

52

**STANDING COMMITTEE ON FINANCE
(2022-2023)**

SEVENTEENTH LOK SABHA

'THE COMPETITION (AMENDMENT) BILL, 2022'

(MINISTRY OF CORPORATE AFFAIRS)

FIFTY-SECOND REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2022 / Agrahayana, 1944 (Saka)

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(MINISTRY OF CORPORATE AFFAIRS)

Presented to Lok Sabha on ...¹³...December, 2022

Laid in Rajya Sabha on ...¹³...December, 2022



LOK SABHA SECRETARIAT
NEW DELHI

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CONTENTS

	Page Nos.
Composition of the Committee.....	(iii)
Introduction.....	(v)

REPORT

	Page No.
I. Background	1
II. Salient features of the Bill	4
III. Issues discussed	
1) Deal Value Threshold	7
2) Definition of Control	16
3) Procedural Timelines (Section 6(2A) read with Section 29 and 31)	21
4) Ability of DG to depose legal advisors.	26
5) Settlement and Commitment	30
6) Hub and Spoke Cartels	43
7) Requirement of a Judicial Member	47
8) IPR As Defence of Abuse of Dominant Position	50
9) Effect Based Test	54

Annexure

- I. Minutes of the sittings of the Committee held on 28 October, 2022, 4 November, 2022, 29 November, 2022 and 08.12.2022.
- II. 'The Competition (Amendment) Bill, 2022'

COMPOSITION OF STANDING COMMITTEE ON FINANCE (2022-23)

Shri Jayant Sinha - Chairperson

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LOK SABHA

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3. Shri Sukhbir Singh Badal
4. Shri Subhash Chandra Baheria
5. Dr. Subhash Ramrao Bhamre
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SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Kulmohan Singh Arora - Additional Director
4. Ms. Abhiruchi Srivastava - Assistant Committee Officer

INTRODUCTION

I, the Chairperson of the Standing Committee on Finance having been authorised by the Committee present this Fifty-Second Report on 'The Competition (Amendment) Bill, 2022'

2. 'The Competition (Amendment) Bill, 2022', introduced in Lok Sabha on 05 August, 2022 was referred to the Committee on 16 August, 2022 for examination and report thereon, by the Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee took evidence of the representatives of the Ministry of Corporate Affairs, Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs), Ministry of Commerce (Department for Promotion of Industry and Internal Trade) and Competition Commission of India (CCI), at their sitting held on 28 October, 2022.

4. The Committee at their Sitting held on 04 November, 2022 heard the views of the representatives of the Indian Chambers of Commerce & Industry (FICCI), AZB Partners, Consumer Unity and Trust Society (CUTS) International, Shri Vinod Dhall, Senior Advisor, Touchstone Partners and Dr. Aditya Bhattacharjea, Professor of Economics, Delhi School of Economics (DSE). On 19 November, 2022, the Committee took evidence of the representatives of Ministry of Corporate Affairs and Competition Commission of India (CCI). The Committee also interacted with the representatives of Ministry of Law and Justice (Department of Legal Affairs) on 8 December, 2022.

5. The Committee considered and adopted this report at their Sitting held on 08 December, 2022.

6. The Committee wish to express their appreciation to the officials of the Ministries of Corporate Affairs, Law and Justice, Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs), Commerce (Department for Promotion of Industry and Internal Trade) and Competition Commission of India (CCI) for their co-operation and all the experts, stakeholders and individuals for their valuable suggestions on the Bill. The Committee would like to also thank Indian Chambers of Commerce & Industry (FICCI), AZB Partners,

Consumer Unity and Trust Society (CUTS) International, Shri Vinod Dhall, Senior Advisor, Touchstone Partners and Dr. Aditya Bhattacharjea, Professor of Economics, Delhi School of Economics (DSE) for their views and suggestions on the Bill.

7. For facility of reference, observation/ recommendations of the Committee have been printed in bold in the body of the Report.

New Delhi
08 December, 2022
17 Agrahayana, 1944(Saka)

Shri Jayant Sinha
Chairperson,
Standing Committee on Finance

Report

I. BACKGROUND

1.1 The Monopolistic and Restrictive Trade Practices (MRTP) Act was enacted in 1969 to prohibit monopolistic, restrictive and unfair trade practices. However, the economic reforms, globalization and trade liberalization in 1990s witnessed the shift from curbing monopolies to promoting competition and this necessitated amendments to the MRTP Act. The Parliament enacted the Competition Act, 2002 (the Act) which received the assent of the President of India on 13th January, 2003. The framework of the Act rests broadly on four pillars, viz; prohibition of anti-competitive agreements (Section 3), prohibition of abuse of dominance (Section 4), regulation of combinations (Section 5 & 6), and competition advocacy (Section 49).

- (i) The Sections relating to the establishment of Commission, office of Director General (DG), and advocacy functions of the Commission were notified in 2003.
- (ii) Between 2003 - 2009 (till May, 2009), activities were focussed around advocacy functions of the Act.
- (iii) The Section 3 (prohibition of anti-competitive agreements), Section 4 (abuse of dominant position) and other related sections were notified in May 2009.
- (iv) The Section 5 (combinations- acquisition, control, and merger), Section 6 (regulation of combinations) and other related sections were notified in June 2011.

1.2 In the last two decades since the enactment of the Act, it has been amended thrice:

- (i) **Amendment in 2007**: substantive amendments leading to the change in composition of the Commission and the establishment of Competition Appellate Tribunal (COMPAT) to hear and dispose of appeals against the decisions/ orders passed by the Competition Commission of India (CCI). Earlier there was no appellate tribunal and cases were being heard by Supreme Court directly;

- (ii) **Amendment in 2009**: for transfer of all pending cases relating to restricted trade practices before MRTP Commission to CCI; and
- (iii) **Amendment in 2017**: through Finance Act 2017, COMPAT was replaced with NCLAT to hear all appeals on competition matters.

1.3 The global changes in market dynamics, led by new age economics, digital markets, e-commerce, emergence of new business models such as the aggregator business model etc. necessitated amendments to the Competition Act, 2002. Keeping aforesaid in view, the Ministry of Corporate Affairs (MCA) constituted a Competition Law Review Committee (CLRC) in October, 2018 to review and recommend a robust competition law framework in consultation with key stakeholders, and suggest changes in both the substantive and procedural aspects of the law. The CLRC comprised of representatives from NITI Aayog, Department of Commerce, Department of Economic Affairs, Department of Consumer Affairs, Department for Promotion of Industry and Internal Trade, eminent lawyers, economists, academicians, and experts. Comments from different stakeholders including general public were invited by the CLRC to seek suggestions on the changes that shall be brought out in the Act. The CLRC considered these comments while making recommendations in its Report.

1.4 The CLRC submitted its Report to the Government in July 2019 and recommended amendments in the Act with the intent to make the competition law regime more robust and effective. Based on the recommendations of CLRC, a draft Competition (Amendment) Bill was prepared. The draft Bill was placed in the public domain and comments received from the different stakeholders were reviewed and considered while formulating the draft Bill. Consultations on the draft Competition (Amendment) Bill have been carried out with NITI Aayog, Department of Commerce (DoC), Department of Consumer Affairs (DoCA), Department for Promotion of Industry and Internal Trade (DPIIT), Department of Economic Affairs (DEA), Department of Legal Affairs (DoLA) and Legislative Department.

1.5 The Cabinet in its meeting held on 27th July, 2022 had considered and approved the proposal of Ministry of Corporate Affairs to introduce the Competition (Amendment) Bill, 2022 in the Parliament to further amend the Competition Act, 2002. The Bill was introduced in Lok Sabha on 5th August, 2022 and the same has been referred to the Parliamentary Standing Committee on Finance for examination and submission of its report thereon.

