)the rules for the purpose of securing any case or matter which requires to be decided by a Bench composed of more than two Members under sub-section (4) of section 23;" by the COMPETITION (AMENDMENT) ACT 2007.

In section 63, in sub-section (2), in clause (i) shall be omitted, Old once are as follows :- "(i) any other matter in respect of which the Commission shall have power under clause (g) of sub-section (2) of section 36;" by the

COMPETITION (AMENDMENT) ACT 2007.

In section 63, in sub-section (2), in clause (j) shall be omitted, omitted clause is as follows :- "(j) the promotion of competition advocacy, creating awareness and imparting training about competition issues under sub-section (3) of section 49;" by the COMPETITION (AMENDMENT) ACT 2007.

In section 63, in sub-section (2), after clause (m), the following clauses shall be inserted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 63, in sub-section (2), clause (n) shall be substituted, old clause is as follows :- "(n) the manner in which the monies transferred to the Central Government report shall be dealt with by that Government under the fourth proviso to sub-section (2) of section 66;" by the COMPETITION (AMENDMENT) ACT 2007.

64. Power to make regulations.- :-

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

(2) In particular, and without prejudice to the generality of the foregoing provisions, such -regulations may provide for all or any of the following matters, namely,-

(a) the cost of production to be determined under clause (b) of the Explanation to section 4;

(b) the form of notice as may be specified and the fee which may be determined under sub-section (2) of section 6;

(c) the form in which details of the acquisition shall be filed under sub- section (5) of section 6;

(d) the fee which may be determined under clause (a) of sub-section (1) of section 19;

(e) any other matter in respect of which provision is to be , or may be, made by regulations.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each Houses 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 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 the regulation.

65. Power to remove difficulties. :-

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government, may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it be necessary for removing the difficulty. Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

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

66. Repeal and saving.- :-

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

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

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

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

(a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or

(c) any penalty, confiscation or punishment incurred in respect of any contravention under the Act so repealed; or

(d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, confiscation or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.

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

Provided that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer and 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:

²Provided further that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Competition Commission of India or the Appellate Tribunal, in such manner as may be specified by the Central Government, with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Competition Commission of India or the Appellate Tribunal, as the case may be, and shall continue to do so unless and until his employment in the Competition Commission of India or the Appellate Tribunal, as the case may be, is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Competition Commission of India or the Appellate Tribunal, as the case may be;

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, ³"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 Director-Generals 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 ⁴"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, ⁵"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."

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

(4) Subject to the provisions of sub-section (3) all cases pertaining to unfair trade practices other than those referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and pending before the Monopolies and Restrictive Trade Practices Commission ⁷"on or before the expiry of two years referred to in the proviso to sub-section(1)", 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 filed under that Act.

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

⁸ (5) All cases pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969(54 of 1969) and pending before the Monopolies and Restrictive Trade Practices Commission shall, after the expiry of two years referred to in the proviso to sub-section (1), stand transferred to the Appellate Tribunal and the Appellate Tribunal shall dispose of such cases as if they were cases filed under that Act.

(6) All investigations or proceedings, other than those relating to unfair trade practices, pending before the Director

General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

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

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

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

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

In section 66, sub-section (1) shall be substituted, old clause is as follows :- "(1)The Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved." by the COMPETITION (AMENDMENT) ACT 2007.

In section 66, in sub-section (2), second proviso shall be substituted, old clause is as follows :- "Provided further that the Director-General of Investigation and Registration Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission, employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government:" by the COMPETITION (AMENDMENT) ACT 2007.

In section 66, sub-section (2), in the third proviso, for the words "the Central Government", the words "the Competition Commission of India or the Appellate Tribunal, as the case may be," shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 66, sub-section (2), in the fourth proviso, for the words "the Central Government shall, out of the monies standing", the words "the Competition Commission of India or the Appellate Tribunal, as the case may be, shall, out of the monies standing" shall be substituted, by the COMPETITION (AMENDMENT) ACT 2007.

In section 66, sub-section (2), in the fourth proviso, for the portion beginning with the words "the Central Government and such monies" and ending with the words "as may be prescribed" the following shall be substituted, namely:- "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"; by the COMPETITION (AMENDMENT) ACT 2007.

In section 66, sub-section (3) shall be substituted, Old sub-section are as follows:- "(3) All cases pertaining to monopolistic trade practices or restrictive trade practices pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act, including such cases, in which any unfair trade practice has also been alleged, shall, on such commencement, stand transferred to the Competition Commission of India and shall be adjudicated by that Commission in accordance with the provisions of the repealed Act as if that Act had not been repealed." by the COMPETITION (AMENDMENT) ACT 2007.

In Section 66 Sub-Section 4, the words shall be substituted, the old are as follows :- "on or before the commencement of the Act shall, on such commencement" shall be substituted by Competition (Amendment) Act, 2007.

In section 66, sub-section (5) shall be substituted, Old sub-section are as follows:- "(5) All case pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India shall dispose of such cases as if they were filed under that Act." by the COMPETITION (AMENDMENT) ACT 2007.