The Competition Act, 2002

Act 12 of 2003. 98 sections. Bare Act with the official footnotes.

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Every section online, with the old and new law side by side and exam questions:
https://www.lawmaker.in/bare-acts/competition-act-2002

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[13th January, 2003.]

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

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

CHAPTER I PRELIMINARY

Section 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[1] 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.

[1] 31st March, 2003, vide Notification No. S.O. 340(E), dated 31st March, 2003 in respect of [s. 1, cls. (d), (g), (j), (k), (l) and (n) of s. 2, ss. 8, 9, 10, 14, 16, 17, sub-sec. (1) of s. 63 and cls. (a), (b), (d), (e), (f) and (g) of sub-sec. (2) of s. 63]; 19th June, 2003, vide Notification no. S.O. 715(E), dated 19th June, 2003 in respect of [s. 2 {except cls. (d), (g), (j), (k), (l) and (n)}, ss. 7, 11, 12, 13, 15, 22, 23, 36, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, s. 63 {except cls. (a), (b), (d), (e), (f), (g) and (n) of sub- sec. (2)}, 64 and 65] 20th May, 2009, vide Notification No. S.O. 1241(E), dated 15th May, 2009 in respect of [s. 3, 4, 18, 19, 21, 26, 27, 28, 32, 33, 35, 38, 39, 41, 42, 43, 45, 46, 47, 48, 54, 55 and 56.] 1st September, 2009, vide Notification No. S.O. 2204(E), dated 28th August 2009 in respect of s. 66. 1st June, 2011, vide Notification No. S.O. 1231(E), dated 30th May 2011 in respect of s. 44.

Section 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 National Company Law Appellate Tribunal referred to in sub-section (1) of section 53A;]

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

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

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

[2][(ea) "commitment" means the commitment referred to in section 48B;]

(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 [3][a person or a department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic 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, but does not include any activity of the Government relatable 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 8 and includes the Chairperson;

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

[4][(ka) "party" includes a consumer or an enterprise or a person or an information provider, or a consumer

association or a trade association, or the Central Government or any State Government or any statutory authority, as the case may be, and shall include an enterprise or a person against whom any inquiry or proceeding is instituted; and any enterprise or person impleaded by the Commission to join the proceedings;]

(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 [5][clause (45) of section 2 of [6][the Companies Act, 2013 (18 of 2013)]];

(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;

[7][(p) "public financial institution" means public financial institution as defined in clause (72) of section 2 of the Companies Act, 2013 (18 of 2013) and includes a State Financial Corporation, State Industrial Corporation or State Investment Corporation;]

(q) "regulations" means the regulations made by the Commission under section 64;

(r) "relevant market" means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;

(s) "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;

[8][(t) "relevant product market" means a market comprising of all those products or services-

(i) which are regarded as inter-changeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use; or

(ii) the production or supply of, which are regarded as inter-changeable or substitutable by the supplier, by reason of the ease of switching production between such products and services and marketing them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices;]

(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;

[9][(ua) "settlement" means the settlement referred to in section 48A;]

(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 [10][the Companies Act, 2013 (18 of 2013)] shall have the same meanings respectively assigned to them in that Act.

[1] Subs. by Act 7 of 2017, s. 171, for clause (ba) (w.e.f. 26-5-2017).
[2] Ins. by Act 9 of 2023, s. 3 (w.e.f. 18-5-2023).
[3] Subs. by Act 9 of 2023, s. 3, for certain words (w.e.f. 18-5-2023).
[4] Ins. by s. 3, ibid. (w.e.f. 18-5-2023).
[5] Subs. by Act 9 of 2023, s. 3, for the words and figures "section 617 of the Companies Act, 1956 (1 of 1956)" (w.e.f. 18-5- 2023).
[6] Subs. by s. 2, ibid., for "the Companies Act, 1956 (1 of 1956)" (w.e.f. 18-5-2023).
[7] Subs. by s. 3, ibid., for clause (p) (w.e.f. 18-5-2023).
[8] Subs. by s. 3, ibid., for clause (t) (w.e.f. 18-5-2023).
[9] Ins. by Act 9 of 2023, s. 3 (w.e.f. 18-5-2023).
[10] Subs. by s. 2, ibid., for "the Companies Act, 1956 (1 of 1956)" (w.e.f. 18-5-2023).

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

Prohibition of agreements

Section 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.

[1][Provided further that an enterprise or association of enterprises or a person or association of persons though not engaged in identical or similar trade shall also be presumed to be part of the agreement under this sub-section if it participates or intends to participate in the furtherance of such agreement.]

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) [2][Any other agreement amongst enterprises or persons including but not restricted to 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 [3][dealing] agreement;

(c) exclusive distribution agreement;

(d) refusal to deal;

(e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an

appreciable adverse effect on competition in India.

[4][Provided that nothing contained in this sub-section shall apply to an agreement entered into between an enterprise and an end consumer.]

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

[5][(a) "tie-in arrangement" includes any agreement requiring a purchaser of goods or services, as a condition of such purchase, to purchase some other distinct goods or services;

(b) "exclusive dealing agreement" includes any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be;]

(c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods [6][or services] or allocate any area or market for the disposal or sale of the goods [6][or services];

(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 [6][or services] are sold or from whom goods [6][or services] are bought;

(e) "resale price maintenance" [7][includes, in case of any agreement to sell goods or provide services, any direct or indirect restriction] that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

(5) Nothing contained in this section shall restrict-

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

(a) the Copyright Act, 1957 (14 of 1957);

(b) the Patents Act, 1970 (39 of 1970);

(c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);

(d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);

(e) the Designs Act, 2000 (16 of 2000);

(f) the Semi-conductor Integrated Circuits Layout-Design Act, 2000 (37 of 2000);

[8][(g) any other law for the time being in force relating to the protection of other intellectual property rights.]

(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.

[1] Ins. by Act 9 of 2023, s. 4 (w.e.f. 18-5-2023).
[2] Subs. by s. 4, ibid., for "Any agreement amongst enterprises or persons" (w.e.f. 18-5-2023).
[3] Subs. by s. 4, for "supply" (w.e.f. 18-5-2023).
[4] Ins. by s. 4, ibid. (w.e.f. 18-5-2023).
[5] Subs. by s. 4, ibid., for clauses (a) and (b) (w.e.f. 18-5-2023).
[6] Ins. by s. 4, ibid. (w.e.f. 18-5-2023).
[7] Subs. by s. 4, ibid., for "includes any agreement to sell goods on condition" (w.e.f. 18-5-2023).
[8] Ins. by Act 9 of 2023, s. 4 (w.e.f. 18-5-2023).

Prohibition of abuse of dominant position

Section 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 service; or

(ii) price in purchase or sale (including predatory price) of goods or service.

Explanation.-For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such [3][condition or price] which may be adopted to meet the competition; or

(b) limits or restricts-

(i) production of goods or provision of services or market therefor; or

(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access [4][in any manner]; or

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

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

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

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

(i) operate independently of competitive forces prevailing in the relevant market; or

(ii) affect its competitors or consumers or the relevant market in its favour;

(b) "predatory price" means the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors;

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

[1] Subs. by Act 39 of 2007, s. 3, for sub-section (1) (w.e.f. 20-5-2009).
[2] Subs. by s. 3, ibid., for "under sub-section (1), if an enterprise" (w.e.f. 20-5-2009).
[3] Subs. by Act 9 of 2023, s. 5, for "discriminatory condition or price" (w.e.f. 18-5-2023).
[4] Ins. by Act 39 of 2007, s. 3 (w.e.f. 20-5-2009).
[5] Ins. by Act 39 of 2007, s. 3 (w.e.f. 20-5-2009).

Section 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 crores in India, or turnover more than six billion US dollars; or, including at least rupees fifteen hundred crores in india; or]

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

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

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

[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

[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]

(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

[5][(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or]

(ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,-

(A) either in India, the assets of the value of more than rupees four-thousand crores or turnover more than rupees twelve thousand crores; or

[6][(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 [7][India; or]]

[8][(d) value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds rupees two thousand crore:

Provided that the enterprise which is being acquired, taken control of, merged or amalgamated has such substantial business operations in India as may be specified by regulations.