II. SALIENT FEATURES OF THE BILL

2.1. Some of the salient features of the amendments proposed in the draft Bill are as under:-

- (i) In view of making the assessment for combinations time-bound and quicker, the overall time-limit for such assessment is proposed to be reduced from the existing 210 days to 150 days from the date of filing of combination notice by the parties. Further, the Commission shall form prima facie opinion on combination notifications within a time-period of 20 days from the receipt of such notice, failing which the combination shall be considered as deemed approved;
- (ii) Introduction of a Green Channel route for certain combinations which shall be eligible for deemed approval in a trust-based framework, upon filing of a combination notice, on the lines of jurisdictions like Italy, Mexico and Latvia. This seeks to encourage the 'ease of doing business' by eliminating the standstill period for certain categories of combinations, which shall be specified by regulations;
- (iii) De-minimis exemption for combinations below a certain threshold (measured in terms of asset or turnover) to be provided through rules is proposed to be included in the Act itself. At present, such exemption is being provided through notifications issued under Section 54 of the Act. The threshold shall be applicable to the target enterprise, being acquired, taken control of, or amalgamated/ merged with another;
- (iv) On the lines of best global practices, size of transaction test is proposed to be introduced in terms of 'value of transaction' as another criteria for notifying combinations in certain cases like those of digital markets, where though the enterprises being acquired have minimal assets and turnover; they have huge potential in terms of valuable data, technologies, market information etc. Such transaction value thresholds have been introduced by the Austrian Federal Competition Authority and German Competition Authority for those cases not meeting the primary turnover thresholds but requiring merger control

assessment to protect innovation and competition in the changing economic landscape driven primarily by new technologies;

- (v) Introduction of a Settlement and Commitment framework is proposed to significantly reduce litigation that will add to India's image of being a business-friendly nation. Certain jurisdictions like the European Union, the United Kingdom and Singapore provide for settlement and commitment in anti-trust proceedings;
- (vi) Scope of anti-competitive agreements to be widened to include other than vertical and horizontal agreements which are anti-competitive in nature;
- (vii) A party facilitating an anti-competitive horizontal agreement is also proposed to be covered along with other parties to such an agreement on the lines of competition authorities in other jurisdictions like the United States and the United Kingdom;
- (viii) The power to appoint the Director General (DG) by the Commission, instead of the Central Government is proposed, for bringing in more operational and administrative efficiency in the functioning of the Commission. However, such appointment will be after the prior approval of the Central Government as a check and balance and to ensure independence of the working of the office of the DG;
- (ix) The existing provision for fine/ imprisonment under the said Act by the National Company Law Appellate Tribunal (NCLAT) is proposed to be replaced with punishment for contempt, in accordance with the provisions of the Contempt of Courts Act, 1971, and the word 'fine' is being replaced with 'penalty' in some other provisions of the Act;
- (x) The scope of inter-regulatory consultations is proposed to be enhanced on matters raised before the authorities to bring more certainty for businesses;
- (xi) It is proposed that the Commission may issue guidance notes on matters including calculation of penalty that may be imposed for contravention of the provisions of the Act for greater transparency and certainty in its enforcement practices. Competition authorities in Jurisdictions like UK, Germany,

European Union, Singapore, South Africa, Japan and South Korea have issued such penalty guidelines on anti-trust matters;

- (xii) A limitation period of 3 years is proposed for filing information before CCI to ensure that only genuine cases that adversely affect competition in the market are considered and to de-burden the limited manpower of the Commission;
- (xiii) It is proposed that CCI may issue regulations only after public consultation;
- (xiv) On the lines of jurisdictions like the United States, the United Kingdom, Singapore and Brazil, a leniency plus framework is proposed to incentivize the parties in an ongoing cartel investigation to disclose information regarding other existing cartels;
- (xv) Other significant amendments include changes in certain definitions like that of 'enterprise', 'relevant product market', 'Group', 'Control' etc.
- (xvi) Introduction of a provision for compounding of offences, whereby only those offences that are not punishable with imprisonment, either with or without a fine, can be compounded.

III. ISSUES DISCUSSED

3.1 In view of the detailed examination of the Competition (Amendment) Bill, 2022 and suggestions received from the stakeholders, the Committee has commented upon some of the important clauses of the bill and the amendments recommended in the clauses have been underlined are as under :

1) Deal Value Threshold

The provision of the Deal Value Threshold currently does not exist in the Principal Act.

Clause 6 of the bill reads as under:

In Section 5 of the principal Act,--

After clause (c), the following clauses shall be inserted namely:-

(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 a party to the transaction has such substantial business operations in India as may be specified by regulations.

3.2 On the above issue, the Federation of Indian Chambers of Commerce and Industry (FICCI) furnished the following suggestion:

“It is submitted that the proposed provision should not be inserted. If at all the provision is retained, it is suggested that enabling provisions as opposed to a specific threshold in the statute (which can only be amended by way of parliamentary process) may be provided. This is imperative because no one is sure what the challenges and results of this intervention are going to be. Flexibility and adaptability of the regulator will be compromised.

The following points may be noted in connection with introduction of the proposed transaction value-based threshold for determination of Combinations –

- (i) Applying the transaction value threshold for all industries, including ones where asset / turnover size are appropriate indicators of the market presence of the entity, would make it unreasonably burdensome for such entities as well as the

regulator. Although there may be some sectors where the application of the threshold becomes relevant, it most certainly does not apply with equal significance across sectors.

- (ii) Transaction value is not a determinative factor of whether a transaction will have any effect on market competition. There may be instances where an entity wishes to enter into a new relevant product market by way of an acquisition transaction which exceeds the transaction value threshold. While this is normally expected to improve / increase the competition in the market, yet such transaction would be held up because of the notification / approval requirements. Defining "transaction value" for many contemporary deals may be complicated, particularly where there are elements of consideration paid through shares or earn-out payments, contingent consideration, ancillary/ side deal payments are involved."

3.3 While submitting their written information the Ministry of Corporate Affairs on the above suggestions stated as under:

- "It is submitted that on the lines of best global practices, size of transaction test is proposed to be introduced wherein 'value of transaction' has been included as other criteria for notifying combinations.
- This will be mainly in cases like that of the digital and new age markets, where though the enterprises being acquired are having minimal assets and turnover; they are having huge potential in terms of having control over data, market information etc.
- Further, the transaction value thresholds have been introduced by the Austrian Federal Competition Authority and German Competition Authority for the cases not meeting the primary turnover thresholds but requiring merger control assessment to protect innovation and competition in changing economic landscape driven primarily by new technology.
- It is submitted that Section 20(3) of the Act mandates a review of assets and turnover criteria every two years. Hence, Section 20(3) has been amended to

include clause (d) of Section 5 i.e. "value of transaction" criteria which can also be reviewed from time to time.

- Further, the value of transaction is the only criteria prescribed in the bill for notifying combinations. It has been provided that an enterprise which is a party to such a transaction must have substantial business operations in India.
- Regulations to be framed by the Commission in this regard shall be after due consultation with the stakeholders which will take care of all concerns."

3.4 Elaborating, further on the same, stakeholders submitted as under:-

"Whilst the inclusion of a threshold based on the value of a transaction is a welcome step, there are a few points in respect of which further guidance would be necessary:

- (a) The proposed amendment also provides for an India nexus criterion (by way of either party to the transaction having "substantial business operations in India"). However, the scope of this additional test has not been specified in the Bill, and has instead been left to the regulations to define. What will additionally constitute having "substantial business operations in India" needs to be clarified – will the scope of this test be limited to a party having a local presence (i.e. through a subsidiary, presence of critical IT assets such as servers or other site) in India or if it could extend to the size of a party's user / consumer base reflecting its market position in the relevant industry in India.
- (b) Another question that this proposed amendment raises is what constitutes the "value of any transaction" and how does it need to be calculated. For instance, would this be the value attributable to the India operations or to the overall global transaction?
- (c) Finally, it is presumed that the current *de minimis* threshold in terms of assets / turnover will not apply to the sectors to which this proposed provision applies. This needs to be clarified in the Bill.