(e) notwithstanding anything contained in clause (a) or clause (b) or clause (c), where either the value of assets or turnover of the enterprise being acquired, taken control of, merged or amalgamated in India is not more than such value as may be prescribed, such acquisition, control, merger or amalgamation, shall not constitute a combination under section 5.]

[9][Explanation.-For the purposes of this section,-

(a) "control" means the ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions by-

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

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

(b) "group" means two or more enterprises where one enterprise is directly or indirectly, in a position to-

(i) exercise twenty-six per cent. or such other higher percentage as may be prescribed, of the voting rights in the other enterprise; or

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

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

(c) "turnover" means the turnover certified by the statutory auditor on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (2) or sub-section (4) of section 6 and such turnover in India shall be determined by excluding intra-group sales, indirect taxes, trade discounts and all amounts generated through assets or business from customers outside India, as certified by the statutory auditor on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (2) or sub-section (4) of section 6;

(d) "value of transaction" includes every valuable consideration, whether direct or indirect, or deferred for any acquisition, merger or amalgamation;

(e) 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 combination falls and if such financial statement has not yet become due to be filed with the Registrar under the Companies Act, 2013 (18 of 2013) then as per the statutory auditor's report made on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (2) or sub-section (4) of section 6, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other

commercial rights under the laws provided in sub-section (5) of section 3;

(f) where a portion of an enterprise or division or business is being acquired, taken control of, merged or amalgamated with another enterprise, the value of assets or turnover or value of transaction as may be applicable, of the said portion or division or business or attributable to it, shall be the relevant assets or turnover or relevant value of transaction for the purpose of applicability of the thresholds under section 5.]

[1] Subs. by s. 4, ibid., for Item (B) (w.e.f. 1-6-2011).
[2] Subs. by s. 4, ibid., for Item (B) (w.e.f. 1-6-2011).
[3] Subs. by s. 4, ibid., for Item (B) (w.e.f. 1-6-2011).
[4] Subs. by s. 4, ibid., for Item (B) (w.e.f. 1-6-2011).
[5] Subs. by Act 39 of 2007, s. 4, for Item (B) (w.e.f. 1-6-2011).
[6] Subs. by s. 4, ibid., for Item (B) (w.e.f. 1-6-2011).
[7] Subs. by Act 9 of 2023, s. 6, for "India." (w.e.f. 10-9-2024).
[8] Ins. by s. 6, ibid. (w.e.f. 10-9-2024).
[9] Subs. by s. 6, ibid., for the Explanation (w.e.f. 10-9-2024).

Section 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] 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, [2][after any of the following, but before consummation of the combination]-

(a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) [3][and clause (d)] 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) [3][and clause (d)] of section 5 or acquiring of control referred to in clause (b) of that section.

[3][Explanation.-For the purposes of this sub-section, "other document" means any document, by whatever name called, conveying an agreement or decision to acquire control, shares, voting rights or assets or if the acquisition is without the consent of the enterprise being acquired, any document executed by the acquiring enterprise, by whatever name called, conveying a decision to acquire control, shares or voting rights or where a public announcement has been made in accordance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992) for acquisition of shares, voting rights or control such public document.]

[4][(2A) No combination shall come into effect until [5][one hundred and fifty 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 [6][sections 29, 29A, 30 and 31.]

[7][(4) Notwithstanding anything contained in sub-sections (2A) and (3) and section 43A, if a combination fulfils such criteria as may be prescribed and is not otherwise exempted under this Act from the requirement to give notice to the Commission under sub-section (2), then notice for such combination may be given to the Commission in such form and on payment of such fee as may be specified by regulations, disclosing the details of the proposed combination and thereupon a separate notice under sub-section (2) shall not be required to be given for such combination.

(5) Upon filing of a notice under sub-section (4) and acknowledgement thereof by the Commission, the proposed combination shall be deemed to have been approved by the Commission under sub-section (1) of section 31 and no other approval shall be required under sub-section (2) or sub-section (2A).

(6) If within the period referred to in sub-section (1) of section 20, the Commission finds that the combination notified under sub-section (4) does not fulfil the requirements specified under that sub-section or the information or declarations provided are materially incorrect or incomplete, the approval under sub-section (5) shall be void ab initio and the Commission may pass such order as it may deem fit:

Provided that no such order shall be passed unless the parties to the combination have been given an opportunity of being heard.

(7) Notwithstanding anything contained in this section and section 43A, upon fulfilment of such criteria as may be prescribed, certain categories of combinations shall be exempted from the requirement to comply with sub-sections

(2), (2A) and (4).

(8) Notwithstanding anything contained in sub-sections (4), (5), (6) and (7)-

(i) the rules and regulations made under this Act on the matters referred to in these sub-sections as they stood immediately before the commencement of the Competition (Amendment) Act, 2023 and in force at such commencement, shall continue to be in force, till such time as the rules or regulations, as the case may be, made under this Act; and

(ii) any order passed or any fee imposed or combination consummated or resolution passed or direction given or instrument executed or issued or thing done under or in pursuance of any rules and regulations made under this Act shall, if in force at the commencement of the Competition (Amendment) Act, 2023, continue to be in force, and shall have effect as if such order passed or such fee imposed or such combination consummated or such resolution passed or such direction given or such instrument executed or issued or done under or in pursuance of this Act.

(9) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign portfolio investor, bank or Category I alternative investment fund, pursuant to any covenant of a loan agreement or investment agreement.

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

(a) "Category I alternative investment fund" has the same meaning as assigned to it under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(b) "foreign portfolio investor" has the same meaning as assigned to it under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 made under the Securities and Exchange Board of India Act,1992 (15 of 1992).]

[1] Subs. by Act 39 of 2007, s. 5, for "may, at his or its option," (w.e.f. 1-6-2011).
[2] Subs. by Act 9 of 2023, s. 7, for "within thirty days of" (w.e.f. 10-9-2024).
[3] Ins. by s. 7, ibid. (w.e.f. 10-9-2024).
[4] Ins. by Act 39 of 2007, s. 5 (w.e.f. 1-6-2011).
[5] Subs. by Act 9 of 2023, s. 7, for "two hundred and ten days" (w.e.f. 10-9-2024).
[6] Subs. by Act 9 of 2023, s. 7, for "sections 29, 30 and 31" (w.e.f. 10-9-2024).
[7] Subs. by s. 7, ibid., for sub-sections (4) and (5) and the Explanation (w.e.f. 10-9-2024)

Section 6A. Open offers, etc

[1][Nothing contained in sub-section (2A) of section 6 and section 43A shall prevent the implementation of an open offer or an acquisition of shares or securities convertible into other securities from various sellers, through a series of transactions on a regulated stock exchange from coming into effect, if-

(a) the notice of the acquisition is filed with the Commission within such time and in such manner as may be specified by regulations; and

(b) the acquirer does not exercise any ownership or beneficial rights or interest in such shares or convertible securities including voting rights and receipt of dividends or any other distributions, except as may be specified by regulations, till the Commission approves such acquisition in accordance with the provisions of sub-section (2A) of section 6 of the Act.

Explanation.-For the purposes of this section, "open offer" means an open offer made in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992).]

[1] Ins. by s. 8, ibid. (w.e.f. 10-9-2024).

CHAPTER III COMPETITION COMMISSION OF INDIA

Section 7. Establishment of Commission

(1) With effect from such date[1] 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.

[1] 14th October, 2003, vide Notification No. S.O. 1198(E), dated 14th October, 2003.

Section 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 [2][technology,] 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.]

[1] Subs. by Act 39 of 2007, s. 6, for section 8 (w.e.f. 12-10-2007).

[2] Ins. by Act 9 of 2023, s. 9 (w.e.f. 18-5-2023).

Section 9. Selection Committee for Chairperson and Members of Commission

[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, [2][technology,] 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.]

[1] Subs. by Act 39 of 2007, s. 7, for section 9 (w.e.f. 12-10-2007).

[2] Ins. by Act 9 of 2023, s. 10 (w.e.f. 18-5-2023).

Section 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 re-appointment:

[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 sections 8 and 9.