It is therefore recommended that detailed guidance should be required by way of regulations with respect to: (i) the sector(s) which are intended to be regulated through the deal value threshold; (ii) clarifying the scope and parameters of

“substantial business operations in India”; and (iii) clarifying the scope / calculation of the “value of any transaction”; (iv) clarifying that the current *de minimis* threshold in terms of assets / turnover will not apply to the transactions / sectors to which this proposed provision applies.”

3.5 The Ministry of Corporate Affairs furnished the following comments on the above suggestions:

- “Based on the recommendation of CLRC, the value of transaction threshold has been proposed as an additional criterion to capture certain combinations which have assets/ turnover lower than thresholds but have huge intangibles like data.
- Section 5(d) of the Bill, read with the proviso states that certain combinations having value of transaction exceeding rupees two thousand crore and have local nexus need to notify such combination to the Commission. The monetary threshold of rupees two thousand crore though an essential criteria, but not sufficient to attract notification of such combination, unless it has any local nexus. Thus, a combination of such kind will attract notification to the Commission only when both the conditions (i.e., transaction value of rupees two thousand crore as well as substantial business operations in India) are met.
- Local nexus criteria will not be prescribed through the Act; rather, these are proposed to be prescribed through the regulations to have a flexibility to dynamically respond to the peculiarities of new-age markets.
- Determination of adverse effect on competition can be carried out based on filings in accordance with various factors mentioned in the Act only when parties notify transactions beyond the prescribed threshold and only the enterprise which is a party to a transaction has substantial business operations in India.
- What all gets covered in the scope of de-minimis find mention in clause 6 of the bill. For “value of transaction”, de-minimis shall not apply.”

3.6 Stakeholders on the above clause furnished the following suggestion:-

In sum, the administrative burden of false positives, i.e., the CCI having to review more transactions that are unlikely to cause competitive harm, does not appear to outweigh the likely benefit of a Deal Value Threshold, as presently formulated. As such, it is recommended that the current formulation of the Deal Value Threshold be excluded from the Amendment Bill.

Instead, the Hon'ble Committee may consider the formulation outlined in the CLRC Report and reflected in the 2020 draft of the Amendment Bill. In the 2020 Bill, the CCI was granted the power to specify sector-specific thresholds, through regulations. This formulation affords the following benefits:

- (i) Light touch regulation, avoiding the additional administrative burden and increased transaction costs of a blanket Deal Value Threshold applicable across sectors.
- (ii) Finally, experienced antitrust regulators across the world continue to research the appropriateness and necessity of Deal Value Thresholds, and very few have implemented this concept in ex-ante merger control regimes. Prior to introduce in game assure that is likely to have far-reaching effects, it is key for the CCI to conduct a detailed market study to consider (a) the enforcement gap, if any; (b) the potential economy-wide impact of a Deal Value Threshold; and (c) international experience in applying Deal Value Thresholds.

3.7 Stakeholders on the above clause in their written submission furnished the following suggestion:-

"The digital economy may perhaps be regulated better with the deal value threshold, as suggested in the Bill, but as the digital economy has almost become a lifeline of consumers, especially during the Covid-19 pandemic an appropriate assessment of benefits of this new concept needs to be understood well before implemented."

3.8 In a written submission from one of the stakeholders following suggestion have been advanced in the context of above issue:-

An overtly low deal value threshold, combined with codification of the lowest standard of control, i.e., “*material influence*” (discussed separately below), will lead to a flood of additional transactions having to be notified to the CCI. The net should not be cast too wide, especially keeping in mind that the CCI’s review timelines are also proposed to be reduced, and it will already have its hands full.

Guidance on computing deal value:

- (a) The definition of “*value of a transaction*” provided under the Amendment Bill is quite wide and expansive. Additional guidance is required on how to correctly compute the deal value, especially in various ‘grey area’ transactions where the exact monetary deal value is not explicitly clear, for instance, in case of transactions which have a post-closing adjustment mechanism; transactions involving deferred consideration; transactions involving only appointment of board seats (which the CCI considers as notifiable, if thresholds are met); transactions which are cash free mergers; and share swaps, amongst others.
- (b) This recommendation is also in line with international best practices. For instance, Austria and Germany have released detailed guidance on how to compute deal values, including in certain grey area transactions. This has added much needed certainty to the regime.”

3.9 The Ministry of Corporate Affairs commented on the above suggestion as under:

- “Based on the recommendation of CLRC, size of transaction test is proposed to be introduced wherein ‘value of transaction’ has been included as another criteria for notifying combinations.
- The transaction value thresholds have been introduced by the Austrian Federal Competition Authority and German Competition Authority for the cases not meeting the primary turnover thresholds but requiring merger control assessment to protect innovation and competition in changing economic landscape driven primarily by new technology;

- After considering the thresholds in Germany (Euro 400Million), Austria (Euro 200 Million) and USA (USD 101 Million), value of Rs. 2000 crore as a threshold is proposed under this criteria.
- Further, Section 20(3) of the Act mandates a review of assets and turnover criteria every two years. Hence, Section 20(3) has been amended to include clause (d) of Section 5 i.e. "value of transaction" criteria which can also be reviewed from time to time.
- Section 5(d) of the Bill, read with the proviso states that certain combinations having value of transaction exceeding rupees two thousand crore and have local nexus need to notify such combination to the Commission. The monetary threshold of rupees two thousand crore though is an essential criteria, but not sufficient to attract notification of such combination, unless it has any local nexus.
- Thus, a combination of such kind will attract notification to the Commission only when both the conditions (i.e., transaction value of rupees two thousand crore as well as substantial business operations in India) are met.
- Local nexus criteria are proposed to be prescribed through the regulations to have a flexibility to dynamically respond to the peculiarities of new-age markets.
- Determination of adverse effect on Competition can be carried out based on combination filings in accordance with various factors mentioned in the Act only when parties notify transactions beyond the prescribed threshold and only the enterprise which is a party to a transaction has substantial business operations in India.
- The parties are obliged to notify only when value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise exceeds threshold of Rs.2000/- crore and the enterprise which is a party to a transaction has substantial business operations in India. Clarity shall be provided as regards meaning of substantial business operations in India, through Regulations to be issued by the Commission as proposed in the bill.
- Regulations to be framed by the Commission in this regard shall be after due consultation with the stakeholders which will take care of all concerns.

- As per the scheme of the Competition Act, whether there is an adverse impact on competition in India due to such acquisition of any control, shares, voting rights or assets of an enterprise shall be subject matter of assessment by the Commission, once parties notify such acquisition to the Commission.
- Proposed value of transaction threshold will ensure that the parties shall not be obliged to notify smaller acquisitions, mergers and amalgamations.

What all gets covered in the scope of de-minimis find mention in clause 6 of the bill. For “value of transaction”, de-minimis shall not apply.”

3.10 Regarding the deal value threshold , the recommendation of The Competition Law Review Committee, 2019 reads as under :

“While the act is being comprehensively reviewed, an enabling provision empowering the government to introduce necessary thresholds including a deal value threshold for merger notification may be introduced in the act. Any new threshold must account for clear and objectively quantifiable standards for computing the necessary figure as well as local Nexus criteria. This will ensure that only those transactions that have a significant economic link to India are caught by the threshold and neither the CCI nor the parties are burdened with unnecessary notifications.

The committee note that the bill proposes to introduce the deal value threshold and local nexus requirement for mergers and acquisitions. This shall give CCI jurisdiction over global deals as well, involving parties having substantial business operations in India.”