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

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

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

[1] Subs. by Act 39 of 2007, s. 8, for the proviso (w.e.f. 12-10-2007).

Section 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 affect prejudicially his functions as a Member; or

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

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

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

Section 12. Restriction on employment of Chairperson and other Members

[1][(1) The Chairperson and other Members shall, for a period of two years from the date on which they cease to hold office, not accept any employment in or advise as a consultant, retainer or in any other capacity whatsoever, or be connected with the management or administration of-

(a) any enterprise which is or has been a party to a proceeding before the Commission under this Act; or

(b) any person who appears or has appeared before the Commission under section 35.

(2) Notwithstanding anything contained in section 35, the Chairperson or any other Member after retirement or otherwise ceasing to be in service for any reason shall not represent for any person or enterprise before the Commission:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).]

[1] Subs. by Act 9 of 2023, s. 11, for section 12 (w.e.f. 18-5-2023).

Section 13. Administrative powers of Chairperson

[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.]

[1] Subs. by Act 39 of 2007, s. 10, for section 13 (w.e.f. 20-5-2009).

Section 14. Salary and allowances and other terms and conditions of service 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, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be prescribed.

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

Section 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.

Section 16. Appointment of Director General, etc

[1][(1) The [2][Commission may, with the prior approval of the Central Government], 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 [3][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 [4][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 [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.

[1] Subs. by s. 11, ibid., for sub-section (1) (w.e.f. 12-10-2007).
[2] Subs. by Act 9 of 2023, s. 12, for "Central Government may, by notification" (w.e.f. 18-7-2023).
[3] Subs. by Act 39 of 2007, s. 11, for "such other advisers, consultants and officers," (w.e.f. 12-10-2007).
[4] Subs. by s. 11, ibid., for "such other advisers, consultants or officers," (w.e.f. 12-10-2007).

Section 17. Appointment of Secretary, experts, professionals and officers and other employees of Commission

[1][(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.]

[1] Subs. by Act 39 of 2007, s. 12, for section 17 (w.e.f. 12-10-2007).

CHAPTER IV DUTIES, POWERS AND FUNCTIONS OF COMMISSION

Section 18. Duties and functions of Commission

[1][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:

Provided further 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 any statutory authority or department of Government.]

[1] Subs. by Act 9 of 2023, s. 13, for section 18 (w.e.f. 18-5-2023).

Section 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][Provided that the Commission shall not entertain an information or a reference unless it is filed within three years from the date on which the cause of action has arisen:

Provided further that an information or a reference may be entertained after the period specified in the first proviso if the Commission is satisfied that there had been sufficient cause for not filing the information or the reference within such period after recording its reasons for condoning such delay.]

(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 [3]***;

(d) [4][benefits or harm] to consumers;

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

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

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

(a) market share of the enterprise;

(b) size and resources of the enterprise;

(c) size and importance of the competitors;

(d) economic power of the enterprise including commercial advantages over competitors;

(e) vertical integration of the enterprises or sale or service network of such enterprises;

(f) dependence of consumers on the enterprise;

(g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;

(h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;

(i) countervailing buying power;

(j) market structure and size of market;

(k) social obligations and social costs;

(l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;

(m) any other factor which the Commission may consider relevant for the inquiry.

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

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

(a) regulatory trade barriers;

(b) local specification requirements;

(c) national procurement policies;

(d) adequate distribution facilities;

(e) transport costs;

(f) language;

(g) consumer preferences;

(h) need for secure or regular supplies or rapid after-sales services.

[5][(i) characteristics of goods or nature of services;

(j) costs associated with switching supply or demand to other areas.]

(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 [5][or the nature of services];

(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.

[5][(g) costs associated with switching demand or supply to other goods or services;

(h) categories of customers.]

[1] Subs. by Act 39 of 2007, s. 13, for "receipt of a complaint" (w.e.f. 20-5-2009).

[2] Ins. by Act 9 of 2023, s. 14 (w.e.f. 18-5-2023).

[3] The words "by hindering entry into the market" omitted by Act 9 of 2023, s. 14 (w.e.f. 18-5-2023).

[4] Subs. by s. 14, ibid. for "accrual of benefits" (w.e.f. 18-5-2023).

[5] Ins. by Act 9 of 2023, s. 14 (w.e.f. 18-5-2023).

Section 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 to in [1][clause (c) of section 5 or acquisition of any control, shares, voting right or assets of an enterprise, merger or amalgamation referred to in clause (d) 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 6 [2]***, inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.

(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, [3][enhance or reduce by notification, or keep at the same level, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, or such factors that in its opinion are relevant in this matter, the value of assets or the value of turnover or value of transaction], for the purposes of that section.

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

(a) actual and potential level of competition through imports in the market;

(b) extent of barriers to entry into the market;

(c) level of [4][concentration] 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.

[1] Subs. by s. 15, ibid., for "clause (c) of that section" (w.e.f. 18-5-2023).

[2] The words, brackets and figures in brackets "or upon receipt of a reference under sub-section (1) of section 21" omitted by Act 39 of 2007, s. 14 (w.e.f. 1-6-2011).

[3] Subs. by Act 9 of 2023, s. 15, for certain words (w.e.f. 18-5-2023).

[4] Subs. by s. 15, ibid., for "combination" (w.e.f. 18-5-2023).

Section 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 a reference to the Commission on any issue that involves any provision of this Act or is related to promoting the objectives of this Act, as the case may be.]

[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.]

[1] Subs. by Act 9 of 2023, s. 16, for the proviso (w.e.f. 18-5-2023).
[2] Subs. by Act 39 of 2007, s. 15, for sub-section (2) (w.e.f. 20-5-2009).

Section 21A. Reference by Commission

[1][(1) Where in the course of a proceeding before the Commission an issue is raised by any party that any decision which, the Commission has taken during such proceeding or proposes to take, is or would be contrary to any provision of [2][an Act] whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority:

[3][Provided that the Commission, may, suo motu, make a reference to a statutory authority on any issue that involves provisions of an Act whose implementation is entrusted to that statutory authority.]

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

[1] Ins. by s. 16, ibid. (w.e.f. 20-5-2009).
[2] Subs. by Act 9 of 2023, s. 17, for "this Act" (w.e.f. 18-5-2023).
[3] Subs. by s. 17, ibid., for the proviso (w.e.f. 18-5-2023).

Section 22. Meetings of Commission

[1][(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, [2]***:

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

[1] Subs. by Act 39 of 2007, s. 17, for section 22 (w.e.f. 12-10-2007).
[2] The words "and in the event of equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote" omitted by Act 9 of 2023, s. 18 (w.e.f. 18-5-2023).

Section 23. Distribution of business of Commission amongst Benches

[Distribution of business of Commission amongst Benches.] Omitted by the Competition (Amendment) Act, 2007 (39 of 2007), s. 18 (w.e.f. 12-10-2007)].

Section 24. Procedure for deciding a case where Members of a Bench differ

[Procedure for deciding a case where Members of a Bench differ.] Omitted by s. 18, ibid. (w.e.f. 12-10-2007)].

Section 25. Jurisdiction of Bench

[Jurisdiction of Bench.] Omitted by s. 18, ibid. (w.e.f. 12-10-2007)].

Section 26. Procedure for inquiry under section 19

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

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

(2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

[2][(2A) The Commission may not inquire into agreement referred to in section 3 or conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information received under section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order.]

(3) The Director General shall, on receipt of direction under sub-section (1), submit a report on his findings within such period as may be specified by the Commission.

[2][(3A) If, after consideration of the report of the Director General referred to in sub-section (3), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter.

(3B) The Director General shall, on receipt of direction under sub-section (3A), investigate the matter and submit a supplementary report on his findings within such period as may be specified by the Commission.]

(4) The Commission may forward a copy of the report referred to in [3][sub-sections (3) and (3B)] to the parties concerned:

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

(5) If the report of the Director General referred to in [3][sub-sections (3) and (3B)] recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

(6) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

(7) If, after consideration of the objections or suggestions referred to in sub-section (5), if any, the Commission is of the opinion that further investigation is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

(8) If the report of the Director General referred to in [4][sub-sections (3) and (3B)] 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.]