3.11 The Committee note that the Bill defines value of transaction as including every valuable consideration, whether direct or indirect, or defined for any acquisition, merger or amalgamation. It does not provide guidance on how the deal value is to be calculated and the meaning of direct, indirect and deferred consideration. The Committee strongly concur with the argument advanced by

the stakeholders that the uncertainty about these terms can potentially bring transactions which are unlikely to cause adverse effects on competition under the merger control mechanism.

The Committee is of the opinion that the proviso needs to specify with clarity that the 'enterprise' being referred to is the party being acquired. The local nexus condition should not be left to delegated legislation. Rather, it should be defined with clarity in the Act itself. This is to ensure predictability and certainty. The Committee, accordingly recommend that the above clause may be modified as under:-

“(d) value of any transaction, manner of calculation of which shall be determined by regulations, and which 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 party whose control, shares, voting rights or assets have been acquired or are being acquired has such substantial business operations in India as may be specified by regulations.”

Additionally,

Clause 15(c) of the Bill be amended to read:

“(b) in sub-section (3):-

(i) after the words "value of turnover", the words "or the value of transaction" shall be inserted;

(ii) the words "thereafter every two years" be substituted with "thereafter every year"."

Consequentially, the explanation for 'value of transaction', may be amended as:

“value of transaction” includes every valuable consideration, whether direct or indirect, or deferred for any acquisition, merger or amalgamation as may be specified by regulations.”

(This shall further require amendment to Section 64 of the Bill, that specifies the matters on which the Commission can make regulations.)

2) Definition of ‘control’

3.12 Introducing the standard of Material Influence.

Clause 6 of the Bill reads as under:

For the Explanation, the following Explanation shall be substituted, namely:-

‘Explanation - For the purposes of this section,

- (i) “control” means the ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions by-*
- (ii) one or more enterprises, either jointly or singly, over another enterprise or group; or*
- (iii) one or more groups, either jointly or singly, over another group or enterprise;*

3.13 The Federation of Indian Chambers of Commerce and Industry(FICCI) submitted the following suggestions/ views on the above issue:

“It is submitted that the proposed amendment should not be carried out and the existing definition of ‘control’ should be retained.

Whether an entity exercises control over another in a particular case is a question of fact and it is difficult to establish a conclusive standard which will work across all cases. The law should be specific and parameters should be clearly defined so that enterprises have clarity on whether a transaction is notifiable, and the Commission can also make an indisputable finding on what constitutes control. Introduction of the “material influence” standard as proposed, would still keep the definition of “control” vague and open to interpretation; enterprises would not be

certain whether a particular transaction would be notifiable, as there would still be some lack of certainty on whether material influence is being exercised.

It is also difficult to attempt to reconcile the definition of “control” with other statutes, such as the Companies Act, the Insolvency and Bankruptcy Code, or the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, as the mandate under each of these is different, necessitating different approaches to the definition of “control.”

3.14 Echoing the same sentiments, stakeholders submitted the following suggestions/ views on the above issue:

“Whilst the CCI’s decisional practice over the years has been shifted from a stringent “decisive influence” test to a lower threshold of “material influence”, the Bill now expressly mentions “material influence” as a test to determine “control”. However, the Bill does not explicitly set out any parameters to determine the contours of exercise of “material influence” over an entity – such as shareholding, board representation, special rights, status and expertise of a person, or commercial / financial arrangements, amongst others.

It is therefore recommended that certain criteria / factors / parameters need to be set out which are to be taken into consideration by the parties to a combination for determination of “material influence” over another enterprise.”

3.15 Elaborating further on the issue of Material influence, the stakeholder furnished the following suggestions/ views on the above issue:

“It is relevant to note that the material influence threshold is not used in ex-ante merger control regimes globally. The CCI cites the principles adopted by UK Competition and Markets Authority (CMA) in interpreting the “material influence” threshold for control-however, the CMA does not require mandatory prior notification of mergers involving the acquisition of control, as the UK follows an ex-post merger control regime. The material influence threshold in the UK is justified by the fact that the CMA adopts a more permissive regime in allowing

transactions to take place as the default position and choosing to intervene in M&A in very limited instances.

In keeping with international best practices in ex-ante merger notification regimes, it is recommended that the definition of control remain as is, i.e., the standard of “decisive influence” without any dilution of the standard. Further, it is recommended that the Hon’ble Committee direct the CCI to conduct a market study to analyse the impact of the “material influence” standard as enforced from 2018. This would allow the CCI to track the unintended consequences of over-enforcement, if at all, and course-correct if necessary.”

- 3.16 The stakeholders submitted the following suggestions/ views on the above issue:
- “Alignment with other statutes: Apart from the Competition Act, “*control*” has been defined and interpreted under various other legislations in India, including the Companies Act, 2013 (*Companies Act*); and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Under these statutes, control has been interpreted to denote “*positive control*”, which is a higher standard than the ability to merely block / veto certain matters, and significantly higher than the material influence standard.
- (i) The definition of control provided these other statutes are largely consistent to each other, and the only outlier / contrasting interpretation of control is under the Competition Act, where a significantly lower standard is adopted. This has led to significant regulatory uncertainty where the Competition Act relies on one definition / standard of control, whereas all other enactments rely on another definition / standard of control.
 - (ii) It would be helpful if the definition of control in the Competition Act is aligned with the definition in the Companies Act and the other mentioned statutes, to provide consistency and to avoid creating parallel jurisprudences on the same concept.
 - (iii) Further, even though different statutes cover different fields, there is no reason why a similar definition / interpretation of control cannot be adopted within the Competition Act. The interpretation adopted under other statutes is sound and logical and has been accepted by the Supreme Court on a number of occasions.

It can be applied equally under the Competition Act, without any damaging consequences.

3.17 The Ministry of Corporate affairs commented on the above suggestions as under:

- "CLRC noted that the definition of control is mandate specific in different laws. This view has also been reiterated by the SEBI in a discussion paper. For example, the Supreme Court recently held that 'control' under the IBC denotes only positive control. However, under the Competition Act in case of notifiability as well as substantive assessment of combinations, acquisition of negative control may be vital. Even internationally, the ability to block special resolutions (i.e. negative control) has been expressly held to confer material influence and hence 'control' for the purposes of competition law. Accordingly, harmonisation of the definition of 'control' with other statutes was not considered to be viable.
- Further, after considering the various practices followed in different International Jurisdictions like UK, South Africa and Canada , CLRC was of the view that introduction of a material influence standard for determination of control would be suitable.
- Introduction of this criteria would bring certainty to the meaning of control and shall empower CCI to scrutinize transactions that may cause AAEC.
- CCI while assessing combinations has been using material influence standard.
- It has been proposed in the bill that the Commission may issue guidelines on various issues when requested by a party.
- Clarifications on such issues shall come out of either decisional practices or guidelines or both."

3.18 Regarding the definition of 'control', the recommendation of The Competition Law Review Committee, 2019 reads as under:

"The recommended definition of control would not only impact the modifiability analysis but also the substantive competition assessment, the Committee was of the view that introduction of a material influence standard for determination of control would be suitable. Introduction of this criteria would serve the twin benefit

of bringing certainty to the meaning of control under Section 5 of the Act whilst retaining the CCI's powers to assess a wide range of combinations that may have AAEC. It was agreed that a balance needs to be struck to ensure that the merger control regulation empowers CCI to scrutinize transactions that may cause AAEC whilst ensuring that the legal framework is investment friendly in the larger interest of the economy.

Guidance on material influence.