[5][(9) Upon completion of the investigation or inquiry under sub-section (7) or sub-section (8), as the case may be, the Commission may pass an order closing the matter or pass an order under section 27, and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be:

Provided that before passing such order, the Commission shall issue a show-cause notice indicating the contraventions alleged to have been committed and such other details as may be specified by regulations and give a reasonable opportunity of being heard to the parties concerned.]

[1] Subs. by Act 39 of 2007, s. 19, for section 26 (w.e.f. 20-5-2009).
[2] Ins. by Act 9 of 2023, s. 19 (w.e.f. 18-5-2023).
[3] Subs. by s. 19, ibid., for "sub-section (3)" (w.e.f. 18-5-2023).
[4] Subs. by Act 9 of 2023, s. 19, for "sub-section (3)" (w.e.f. 18-5-2023).
[5] Ins. by s. 19, ibid. (w.e.f. 19-9-2024).

Section 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;

[1][(b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover or income, as the case may be, for the last three preceding financial years, upon each of such person or enterprise which is a party to such agreement or has abused its dominant position:

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

Explanation 1.-For the purposes of this clause, the expression "turnover" or "income", as the case may be, shall be determined in such manner as may be specified by regulations.

Explanation 2.-For the purposes of this clause, "turnover" means global turnover derived from all the products and services by a person or an enterprise.]

[2]* * * * *

(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]* * * * *

(g) pass such other [4][order 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.]

[1] Subs. by s. 20, ibid., for clause (b) (w.e.f. 6-3-2024).
[2] Clause (c) omitted by Act 39 of 2007, s. 20, (w.e.f. 20-5-2009).
[3] Clause (f) omitted by s. 20, ibid. (w.e.f. 20-5-2009).
[4] Subs. by s. 20, ibid., for "order" (w.e.f. 20-5-2009).
[5] Ins. by s. 20, ibid. (w.e.f. 20-5-2009).

Section 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]* * * * *

(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.

[1] Subs. by Act 39 of 2007, s. 21, for "Central Government, on recommendation under clause (f) of section 27" (w.e.f. 20-5-2009).
[2] Clause (d) omitted by s. 21, ibid. (w.e.f. 20-5-2009).

Section 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 [2][within fifteen days] of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

[1][(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.]

[3][(1B) The Commission shall, within thirty days of receipt of notice under sub-section (2) of section 6, form its prima facie opinion referred to in sub-section (1).]

(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, [4][within seven days] from the date of receipt of the response of the parties to the combination, [1][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 [5][within seven 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 [6][within ten days] from the date on which the details of the combination were published under sub-section (2).

(4) The Commission may, [7][within seven 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) [8][within ten days] from the expiry of the period specified in sub-section (4).

[9][(6) After receipt of all information, the Commission shall proceed to deal with the case in accordance with the provisions contained in section 29A or section 31, as the case may be.

(7) Notwithstanding anything contained in this section, the Commission may accept appropriate modifications offered by the parties to the combination or suo motu propose modifications, as the case may be, before forming a prima facie opinion under sub-section (1).]

[1] Ins. by s. 22, ibid. (w.e.f. 20-5-2009).
[2] Subs. by Act 9 of 2023, s. 21, for "within thirty days" (w.e.f. 10-9-2024).
[3] Ins. by s. 21, ibid. (w.e.f. 10-9-2024).
[4] Subs. by s. 21, ibid., for "within seven working days" (w.e.f. 10-9-2024).
[5] Subs. by s. 21, ibid., for "within ten working days" (w.e.f. 10-9-2024).
[6] Subs. by Act 9 of 2023, s. 21, for "within fifteen working days" (w.e.f. 10-9-2024).
[7] Subs. by s. 21, ibid., for "within fifteen working days" (w.e.f. 10-9-2024).
[8] Subs. by s. 21, ibid., for "within fifteen days" (w.e.f. 10-9-2024).
[9] Subs. by s. 21, ibid., for sub-section (6) (w.e.f. 10-9-2024).

Section 29A. Issue of statement of objections by Commission and proposal of modifications

[1][(1) Upon completion of the process under section 29, where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall issue a statement of objections to the parties identifying such appreciable adverse effect on competition and direct the parties to explain within twenty-five days of receipt of the statement of objections, why such combination should be allowed to take effect.

(2) Where the parties to the combination consider that such appreciable adverse effect on competition can be eliminated by suitable modification to such combination, they may submit an offer of appropriate modification to the combination along with their explanation to the statement of objections issued under sub-section (1) in such manner as may be specified by regulations.

(3) If the Commission does not accept the modification submitted by the parties under sub-section (2) it shall, within seven days from the date of receipt of the proposed modifications under that sub-section, communicate to the parties as to why the modification is not sufficient to eliminate the appreciable adverse effect on competition and call upon the parties to furnish, within twelve days of the receipt of the said communication, revised modification, if any, to eliminate the appreciable adverse effects on competition:

Provided that the Commission shall evaluate such proposal for modification within twelve days from receipt of such proposal:

Provided further that the Commission may suo motu propose appropriate modifications to the combination which may be considered by the parties to the combination.]

[1] Ins. by s. 22, ibid., (w.e.f. 10-9-2024).

Section 30. Procedure in case of notice 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.]

[1] Subs. by Act 39 of 2007, s. 23, for section 30 (w.e.f. 1-6-2011).

Section 31. Orders of Commission on [1]*** 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 [2]*** in respect of which a notice has been given under sub-section (2) of section 6.

[3][Provided that if the Commission does not form a prima facie opinion as provided under sub-section (1B) of section 29, the combination shall be deemed to have been approved and no separate order shall be required to be passed.]

(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.

[4][(3) Where the Commission is of the opinion that any appreciable adverse effect on competition that the combination has, or is likely to have, can be eliminated by modification proposed by the parties or the Commission, as the case may be, under sub-section (7) of section 29 or sub-section (2) or sub-section (3) of section 29A, it may approve the combination subject to such modifications as it thinks fit.

(4) Where a combination is approved by the Commission under sub-section (3), the parties to the combination shall carry out such modification within such period as may be specified by the Commission.

(5) Where-

(a) the Commission has directed under sub-section (2) that the combination shall not take effect; or

(b) the parties to the combination, fail to carry out the modification within such period as may be specified by the Commission under sub-section (4); or

(c) the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition which cannot be eliminated by suitable modification to such combination,

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 such combination shall not be given effect to, or be declared void, or frame a scheme to be implemented by the parties to address the appreciable adverse effect on competition, as the case may be.

(6) If no order is passed or direction issued by the Commission in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), as the case may be, within a period of one hundred and fifty days from the date of notice given to the Commission under sub-section (2) of section 6, the combination shall be deemed to have been approved by the Commission.]

[5]* * * * *

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

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

[1] The word "certain" omitted by Act 9 of 2023, s. 23 (w.e.f. 10-9-2024).
[2] The words "including the combination" omitted by s. 23, ibid., (w.e.f. 10-9-2024).
[3] Ins. by Act 9 of 2023, s. 23, (w.e.f. 10-9-2024).
[4] Subs. by s. 23, ibid., for sub-sections (3), (4), (5) and (6) (w.e.f. 10-9-2024).
[5] Sub-sections (7), (8), (9), (10), (11) and (12) omitted by s. 23, ibid., (w.e.f. 10-9-2024).

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

[1] Ins. by Act 39 of 2007, s. 25, (w.e.f. 20-5-2009).

[2] Subs. by Act 9 of 2023, s. 24, for "29 and 30" (w.e.f. 10-9-2024).

Section 33. Power to issue interim orders

[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.]

[1] Subs. by s. 26, ibid., for section 33 (w.e.f. 20-5-2009).

Section 34. Power to award compensation

[Power to award compensation.] Omitted by the Competition (Amendment) Act, 2007 (39 of 2007), s. 27 (w.e.f. 12-10-2007).

Section 35. Appearance before Commission

[1][1] [2][A party] 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.

[3][(2) Without prejudice to sub-section (1), a party may call upon experts from the fields of economics, commerce, international trade or from any other discipline to provide an expert opinion in connection with any matter related to a case.]

[1] Section 35 shall be numbered as sub-section (1) thereof by Act 9 of 2023, s. 25 (w.e.f. 18-5-2023).

[2] Subs. by s. 25, ibid., for "A person or an enterprise" (w.e.f. 18-5-2023).

[3] Ins. by s. 25, ibid. (w.e.f. 18-5-2023).

Section 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 sections 123 and 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.]

[1] Subs. by Act 39 of 2007, s. 29, for section 36 (w.e.f. 12-10-2007).

Section 37. Review of orders of Commission

[Review of orders of Commission.] Omitted by the Competition (Amendment) Act, 2007 (39 of 2007), s. 30 (w.e.f. 12-10-2007).

Section 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.

Section 39. Execution of orders of Commission imposing monetary penalty

[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 sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made there under shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income- tax and sums imposed by way of penalty, fine and interest under the Income-tax Act, 1961 and to the Commission instead of the Assessing Officer.

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

Explanation 2.-The Tax Recovery Commissioner and the Tax Recovery Officer referred to in the Income-tax Act, 1961 (43 of 1961) shall be deemed to be the Tax Recovery Commissioner and the Tax Recovery Officer for the purposes of recovery of sums imposed by way of penalty under this Act and reference made by the Commission under

sub-section (2) would amount to drawing of a certificate by the Tax Recovery Officer as far as demand relating to penalty under this Act.

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

[1] Subs. by Act 39 of 2007, s. 31, for section 39 (w.e.f. 20-5-2009).

Section 40. Appeal

[Appeal.] -Omitted by the Competition (Amendment) Act, 2007 (39 of 2007), s. 32 (w.e.f. 12-10-2007)

CHAPTER V DUTIES OF DIRECTOR GENERAL

Section 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.

[1][(3) Without prejudice to sub-section (2), it shall be the duty of all officers, other employees and agents of a party which are under investigation-

(a) to preserve and to produce all information, books, papers, other documents and records of, or relating to, the party which are in their custody or power to the Director General or any person authorised by it in this behalf; and

(b) to give all assistance in connection with the investigation to the Director General.

(4) The Director General may require any person other than a party referred to in sub-section (3) to furnish such information or produce such books, papers, other documents or records before it or any person authorised by it in this behalf if furnishing of such information or the production of such books, papers, other documents or records is relevant or necessary for the purposes of its investigation.

(5) The Director General may keep in his custody any information, books, papers, other documents or records produced under sub-section (3) or sub-section (4) for a period of one hundred and eighty days and thereafter shall return the same to the person by whom or on whose behalf the information, books, papers, other documents or records were produced:

Provided that the information, books, papers, other documents or records may be called for by the Director General if they are needed again for a further period of one hundred and eighty days by an order in writing:

Provided further that the certified copies of the information, books, papers, other documents or records, as may be applicable, produced before the Director General may be provided to the party or person on whose behalf the information, books, papers, other documents or records are produced at their own cost.

(6) The Director General may examine on oath-

(a) any of the officers and other employees and agents of the party being investigated; and

(b) with the previous approval of the Commission, any other person,

in relation to the affairs of the party being investigated and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

(7) The examination under sub-section (6) shall be recorded in writing and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against it.

(8) Where in the course of investigation, the Director General has reasonable grounds to believe that information, books, papers, other documents or records of, or relating to, any party or person, may be destroyed, mutilated, altered, falsified or secreted, the Director General may make an application to the Chief Metropolitan Magistrate, Delhi for an order for seizure of such information, books, papers, other documents or records.

(9) The Director General may make requisition of the services of any police officer or any officer of the Central Government to assist him for all or any of the purposes specified in sub-section (10) and it shall be the duty of every such officer to comply with such requisition.

(10) The Chief Metropolitan Magistrate, Delhi may, after considering the application and hearing from the Director General, by order, authorise the Director General-

(a) to enter, with such assistance, as may be required, the place or places where such information, books, papers, other documents or records are kept;

(b) to search that place or places in the manner specified in the order; and

(c) to seize information, books, papers, other documents or records as it considers necessary for the purpose of the investigation:

Provided that certified copies of the seized information, books, papers, other documents or records, as the case may be, may be provided to the party or person from whose place or places such documents have been seized at its cost.

(11) The Director General shall keep in his custody such information, books, papers, other documents or records seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the party or person from whose custody or power they were seized and inform the Chief Metropolitan Magistrate, of such return:

Provided that the Director General may, before returning such information, books, papers, other documents or records take copies of, or extracts thereof or place identification marks on them or any part thereof.

(12) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search or seizure made under that Code.]

[2][Explanation.-For the purposes of this section,-

(a) "agent", in relation to any person, means any one acting or purporting to act for or on behalf of such person, and includes the bankers, and persons employed as auditors and legal advisors, by such person;

(b) "officers", in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate;

(c) any reference to officers and other employees or agents shall be construed as a reference to past as well as present officers and other employees or agents, as the case may be.]

[1] Subs. by Act 9 of 2023, s. 26, for sub-section (3) (w.e.f. 18-5-2023).

[2] Subs. by Act 9 of 2023, s. 26, for Explanation (w.e.f. 18-5-2023).

CHAPTER VI PENALTIES

Section 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 clause, fails to comply with the orders or directions of the Commission issued under [2][sections 6, 27, 28, 31, 32, 33, 42A, 43, 43A, 44 and 45 of the Act, he shall be liable to a penalty] 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 [3][pay the penalty 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.]

[1] Subs. by Act 39 of 2007, s. 34, for section 42 (w.e.f. 20-5-2009).

[2] Subs. by Act 9 of 2023, s. 27, for "sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine" (w.e.f. 18-5-2023).

[3] Subs. by s. 27, ibid., for "pay the fine imposed under sub-section (2)" (w.e.f. 18-5-2023).

Section 42A. Compensation in case of contravention of orders of Commission

[1][Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission issued [2][under sections 6, 27], 28, 31, 32 and 33 or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or delaying in carrying out such orders or directions of the Commission.]

[1] Ins. by Act 39 of 2007, s. 35 (w.e.f. 20-5-2009).

[2] Subs. by Act 9 of 2023, s. 28, for "under sections 27" (w.e.f. 10-9-2024).

Section 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 [2][shall be liable to a penalty] 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.]

[1] Subs. by Act 39 of 2007, s. 36, ibid., for section 43 (w.e.f. 20-5-2009).
[2] Subs. by Act 9 of 2023, s. 29, for "shall be punishable with fine" (w.e.f. 18-5-2023).

Section 43A. Power to impose penalty for non-furnishing of information on combination

[1][If any person or enterprise fails to give notice to the Commission under sub-section (2) or sub-section (4) of section 6 or contravenes sub-section (2A) of section 6 or submit information pursuant to an inquiry under sub-section (1) of section 20, the Commission may impose on such person or enterprise, a penalty which may extend to one per cent., of the total turnover or assets or the value of transaction referred to in clause (d) of section 5, whichever is higher, of such a combination:

Provided that in case any person or enterprise has given a notice under sub-section (4) of section 6 and such notice is found to be void ab initio under sub-section (6) of section 6, then a notice under sub-section (2) of section 6 may be given by the acquirer or parties to the combination, as may be applicable, within a period of thirty days of the order of the Commission under sub-section (6) of that section and no action under this section shall be taken by the Commission till the expiry of such period of thirty days.]

[1] Subs. by s. 30, ibid., for section 43A (w.e.f. 10-9-2024).

Section 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 [1][rupees five crore], as may be determined by the Commission.

[1] Subs. by s. 31, ibid., for "rupees one crore" (w.e.f. 18-5-2023).

Section 45. Penalty for [1][contraventions] in relation to furnishing of information

[2][(1) Without prejudice to the provisions of [3][sub-section (6) of section 6 and] 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 [4][liable to a penalty] 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.

[1] Subs. by s. 32, ibid., for "offences" (w.e.f. 18-5-2023).
[2] Subs. by Act 39 of 2007, s. 38, for sub-section (1) (w.e.f. 20-5-2009).
[3] Ins. by Act 9 of 2023, s. 32 (w.e.f. 18-5-2023).
[4] Subs. by Act 9 of 2023, s. 32, for "punishable with fine" (w.e.f. 18-5-2023).