It was noted that the details of what may constitute 'material influence' may be provided in subordinate legislation. It was also discussed that subordinate legislation may list certain minority rights, the acquisition of which would not be considered to confer material influence and hence control. Some indicative factors for determining existence of material influence that have been laid down by the CCI in its orders are shareholding, special rights, status and expertise of an enterprise or person, board representation, structural/financial arrangements, etc"

3.19 The Committee observe that material influence is the lowest and weakest standard of control going by the UK standard. This fact has also been recognized by the CCI in previous instances. However, CCI has been using the material influence standard in actual practice over the last few years. The Committee is of the considered opinion that material influence is now a settled standard and should be explicitly defined. The Committee therefore, recommend that the explanation of 'control' under clause 6(C) may be modified as under:

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

(This shall further require amendment to Section 64 of the Bill, that specifies the matters on which the Commission can make regulations.)

3) Procedural Timelines

3.20 With regard to the procedural timelines the proposed changes in the Bill are as under:

3.21 Clause 7 of the bill reads as under:

In section 6 of the principal Act,-

(a) *In sub-section (2),-*

(i) *for the words "within thirty days of", the words "after any of the following, but before consummation of the combination" shall be substituted;*

(ii) *in clause (a), after the word, brackets and letter "clause (c)", the words, brackets and letter "and clause (d)" shall be inserted;*

(iii) *in clause (b), after the word, brackets and letter "clause (a)", the words, brackets and letter "and clause (d)" shall be inserted;*

(iv) *the following Explanation shall be inserted, namely:-*

'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 for acquisition of shares, voting rights or control such public document;

(b) *In sub-section (2A),-*

(i) *for the words "two hundred and ten days", the words "one hundred and fifty days" shall be substituted;*

(ii) *the following proviso shall be inserted, namely:*

"Provided that in case the party to the combination requests for additional time to furnish relevant information or remove defects to the notice filed under sub-section (2), the Commission may, by order, grant additional time which shall not

be more than thirty days for furnishing relevant information or removing defects, as the case may be.";

3.22 Clause 21

In section 29 of the principal Act,-

(a) *in sub-section (1), for the words "within thirty days", the words "within fifteen days" shall be substituted;*

(b) *after sub-section (1A), the following sub-section shall be inserted, namely:-*

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

(c) *in sub-section (2),*

(i) *for the words "within seven working days", the words "within seven days" shall be substituted;*

(ii) *for the words "within ten working days", the words "within seven days" shall be substituted;* (d) *in sub-section (3), for the words "within fifteen working days", the words "within ten days" shall be substituted;*

(iii) *in sub-section (4), for the words "within fifteen working days", the words "within seven days" shall be substituted;*

(iv) *in sub-section (5), for the words "within fifteen days", the words "within ten days" shall be substituted;*

(v) *for sub-section (6), the following sub-sections shall be substituted, namely:*

"(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)."

3.23 The stakeholders on the above clause furnished the following suggestion:-

"The consequences of not complying and removing defects within thirty (30) days may also be specified. In the current form, the proviso implies that the notice would be invalidated.

The thirty (30) days' period should be limited to each request for information ("RFI") issued by the Competition Commission of India ("CCI" or "Commission")."

3.24 Elaborating further on the same Competition Commission of India(CCI)submitted following suggestion:

"Section 29 of the Competition Act provides for detailed procedures and corresponding timelines to be followed by CCI in the event proposed transaction is prima facie likely to result in appreciable adverse effect on competition.

The regulatory framework as presently operating and as further proposed under Sections 29 & 29A of the Competition Act envisage various intermediate steps such as requirement of publishing the details of proposed combination, seeking public comments thereon, obtaining response from the parties on the public comments, issuing statement of objections etc. along with associated timelines. The aforesaid framework does not provide flexibility and locks considerable time out of the overall timelines for deemed approval. The efficiency and effectiveness of CCI's functioning can significantly improve if CCI is enabled to allocate timelines for different stages and devise its procedure as per the requirement and exigency of each case. Thus, it is imperative that CCI is empowered to regulate its procedure and prescribe timelines for intermediate stages, subject to overarching statutory limit of 150 days for reviewing combinations."

3.25 On the above issue the stakeholders in a written submission stated as under:-

"Whilst the intent of this proposed amendment (i.e. to facilitate expeditious approval of combinations) is laudable, such significantly compressed timelines could give rise to certain issues. For instance, this could significantly increase the

pressure on the CCI in terms of their resources and bandwidth. It could also lead to issue of several RFI's from the case team(s) simply in order to stop the clock and to buy more time – which would, in turn, add to the parties' burden and could subsequently also lead to a greater number of combination filings being invalidated."

3.26 During the course of oral evidence held on 29th November 2022 the representative of CCI (Sangeeta Verma) stated as under:

"I just want to first clarify when the secretary mentioned 17 days, it was 17 average working days and average included something known as Green Channel, which we introduced through regulation which is now coming in through the bill. It is the deemed approval on the date of filing. There was about 66 cases since introduction of Green Channel. Including that and removing the stop clocks, this was an average time period of 17 working days the commission have been approving. Yes, it would be difficult to do it in 20 calendar days because the parties also require time to respond appropriately... that requires more than 20 days. Let us say it is a foreign company acquisition, it takes some time. There are time factors. There are holiday factors at the end of the world. So the 20 days calendar limit then becomes very tight for even the parties to respond."

3.27 The Ministry of Corporate Affairs furnished the following comments on the above suggestions:

- "This is to provide regulatory certainty to the businesses. Thus, the proposed amendment does not require any change.
- In view of making the assessment for combinations time-bound and swift, the overall time-limit for such assessment is sought to be reduced to one hundred and Fifty days (150 days) from the existing 210 days.
- It was observed that revised timelines with mention of days in place of working days will serve the purpose of approval of combinations in time.
- The Commission has maintained that approval is accorded generally within seventeen-eighteen days. Sometimes the Commission has not taken a prima facie view beyond 30 days which is provided in the Combination regulations.

There is no cap at present for taking a prima facie view. Time frame of twenty days will provide certainty in terms of a prima facie view failing which it will be considered as deemed approved. This will provide certainty to businesses.

- Further, it will encourage ease of doing business, ease of living, improve business sentiments, drive growth and innovation.”

3.28 Regarding the procedural timeline, the recommendation of The Competition Law Review Committee, 2019 headed by Shri Injeti Srinivas reads as under :

“The Committee agreed to retain the power of the CCI to hold preliminary conferences; as these may be necessary for the CCI to understand the issues at hand and for the CCI to form its prima facie view. The Committee agreed that a balance must be struck between timely disposal of cases and the efficiencies brought in by the involvement of informants. It was concluded that instead of being prescriptive about the informant’s involvement, focus should be on reducing the time taken for proceedings. In this regard, it was agreed that detailed timelines for the various stages of the enforcement process should be prescribed through subordinate legislation, and the CCI should adhere to such detailed timelines as may be prescribed.”

3.29 **The Committee notes that the Amendment Bill proposes to reduce the timeline for the CCI to pass an order on application for approval of combinations from 210 days to 150 days. Similarly, the timeline to form a prima facie opinion has been reduced from 30 days to 20 days. In this regard, apprehensions were raised by the CCI and stakeholders that it will put the authority in a difficult and onerous position. The Committee is of the opinion that reducing the time line can be burdensome for an already understaffed commission. On this clause the Committee concurs with the CCI and stakeholders that the current prima facie opinion timeline and that of passing the order for approval of combinations, should remain unchanged.**

4) Ability of Director General to depose legal advisors

3.30 Clause 26(6) of the Bill reads as under:

In section 41 of the principal Act,-

(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.

“(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 legal advisers of, and persons employed as auditors by, such person;”

3.31 FICCI submitted the following suggestions/ views on the above issue:

“The scope of the proposed amendment is very wide and it must be deleted or its scope should be narrowed so as to exclude privileged advisors such as legal advisors.

It must be noted that the DG or any investigative authority such as the CCI cannot be authorized to depose legal professionals or other similarly placed privileged advisors. Attorney – client privilege or legal privilege is developed and backed by years of court precedents protecting it and any attempted deposition of such legal advisers by the DG would be constrained by the provisions of the Evidence Act (sections 126 – 129 of the Evidence Act protecting professional communication between legal adviser and client).

Further, the Competition Act prescribes civil penalties for violations prescribed therein and must not contain provisions such as the one in question which portray the nature of the legislation as an extraordinary criminal statute, permitting deposition of legal advisers in extraordinary circumstances. It is highly probable that such a provision, if inserted in the Amended Competition Act, be struck down as unconstitutional considering that it is against established principles of law.

The protection to legal advisers and professional communication is echoed by the Hon'ble Bombay High Court where it upheld the sanctity of legal privilege of in-house counsel of companies in *Municipal Corporation of Greater Bombay v. Vijay Metal Works* [(1982) 1 SLR 645 (Bom)]. Therefore, the suggested amendment overrides the fundamental principles of legal policy and right to legal representation and is an unwelcome change that unintentionally derogates from years of precedent on the subject of legal privilege and the Indian Evidence Act."

3.32 The Ministry have furnished their following comments on the above suggestions:

"The proposed amendment does not override the legal privilege or attorney-client privilege. It only provides for seeking information as regards parties under investigation. Legislative Department, Ministry of Law & Justice has vetted this provision of the Bill."

3.33 Elaborating further on the above issue the stakeholder submitted the following suggestions/ views on the above issue:

"To ensure that the Amendment Bill is consistent with the Advocates Act and the BCI Rules, Section 41 of the Amendment Bill should exclude all legal advisers who qualify as "advocates" within the meaning of the Advocates Act from the list of persons whom the DG may examine on oath."

3.34 The Ministry have furnished their following comments on the above suggestions:

"Ministry of Law & Justice has vetted this provision of the Bill."

3.35 The Stakeholders submitted the following suggestions/ views on the above issue:

"It is pertinent to note that external(independent) advocates are governed by the Advocates Act, 1961 and Indian Evidence Act, 1872 ("Evidence Act"). Any disclosure by external legal counsel on oath before the DG in relation to privileged communication between such external legal counsels and their clients would be in breach of relevant provisions of the Evidence Act."

3.36 The Ministry have furnished their following comments on the above suggestions:

“The proposed amendment does not override the legal privilege or attorney-client privilege. It only provides for seeking information as regards parties under investigation. Legislative Department, Ministry of Law & Justice has vetted this provision of the Bill.”

3.37 On the above issue, the stakeholders have submitted the following suggestions/ views on the above issue:

“The proposed amendments seem to implicate and subject third parties, such as advocates representing parties under investigation, to the investigative powers of the DG (including but not limited to being subject to dawn raids). This is unheard of for what are essentially civil wrongs.

The primary concern here is that such a provision will likely dilute attorney-client privilege (governed by Sections 126 and 129 of the Indian Evidence Act, 1872) and act as a deterrent against open and full disclosures to advocates in preparing defences, etc.”

3.38 The Ministry have furnished their following comments on the above suggestions:

- (i) “The proposed amendment does not override the legal privilege or attorney-client privilege. It only provides for seeking information as regards parties under investigation.
- (ii) Legislative Department, Ministry of Law & Justice has vetted this provision of the Bill
- (iii) Further, Section 41 (6) of the Bill, only provides that Director General may examine on oath any agent.
- (iv) Search and Seizure finds mention in the proposed Section 41(10) of the Bill.

There is no specific mention of search and seizure action against legal advisor as such.”

3.39 The recommendation of The Competition Law Review Committee, 2019 on the above issue reads as under :

“The Committee believed that there is a need to ensure clarity of rules and processes and clear articulation of rights and obligations of business and officials

in enforcement procedure. Accordingly, in line with best practices as discussed above and with a view to making the process transparent and certain, the Committee recommended that the powers of investigation of the DG, more particularly power of search and seizure should be codified in Section 41. Therefore, instead of referring to provisions of CA 1956 (or CA 2013), the provisions of Section 240 and Section 240A of CA 1956 (as reflected in Section 217 and Section 220 of CA 2013) should be codified in Section 41. Further, the Committee recommended that Section 41 should retain the requirement to obtain authorisation from the Chief Metropolitan Magistrate for conducting search and seizure.”

3.40 The Committee are in full agreement with the suggestion received from stakeholders that allowing the Director General to examine legal advisers goes against the attorney- client privilege and is in contravention of the Indian Evidence Act, 1872, and the Bar Council of India Rules (BCI Rules) which apply to external or independent advocates. All legal advisers employed by a company or firm will be included within the definition of any of the officers and other employees and agents of the parties being investigated in the proposed definition of agent under the Bill. It holds potential to invite a judicial challenge. Thus, the Committee strongly recommend that the clause specify with clarity that nothing in this section shall be in contravention of the Indian Evidence Act 1872 or any other Act that protects attorney-client privilege.

5) Settlement and Commitment

3.41 Clause 35

48A.

- (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.

48B.

- (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.

3.42 On the issue of consideration of settlement proposals, Competition Commission of India (CCI) submitted the following suggestions:

“It is stated that while considering the settlement proposal, the Commission should be given discretion to agree to the proposal for settlement either on payment of settlement sum or on such other terms or both. Accordingly, the proposal may be modified as follows:

Section 48A (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 or both and manner of implementation of settlement and monitoring as may be specified by regulations.”

3.43 The Ministry of Corporate affairs commented on the above suggestions as under: “The phrase “or on such other terms and manner” covers both penalty and some other conditions. Thus, no change as such in the proposed amendment may be required.”

3.44 On the issue of submission of commitment proposals, Competition Commission of India (CCI) submitted the following suggestions:

“The stage for submission of commitment proposal needs to be based on some firm determinant cut-off date instead of nebulous stage of prior to *receipt* of investigation report by the party concerned. Invariably, there is a time lag between submission of investigation report by the DG to the Commission, forwarding thereof to the parties and actual receipt by the parties. The time period between submission of investigation report by the DG to the Commission and receipt thereof by the party, may create speculation and uncertainty.

It is therefore suggested that the stage for commitment may be provided within such time after passing of an order under sub-section (1) of Section 26 but prior to submission of investigation report by the DG, as may be specified by regulations. The proposal may be considered for modification accordingly.”

3.45 The Ministry of Corporate affairs commented on the above suggestions as under:
"Commitment prior to the receipt by the party of the report of DG provides certainty since the submission of report by DG to the Commission is an internal matter.

It is only when the parties receive the report that they become aware of the findings of investigation. The proposal is that before they are made aware of the contents of investigation, they can opt for commitments. Thus, there may not be a need to modify the proposed amendment."

3.46 The FICCI on the issue of settlement procedure, furnished the following suggestion:-

"The scope of the provision allowing settlement procedure must be widened to include offences under Section 3(3) of the primary Act (i.e., cartel offences).

The suggested provision aims to include a settlement procedure for closure of proceedings against parties for contravention of Section 3(4) and Section 4 of the primary Act. However, there is no provision for utilizing settlement procedure in cases of offences under Section 3(3) of the Act, i.e. for cartelization. We believe that settlement procedure should be extended to instances of cartel offences as well, similar to the settlement provisions in the US Antitrust law. The primary objective of settlement procedure shall not be met if cartel offences are excluded from its ambit. Since cartelisation is a public offence and directly affects general public, procedure for successful settlements must be available for such offences as well. Further, it would serve as a benefit for the parties to avoid reputational damage to an extent, as they could resort to voluntary settlement procedure in case of alleged contravention of Section 3(3) of the Act. Therefore, we suggest inclusion of this enabling provision for offences under Section 3(3) of the Act."