Section 46. Power to impose lesser penalty

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

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 has made the full, true and vital disclosures under this section:

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 contravention with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.

(2) The Commission may allow a producer, seller, distributor, trader or service provider included in the cartel, to withdraw its application for lesser penalty under this section, in such manner and within such time as may be specified by regulations.

(3) Notwithstanding anything contained in sub-section (2), the Director General and the Commission shall be entitled to use for the purposes of this Act, any evidence submitted by a producer, seller, distributor, trader or service provider in its application for lesser penalty, except its admission

(4) Where during the course of the investigation, a producer, seller, distributor, trader or service provider who has disclosed a cartel under sub-section (1), makes a full, true and vital disclosure under sub-section (1) with respect to another cartel in which it is alleged to have violated section 3, which enables the Commission to form a prima facie opinion under sub-section (1) of section 26 that there exists another cartel, then the Commission may impose upon such producer, seller, distributor, trader or service provider a lesser penalty as may be specified by regulations, in respect of the cartel already being investigated, without prejudice to the producer, seller, distributor, trader or service provider obtaining lesser penalty under sub-section (1) regarding the newly disclosed cartel.]

[1] Subs. by s. 33, ibid, for section 46 (w.e.f. 20-2-2024).

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

All sums realised by way of penalties [1][and recovery of legal costs by the Commission] under this Act shall be credited to the Consolidated Fund of India.

[1] Ins. by s. 34, ibid., (w.e.f. 10-9-2024).

Section 48. Contravention by companies

[1][(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 in contravention of this Act and unless otherwise provided in this Act, the Commission may impose such penalty on such persons, as it may deem fit which shall not be more than ten per cent. of the average of the income for the last three preceding financial years:

Provided that in case any agreement referred to in sub-section (3) of section 3 has been entered into by a cartel, the Commission may unless otherwise provided in this Act, impose upon such persons referred to in sub-section (1), a penalty of up to ten per cent. of the income for each year of the continuance of such agreement.

(2) Nothing contained in sub-section (1) shall render any such person liable to any penalty 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.

(3) 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 officers of the company, such director, manager, secretary or other officers shall also be deemed to be in contravention of the provisions of this Act and unless otherwise provided in this Act, the Commission may impose such penalty on such persons, as it may deem fit which shall not be more than ten per cent. of the average of the income for the last three preceding financial years:

Provided that in case any agreement referred to in sub-section (3) of section 3 has been entered into by a cartel, the

Commission may, unless otherwise provided under this Act, impose upon such person a penalty as it may deem fit which shall not exceed ten per cent. of the income for each year of the continuance of such agreement.

Explanation.-For the purposes of this section,-

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

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

(c) "income", in relation to a person, shall be determined in such manner as may be specified by regulations.

[1] Subs. by Act 9 of 2023, s. 35, for section 48 (w.e.f. 6-3-2024).

Section 48A. Settlement

(1) Any enterprise, against whom any inquiry has been initiated under sub-section (1) of section 26 for contravention of sub-section (4) of section 3 or section 4, may, for settlement of the proceeding initiated for the alleged contraventions, submit an application in writing to the Commission in such form and upon payment of such fee as may be specified by regulations.

(2) An application under sub-section (1) may be submitted at any time after the receipt of the report of the Director General under sub-section (4) of section 26 but prior to such time before the passing of an order under section 27 or section 28 as may be specified by regulations.

(3) The Commission may, after taking into consideration the nature, gravity and impact of the contraventions, agree to the proposal for settlement, on payment of such amount by the applicant or on such other terms and manner of implementation of settlement and monitoring as may be specified by regulations.

(4) While considering the proposal for settlement, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.

(5) If the Commission is of the opinion that the settlement offered under sub-section (1) is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the settlement within such time as may be specified by regulations, it shall, by order, reject the settlement application and proceed with its inquiry under section 26.

(6) The procedure for conducting the settlement proceedings under this section shall be such as may be specified by regulations.

(7) No appeal shall lie under section 53B against any order passed by the Commission under this section.

(8) All settlement amounts, realised under this Act shall be credited to the Consolidated Fund of India.

Section 48B. Commitment

(1) Any enterprise, against whom any inquiry has been initiated under sub-section (1) of section 26 for contravention of sub-section (4) of section 3 or section 4, as the case may be, may submit an application in writing to the Commission, in such form and on payment of such fee as may be specified by regulations, offering commitments in respect of the alleged contraventions stated in the Commission's order under sub-section (1) of section 26.

(2) An offer for commitments under sub-section (1) may be submitted at any time after an order under sub-section (1) of section 26 has been passed by the Commission but within such time prior to the receipt by the party of the report of the Director General under sub-section (4) of section 26 as may be specified by regulations.

(3) The Commission may, after taking into consideration the nature, gravity and impact of the alleged contraventions and effectiveness of the proposed commitments, accept the commitments offered on such terms and the manner of implementation and monitoring as may be specified by regulations.

(4) While considering the proposal for commitment, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.

(5) If the Commission is of the opinion that the commitment offered under sub-section (1) is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the commitment, it shall pass an order rejecting the commitment application and proceed with its inquiry under section 26 of the Act.

(6) The procedure for commitments offered under this section shall be such as may be specified by regulations.

(7) No appeal shall lie under section 53B against any order passed by the Commission under this section.

Section 48C. Revocation of the settlement or commitment order and penalty

If an applicant fails to comply with the order passed under section 48A or section 48B or it comes to the notice of the Commission that the applicant has not made full and true disclosure or there has been a material change in the facts,

the order passed under section 48A or section 48B, as the case may be, shall stand revoked and withdrawn and such enterprise shall be liable to pay legal costs incurred by the Commission which may extend to rupees one crore and the Commission may restore or initiate the inquiry in respect of which the order under section 48A or section 48B was passed.]

CHAPTER VII COMPETITION ADVOCACY

Section 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 Government [2][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 [4][or culture], creating awareness and imparting training about competition issues.

[1] Subs. by Act 39 of 2007, s. 40, for sub-section (1) (w.e.f. 12-10-2007).
[2] Ins. by Act 39 of 2007, s. 40, (w.e.f. 12-10-2007).
[3] The words ", as may be prescribed," omitted by s. 40, ibid. (w.e.f. 12-10-2007).
[4] Ins. by Act 9 of 2023, s. 36 (w.e.f. 18-5-2023).

CHAPTER VIII FINANCE, ACCOUNTS AND AUDIT

Section 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.

Section 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]* * * * *

(c) the fees received under this Act;

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

[3][(e) all sums received by the Commission from such other sources as may be decided upon by the Government.]

(2) The Fund shall be applied for meeting-

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

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

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

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

[1] Cl. (b) omitted by Act 39 of 2007, s. 41 (w.e.f. 12-10-2007).
[2] Subs. by s. 41, ibid., for "clauses (a) to (c)" (w.e.f. 12-10-2007).
[3] Ins. by Act 9 of 2023, s. 37 (w.e.f. 18-5-2023).

Section 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.

[1] Subs. by Act 39 of 2007, s. 42, for "Supreme Court" (w.e.f. 12-10-2007).

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

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

CHAPTER VIIIA APPELLATE TRIBUNAL

Section 53A. Appellate Tribunal

[1][[2][The National Company Law Appellate Tribunal constituted under section 410 of the Companies Act, 2013 (18 of 2013) shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017 (7 of 2017), be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall-

(a) hear and dispose of appeals against any direction issued or decision made or order passed by the Commission under [3][sub-section (6) of section 6, sub-sections (2), (2A), (6) and (9) of section 26], section 27, section 28, section 31, section 32, section 33, section 38, section 39, section 43, section 43A, section 44, section 45 or section 46 of this Act; and

(b) adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or under sub-section (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.]

[1] 12-10-2007, vide S.O. No. 1747(E), dated 12-10-2007.

[2] Subs. by Act 7 of 2017, s. 171, for section 53A (w.e.f. 26-5-2017).

[3] Subs. by Act 9 of 2023, s. 38, for "sub-sections (2) and (6) of section 26" (w.e.f. 10-9-2024).