3.47 The Ministry have furnished their following comments on the above suggestions:

- "It was observed that since existing Section 46 provides for leniency for parties involved in a cartel, thus there is no need for them to be included under the proposed settlement mechanism.

- Moreover, cartels and horizontal agreements referred to in Section 3(3) are egregious and pernicious in nature and therefore they have been kept out of the purview of settlement mechanism.”

3.48 Elaborating further on the issue, the stakeholders stated as under:

Settlements Framework

First, it is unclear whether the settlement process involves an admission of contravention and liability as a pre-condition for initiating this procedure. Such an admission may have repercussions on other avenues of business (such as inability to participate in tenders, increased scrutiny from other regulators, director disqualifications, etc.).

It must be kept in mind that the CLRC report, while making reference to the settlement and commitments' process in other jurisdictions (including the fact that the EU framework requires the admission of guilt as a part of its settlement process), does not take a view on the requirement of admission of guilt in the Indian context. Clarity here would help parties decide whether to opt for this mechanism.

Second, there are concerns as to how any subsequent breach of the Competition Act is to be treated by the CCI. Will the presence of a settlement agreement / order be considered as an aggravating factor, and would it amount to recidivism?

Third, will the settlement agreement / order include only monetary penalties, or would it allow behavioural remedies as well? If behavioural remedies are permitted then clarification is required regarding the scope for involvement of third parties (other than the informant and the DG) in the remedies proposal, market testing of proposed remedies, and other related matters.

The bar on appeals in this framework raises another set of questions and is likely to leave parties unhappy and unwilling to participate in such a mechanism.

Fourth, would such a settlement agreement / order, passed after taking into account the views of the DG and the informant, allow informants / affected third parties to institute follow-on action for damages?

Commitments Framework

The concerns highlighted for settlements above are equally applicable to commitments. Specifically for commitments, there are some additional concerns.

Before the completion of the DG's investigation, there is no guidance on the issues that the CCI (or for that matter, the DG) is specifically concerned with. The order for investigation is required to merely mark the card that a prima facie case for contravention is made out, and the DG is accordingly directed to investigate "into the matter". As part of the investigation, the DG is expected to examine all allegations and return findings. The DG is empowered to expand the scope of the investigation (even expand an alleged cartel case to an abuse of dominance case) to arrive at a holistic picture. Therefore, at this stage, the parties are unlikely to be clear on all the allegations that they need to address by way of commitments. This in turn impacts the efficacy of commitments offered by the parties.

Due to the lack of a DG report at this stage, it may be useful to add a positive obligation on the CCI to share a statement of concerns so that parties have clarity on which aspects of their conduct they need to address by way of offered commitments.

3.49 Ministry of Corporate Affairs commented on the above suggestions as under:

- This provision was introduced after detailed consideration by the CLRC.
- A detailed regulation for the settlement & commitment mechanism will be issued by the Commission which will have all the required details and will reduce arbitrariness and ensure accountability.
- Since regulations are to be made after public consultations, all concerns of stakeholders shall get addressed therein.
- The Commission shall pass orders based upon certain sets of facts. Thus, if there is a material change in facts, the settlement & commitment order can be revoked and inquiries initiated shall continue like normal proceedings before the Commission.

- The phrase “or on such other terms and manner” covers both monetary penalty and behavioural remedies.
- Further, during settlement proceedings, parties including third parties shall be heard. Their views and objections shall be considered by the commission.

3.50 The stakeholder on the issue of admission of guilt under settlement procedure furnished the following suggestion in the written note:-

“Settlement” of competition law proceedings as understood in foreign jurisdictions entails that the concerned enterprise admit liability for the alleged contravention.

It is not clear whether the “settlement” would protect the settlement applicant from compensation proceedings under Section 53N of the Act.

Unless there is protection to the settlement applicant from Section 53N of the Act, the settlement provision may be a non-starter, particularly because availing the settlement provision deprives the party of the right to appeal the decision under Section 53 B of the Act.”

3.51 The Ministry have furnished their following comments on the above suggestions:

- “The proposed amendment seeks to introduce commitment mechanism for contraventions of Section 3(4) and Section 4 of the Act.
- It seeks to encourage faster resolution of competition cases, thereby enabling businesses to avoid lengthy investigations.
- These are also expected to significantly reduce litigations, de-burden courts and better recovery of monetary penalties and add to India’s image of being a business friendly nation.
- Since regulations are to be made after public consultations, all concerns of stakeholders shall get addressed therein.
- Proposed amendments in section 42A relating to compensation in case of contravention of orders of the Commission has not included section 48B relating to commitments.

- During committee proceedings, parties including third parties shall be heard. Their views and objections shall be considered by the Commission.
- Since regulations are to be made after public consultations, all concerns of stakeholders shall get addressed therein.”

3.52 Regarding the settlement and commitment mechanism, the recommendation of The Competition Law Review Committee, 2019 reads as under :

“Therefore, in light of existing precedents and in the interest of procedural efficiencies associated with settlement mechanisms as discussed above, the Committee recommended that the Competition Act should be amended to expressly enable CCI to accept settlements from parties and provide for a settlement mechanism. The settlement framework should be applicable for alleged contraventions of agreements under Section 3(4) and the abuse of dominance under Section 4 of the Competition Act. The Competition Act should empower CCI to pass settlement orders subject to certain conditions which may include settlement amount and/or non-monetary terms. With regard to timelines for submission of an application for settlement, it was agreed that the application may be filed only after receipt of the DG Report and within such time before the passing of a final order by the CCI, as may be specified by subordinate legislation. The Committee also agreed that an order granting or rejecting a settlement application should not be made appealable to the Appellate Tribunal. Detailed procedure for the settlement mechanism should be set out in subordinate legislation.”

3.53 **The Committee note that the Stakeholders are of the opinion that the proposed amendment under Section 48(B)(4) may lead to significant interference by third parties and compromise the secrecy of the matter. In this regard, the Committee recommend that the inclusion of the ‘any other party’ in**

the clause must be removed and if the CCI is to seek objection from third parties, such an obligation must not be mandatory but discretionary.

The Committee note that as per the provisions of the Bill, in its present form, the only way parties can mid-way move out of the commitments or settlements process, is if the commission rejects the application on grounds of inappropriate offer, or if the commission and the party do not reach an agreement. However, the power to do so still rests only with the commission. The Committee is of the view that there may be a possibility of cases where the party concerned might want to withdraw in the investigation, but the commission might not reject immediately and continue the process for longer. The Committee, therefore, recommend that the party concerned should also have the ability to withdraw.

The Committee is also of the considered view that the cartels should also be included in the scope of settlements. The argument against including cartels is that they, by their very nature are anti competitive. The CLRC report, too, did not recommend inclusion of cartels. A settlement provision for cartels on a case-by-case basis may be for the courts to decide. It does not require emphasis that any matter, cartels or otherwise, that reaches the settlement stage, would have been an anti-competitive one. The Committee would therefore recommend that the CCI should consider expanding the scope of settlements to include cartels also as a pragmatic recourse to the whole process.

The Committee further observe that the Bill is silent on whether an application for settlements and commitments requires an admission of guilt. Prima facie, admission of guilt should not be mandated. The Committee, accordingly, recommend that there should be an enabling provision to allow the applicant to apply to the CCI to revisit the settlement/commitment after the order of the final settlement by the CCI as one last opportunity. From the consumer's perspective provision may be made by way of regulation under this clause (apart from the enabling section in the parent Act) to provide compensation to the affected consumers in an appropriate manner.

The Committee recommend that that the proposed Sections 48A and 48B be modified as under:

48A. (1) Any enterprise, against whom any inquiry has been initiated under sub-section (1) of section 26 for contravention of sub-section (3) or 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.