Section 53B. Appeal to Appellate Tribunal

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

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

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

[2][Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the Commission, shall be entertained by the Appellate Tribunal unless the appellant has deposited twenty-five per cent. of that amount in the manner as directed by the Appellate Tribunal.]

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

(4) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.

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

[1] 20-5-2009, vide S.O. No 1242(E), dated 15-5-2009.
[2] Ins. by Act 9 of 2023, s. 39 (w.e.f. 18-5-2023).

Section 53C. Composition of Appellate Tribunal

[1][Composition of Appellate Tribunal.] Omitted by the Finance Act, 2017 (7 of 2017), s. 171 (w.e.f. 26-5-2017).

[1] 20-12-2007, vide S.O. No. 2167(E), dated 20-12-2007.

Section 53D. Qualifications for appointment of Chairperson and Members of Appellate Tribunal

[1][Qualifications for appointment of Chairperson and Members of Appellate Tribunal.] Omitted by s. 171, ibid. (w.e.f. 26-5-2017).

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53E. Selection Committee

[1][Selection Committee.] Omitted by s. 171, ibid. (w.e.f. 26-5-2017).

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53F. Term of office of Chairperson and Members of Appellate Tribunal

[1][Term of office of Chairperson and Members of Appellate Tribunal.] Omitted by s. 171, ibid. (w.e.f. 26-5-2017).

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53G. Terms and conditions of service of Chairperson and Members of Appellate Tribunal

[1][Terms and conditions of service of Chairperson and Members of Appellate Tribunal.] Omitted by s. 171, ibid. (w.e.f. 26-5-2017).

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53H. Vacancies

[1][Vacancies.] Omitted by s. 171, ibid. (w.e.f. 26-5-2017).

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53I. Resignation of Chairperson and Members of Appellate Tribunal

[1][Resignation of Chairperson and Members of Appellate Tribunal.] Omitted by s. 171, ibid. (w.e.f. 26-5-2017).

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53J. Member of Appellate Tribunal to act as its Chairperson in certain cases

[1][Member of Appellate Tribunal to act as its Chairperson in certain cases.] Omitted by s. 171, ibid. (w.e.f. 26-5-2017).

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53K. Removal and suspension of Chairperson and Members of Appellate Tribunal

[1][Removal and suspension of Chairperson and Members of Appellate Tribunal.] Omitted by s. 171, ibid. (w.e.f. 26-5-2017).

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53L. Restriction on employment of Chairperson and other Members of Appellate Tribunal in certain cases

[1][Restriction on employment of Chairperson and other Members of Appellate Tribunal in certain cases.] Omitted by s. 171, ibid. (w.e.f. 26-5-2017).

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53M. Staff of Appellate Tribunal

[1][Staff of Appellate Tribunal.] Omitted by s. 171, ibid. (w.e.f. 26-5-2017).

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53N. Awarding compensation

[1](1) Without prejudice to any other provisions contained in this Act, the Central Government or a State Government or a local authority or any enterprise or any person may make an application to the Appellate Tribunal to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any findings of the Commission or under section 42A or [2][under sub-section (2) of section 53Q or the orders of the Supreme Court in an appeal against the findings of the Appellate Tribunal under section 53T or an order for settlement passed under section 48A, and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by the Central Government or a State Government or a local authority or any enterprise or any person as a result of any contravention of the provisions of Chapter II, having been committed by enterprise or as a result of order of settlement passed by the Commission].

(2) Every application made under sub-section (1) shall be accompanied by the findings of the Commission [3][or Appellate Tribunal or the Supreme Court, or an order for settlement], if any, and also be accompanied with such fees as may be prescribed.

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

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

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

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

(a) an application may be made for compensation before the Appellate Tribunal only after either the Commission or the Appellate Tribunal on appeal under clause (a) of sub-section (1) of section 53A [4][or the Supreme Court on appeal under section 53T] of the Act, has determined in a proceeding before it that violation of the provisions of the Act has taken place, or if provisions of section 42A or sub-section (2) of section 53Q of the Act are attracted;

(b) enquiry to be conducted under sub-section (3) shall be for the purpose of determining the eligibility and quantum of compensation due to a person applying for the same, and not for examining afresh the findings of the Commission or the Appellate Tribunal [4][or the Supreme Court,] on whether any violation of the Act has taken place.

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.
[2] Subs. by Act 9 of 2023, s. 40, for certain words (w.e.f. 6-3-2024).
[3] Ins. by s. 40, ibid., (w.e.f. 6-3-2024).
[4] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53O. Procedure and powers of Appellate Tribunal

[1](1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Appellate Tribunal shall have power to regulate its own procedure including the places at which they shall have their sittings.

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

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

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

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

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

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte;

(i) any other matter which may be prescribed.

(3) Every proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code or Criminal Procedure, 1973 (2 of 1974).

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53P. Execution of orders of Appellate Tribunal

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

(a) in the case of an order against a company, the registered office of the company is situated; or

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

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53Q. Contravention of orders of Appellate Tribunal

[1][2][(1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Appellate Tribunal, he shall be liable for contempt proceeding under section 53U.]

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

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

[2] Subs. by Act 9 of 2023, s. 41, for sub-section (1) (w.e.f. 18-5-2023).

Section 53R. Vacancy in Appellate Tribunal not to invalidate acts or proceedings

[1][Vacancy in Appellate Tribunal not to invalidate acts or proceedings.] Omitted by the Finance Act, 2017 (7 of 2017), s. 171, (w.e.f. 26-5-2017).

[1] 20-12-2007, vide S.O. No. 2167(E), dated 20-12-2007.

Section 53S. Right to legal representation

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

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

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

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

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53T. Appeal to Supreme Court

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

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

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

Section 53U. Power to Punish for contempt

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

(a) the reference therein to a High Court shall be construed as including a reference to the Appellate Tribunal;

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

CHAPTER IX

[1] 20-5-2009, vide S.O. No. 1242(E), dated 15-5-2009.

CHAPTER IX MISCELLANEOUS

Section 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 enterprises if such exemption is necessary in the interest of security of the State or public interest;

(b) any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries;

(c) any enterprise which performs a sovereign function on behalf of the Central Government or a State Government:

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

Section 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.

Section 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.

Section 57. Restriction on disclosure of information

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

[1] Subs. by Act 39 of 2007, s. 44, for "the Commission" (w.e.f. 12-10-2007).

Section 58. Chairperson, Members, Director General, Secretary, officers and other employees, etc., 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 (45 of 1860).]

[1] Subs. by s. 45, ibid., for section 58 (w.e.f. 12-10-2007).

Section 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.

[1] Subs. by s. 46, ibid., for "Registrar or officers or other employees of the Commission" (w.e.f. 12-10-2007).

Section 59A. Compounding of certain offences

[1][Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only or imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by the Appellate Tribunal or a court before which such proceeding is pending.]

[1] Ins. by Act 9 of 2023, s. 42 (w.e.f. 18-5-2023).

Section 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.

Section 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.

[1] Subs. by Act 39 of 2007, s. 47, for "Commission" (w.e.f. 12-10-2007).

Section 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.

Section 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 value of the assets or turnover of the enterprise acquired, taken control of, merged or amalgamated in India under clause (e) of section 5;

(ab) the percentage of voting rights higher than twenty-six per cent. under sub-clause (i) of clause (b) of the Explanation to section 5;

(ac) the criteria of combinations under sub-section (4) of section 6;

(ad) the criteria under sub-section (7) of section 6;] [2][[3][(ae)] 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;

[4]* * * * *

(d) the salary and the other terms and conditions of service including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities to be provided to the Chairperson and other Members under sub-section (1) of section 14;

[5][(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 [6][such officers or other employees] under sub-section (3) of section 16;

(f) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or [7][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 [8][Secretary] and officers and other employees payable, and the number of such officers and employees under sub-section (2) of section 17;

[9]* * * * *

(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;

[7][(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;

[10]* * * * *

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

(mf) the other matters under clause (i) of sub-section (2) of section 53-O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit;]

[11][(mg) the form of the publication of guidelines under sub-section (5) of section 64B;]

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

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

(3) Every notification issued under sub-section (3) of section 20 and section 54 and every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule, or both Houses agree that the notification should not be issued or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule, as the case may be.

[1] Ins. by Act 9 of 2023, s. 43 (w.e.f. 18-5-2023).
[2] Subs. by Act 39 of 2007, s. 48, for clause (a) (w.e.f. 12-10-2007).
[3] Clause (a) re-lettered as clause (ae) thereof by Act 9 of 2023, s. 43 (w.e.f. 18-5-2023).
[4] Clause (c) omitted by Act 39 of 2007, s. 48 (w.e.f. 12-10-2007)
[5] Ins. by s. 48, ibid. (w.e.f. 12-10-2007).
[6] Subs. by s. 48, ibid., for "such other advisers, consultants or officers" (w.e.f. 12-10-2007).
[7] Ins. by s. 48, ibid. (w.e.f. 12-10-2007).
[8] Subs. by s. 48, ibid., for "Registrar" (w.e.f. 12-10-2007).
[9] Cls. (h), (i) and (j) omitted by s. 48, ibid. (w.e.f. 12-10-2007).
[10] Cls. (mb), (mc) and (md) omitted by Act 7 of 2017, s. 171 (w.e.f. 26-5-2017).
[11] Ins. by Act 9 of 2023, s. 43 (w.e.f. 18-5-2023).
[12] Subs. by Act 39 of 2007, s. 48, for clause (n) (w.e.f. 12-10-2007).

Section 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;

[1][(c) the manner of determination of substantial business operations in India under clause (d) of section 5;

(ca) the form and fee for notice for combination under sub-section (4) of section 6;

(cb) the time and manner for filing notice of acquisition under clause (a) of section 6A;

(cc) the manner and circumstance in which the acquirer may exercise the ownership or beneficial right or interest in shares or convertible securities including voting right and receipt of dividends or any other distributions as an exception under clause (b) of section 6A;]

[2][(d) the procedures to be followed for engaging the experts and professionals under sub-section (3) of section 17;

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

(f) the rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 22;

[3][(fa) other details to be indicated in the show-cause notice under sub-section (9) of section 26;

(fb) the manner of determining turnover or income under the Explanation to clause (b) of section 27;

(fc) the manner in which modification may be proposed by parties to the combination to the Commission under sub-section (2) of section 29A;]

(g) the manner in which penalty shall be recovered under sub-section (1) of section 39;

[4][(ga) the lesser penalty to be imposed on producer, seller, distributor, trader or service provider under sub-section (1) of section 46;

(gb) the manner and time for withdrawal of application for lesser penalty under sub-section (2) of section 46;

(gc) the lesser penalty to be imposed on producer, seller, distributor, trader or service provider under sub-section (4) of section 46;

(gd) the manner of determining income under clause (c) of Explanation to section 48;

(ge) the form of application and fee under sub-section (1), the time under sub-section (2), the terms and manner of implementations and monitoring under sub-section (3) and the procedure for conducting settlement proceedings under sub-section (6) of section 48A;

(gf) the form of application and fee under sub-section (1), the time under sub-section (2), the terms and manner of

implementations and monitoring under sub-section (3) and the procedure for commitments offered under sub-section (6) of section 48B;

(gg) the other details to be published along with draft regulations and the period for inviting public comments under clause (a) of section 64A;]

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

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

[1] Subs. by Act 9 of 2023, s. 44, for clause (c) (w.e.f. 18-5-2023).
[2] Subs. by Act 39 of 2007, s. 49, for clauses (d) and (e) (w.e.f. 12-10-2007).
[3] Ins. by Act 9 of 2023, s. 44 (w.e.f. 18-5-2023).
[4] Ins. by s. 44, ibid., (w.e.f. 18-5-2023).

Section 64A. Process of issuing regulations

[1][The Commission shall ensure transparency while making regulations under section 64, by-

(a) publishing draft regulations along with such other details as may be specified on its website and inviting public comments for a specified period prior to issuing regulations;

(b) publishing a general statement of its response to the public comments, not later than the date of notification of the regulations;

(c) periodically reviewing such regulations:

Provided that if the Commission is of the opinion that certain regulations are required to be made or existing regulations are required to be amended urgently in public interest or the subject matter of the regulation relates solely to the internal functioning of the Commission, it may make regulations or amend the existing regulations, as the case may be, without following the provisions stated in this section recording the reason, for doing so.

[1] Ins. by Act 9 of 2023, s. 45, (w.e.f. 18-5-2023).

Section 64B. Commission to issue guidelines

(1) The Commission may publish guidelines on the provisions of this Act or the rules and regulations made thereunder either on a request made by a person or on its own motion.

(2) Guidelines issued under sub-section (1) shall not be construed as determination of any question of fact or law by the Commission, its Members or officers and shall not be binding on the Commission, its Members or officers.

(3) Without prejudice to anything contained in sub-section (1), the Commission shall publish guidelines as to the appropriate amount of any penalty for any contravention of provision of this Act.

(4) While imposing penalty under clause (b) of section 27 or under section 43A or section 48 for any contravention of provision of this Act, the Commission shall consider the guidelines under sub-section (3) and provide reasons in case of any divergence from such guidelines.

(5) The guidelines under sub-sections (1) and (3) shall be published in such form as may be prescribed.]

Section 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 to 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 House of Parliament.

Section 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.

[2]* * * * *

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

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

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

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947 (14 of 1947), or in any other law for the time being in force, the transfer of the services of any Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee, employed in the Monopolies and Restrictive Trade Practices Commission, to [4][the Competition Commission of India or the Appellate Tribunal, as the case may be,] shall not entitle such Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

Provided also that where the Monopolies and Restrictive Trade Practices Commission has established a provident fund, superannuation, welfare or other fund for the benefit of the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or the officers and other employees employed in the Monopolies and Restrictive Trade Practices Commission, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to [5][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, [6][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.]

[7][(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, [8][on the commencement of the Competition Amendment Act, 2009 (39 of 2009)] 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.]

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

(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 [10][immediately before the commencement of the Competition (Amendment) Act, 2009 (39 of 2009), shall, on such commencement], stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 (68 of 1986) and the National Commission shall dispose of such cases as if they were cases filed under that Act:

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

[11][Provided further that all the cases relating to the unfair trade practices pending, before the National Commission under this sub-section, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President, shall, on and from that date, stand transferred to the Appellate Tribunal and be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed.]

[12][(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, [13][on the commencement of the Competition (Amendment) Act, 2009 (39 of 2009)], 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:

[14][Provided that all investigations or proceedings, relating to unfair trade practices pending before the National Commission, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President shall, on and from that date, stand transferred to the Appellate Tribunal and the Appellate Tribunal may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.]

(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.

[1] Subs. by Act 39 of 2007, s. 50, for sub-section (1) (w.e.f. 1-9-2009).

[2] The proviso and the Explanation omitted by Act 39 of 2009, s. 2 (w.e.f. 14-10-2009).

[3] Subs. by Act 39 of 2007, s. 50, for the second proviso (w.e.f. 1-9-2009).

[4] Subs. by Act 39 of 2007, s. 50, for "the Central Government" (w.e.f. 1-9-2009).

[5] Subs. by s. 50, ibid., for "the Central Government shall, out of the monies standing" (w.e.f. 1-9-2009).

[6] Subs. by s. 50, ibid., for certain words (w.e.f. 1-9-2009).

[7] Subs. by s. 50, ibid., for sub-section (3) (w.e.f. 1-9-2009).

[8] Subs. by Act 39 of 2009, s. 2, for "after the expiry of two years referred to in the proviso to sub-section (1)" (w.e.f. 14-10-2009).

[9] Ins. by s. 2, ibid. (w.e.f. 14-10-2009).
[10] Subs. by Act 39 of 2009, s. 2, for "on or before the expiry of two years referred to in the proviso to sub-section (1)" (w.e.f. 14-10-2009).
[11] Ins. by s. 2, ibid. (14-10-2009).
[12] Subs. by Act 39 of 2007, s. 50, for sub-section (5) (w.e.f. 1-9-2009).
[13] Subs. by s. 2, ibid., for certain words (14-10-2009).
[14] Ins. by s. 2, ibid. (w.e.f. 14-10-2009).

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