Provided that the applicant under sub-section (1) shall have the right to withdraw the application within 7 working days from the date of the hearing. In

the event of withdrawal of the application, the Commission shall proceed with its inquiry under Section 26 of the Act, without any prejudice to the settlement offered.

(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, or the Director General 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, from any party who agreed to the settlement proposal.

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

48B. (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, or the Director General 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, from any party who agreed to the commitment proposal.

Furthermore, relevant amendment be made in Section 53N of the principal Act,

53N. Compensation:

(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 an order for settlement passed under section 48A or the orders of the Appellate Tribunal in an appeal against any findings of the Commission or under section 42A or under sub-section(2) of section 53Q of the Act, and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by the Central Government or a State Government or a local authority or any enterprise or any person as a

result of any contravention of the provisions of Chapter II, having been committed by enterprise.

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

6) Hub and Spoke Cartels

3.54 Clause 4 of the bill reads as under:

(a) in sub-section (3), after the proviso, the following proviso shall be inserted, namely:—

"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 actively participates in the furtherance of such agreement.";

3.55 FICCI submitted the following suggestions/ views on the above issue:

"If at all the applicability of the provision to persons not engaged in similar trade is to be retained, such provision must be made applicable on the basis of materials and documents inspected, and not on the basis of an adverse presumption / legal fiction. The proposed addition could lead to undue harassment for parties who have no interest in, and gain no benefits from, such anti-competitive agreements.

Further, the term "actively participates" is vague and could lead to misuse of this provision to the detriment of certain parties. For example, there may be industry associations which organise events to provide platforms for discussions between industry players on issues affecting the industry. If certain industry players, of their own volition and unbeknownst to the industry association, discuss anti-competitive arrangements during such events, the industry association may still be implicated in the matter for having organised such event, despite it having no knowledge on discussions regarding anti-competitive arrangements."

3.56 The Ministry of Corporate affairs commented on the above suggestions as under:

- (i) "As per the section 3(3), there is only a rebuttable presumption against any cartels or horizontal agreements and therefore, any hub and spoke cartels that can demonstrate absence of Appreciable Adverse Effect on Competition (AAEC) can rebut the presumption.
- (ii) The phrase "actively participates" aims to capture and penalize hub and spoke cartels along with other horizontal anti-competitive agreements, even if the hub does not operate in the same relevant market.

It is seen that many industry associations provide a platform where parties reach an agreement to fix prices or allocate markets. This has been observed by CCI in its investigation of cartels and anti-competitive agreements as well as in other jurisdictions. However, these associations can always rebut the presumption against them, if charged by."

3.57 Elaborating further on the issue ASSOCHAM submitted the following suggestions/ views:

"The current text of the proposed amendment in the Amendment Bill does not clarify what the CCI would consider as "active" participation. This would particularly be relevant in cases of entities providing intermediary services or merely facilitating information exchange with no intention, knowledge, or concern about the cartel arrangement (for e.g., an e-commerce platform).

The Amendment Bill does not clarify if this role of a trade association (i.e., providing an accessible platform for competitors to exchange commercially sensitive information through meetings), albeit unintentionally, will be viewed as having "actively participated" in such a cartel. We suggest the inclusion of intention to establish the role of a party in the furtherance of a cartel to prevent the presumption of furthering a cartel from being wrongly imputed to a party that had no intention to do so.

It would thus be prudent to limit the applicability of this proviso to only those instances where the enterprises have acted with the intention of furthering the

cartel. This would ensure that enterprises that had nothing to do with the collusive conduct beyond unintentionally and unknowingly providing a platform for such conduct are not brought under the scanner.”

3.58 The Ministry of Corporate affairs commented on the above suggestions as under:

“As per the section 3(3), there is only a rebuttable presumption against any cartel or horizontal agreements and therefore, any hub and spoke cartels that can demonstrate absence of Appreciable Adverse Effect on Competition (AAEC) can rebut the presumption.

- (i) The phrase “actively participates” aims to capture and penalize hub and spoke cartels along with other anti-competitive agreements, even if all participants do not operate in the same relevant market.
- (ii) The phrase “actively participates” takes care of participation of an enterprise or association of enterprises or a person or association of persons in a horizontal and cartel agreement *and* also possible overreach in enforcement, where mere existence may entail penal actions.
- (iii) It is seen that many industry associations provide a platform where parties reach an agreement to fix prices or allocate markets. This has been observed by CCI in its investigation of cartels and anti-competitive agreements as well as in other jurisdictions. However, these associations can always rebut the presumption against them, if charged by CCI.
- (iv) The Commission shall have to establish that there was active participation in furtherance of anticompetitive agreements, otherwise many parties which were even not aware of anti-competitive agreements would come under the rule of presumption. For example, a Trade Association may not have provided a platform knowingly to its members which have entered into anti-competitive agreements on the side-lines during meeting of association. In such cases, that Trade Association may not be considered as part of that anti-competitive agreement.”

3.59 The recommendation of The Competition Law Review Committee, 2019 reads as under :

“In light of the aforesaid deliberations and with a view to providing clarity on the liability of hubs while assessing violation of Section 3(3) of the Competition Act by a hub and spoke cartel, the Committee recommended addition of an explanation to Section 3(3) of the Competition Act to expressly cover ‘hubs’ and impute liability to such hubs based on the existing rebuttable presumption rule as envisaged under Section 3(3) and without any element of ‘knowledge’ or ‘intention’.”

3.60 In the light of the deliberations detailed above, the Committee note that the Bill has expanded the scope of cartels to include Hub and Spoke arrangements implemented by entities involved at different levels of the value chain. The Committee, however, note that there is no clarity on the meaning of active participation in the agreement, which could potentially cover:

- (i) Entities merely providing intermediation services in digital markets, for instance online platforms and
- (ii) Consortiums, industry association and trade unions that merely organise meetings without an agenda to share sensitive information.

The Committee, accordingly, recommend to modify the clause as under:

Bill Clause 4; Principal Act Section 3:

“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 be presumed to be part of the agreement under this sub-section if it is proved that such person intended to actively participate in the furtherance of such agreement.”

7) Requirement of a Judicial Member

3.61 Clause 9 of the bill reads as under:

In section 8 of the principal Act, in sub-section (2), after the word "industry" the word "technology," shall be inserted.

Section 8

Composition of Commission

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

3.62 The Institute of Company Secretary India(ICS) submitted the following suggestions/ views on the above issue:

"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 out of which at least one shall be judicial member. The CCI is performing adjudicatory function under the Act, and to secure impartiality, transparency and to follow the due process of law, it is suggested that the Commission may have a judicial member."

3.63 Elaborating further on the issue FICCI submitted the following suggestions/ views:

"CCI must have a predominance of judicial members. The Amendment Bill proposes to introduce a provision of additional qualification for selecting CCI Members in the field of technology. Additionally, even though the officers and Commission members are highly experienced and qualified, an additional judicial

eye can aid and assist the Commission in drawing judicial conclusions, to see through facts based on evidence and apply appropriate legal principles to reach a decision while deciding on any report. Thus, CCI must have a predominance of judicial members in its commission.”

3.64 The stakeholders submitted the following suggestions/ views on the above issue:

“The CCI has been carrying out adjudicatory functions without the presence of a judicially trained member since 2018. In spite of the express direction of the Division Bench of the Hon’ble Delhi High Court in Mahindra Electric Mobility Limited & Anr v. CCI & Anr. that adjudicatory orders made by the CCI should necessarily include the presence and participation of a judicial member, no judicial member has been appointed a judicial member to the CCI. In the past, several decisions of the CCI have been overturned on basic issues of natural justice or procedural irregularities, which may have been avoided with the experience and knowledge of a judicial member in the bench. The presence of a judicial member may also bring a sense of greater fairness to proceedings and facilitate well-reasoned decisions emanating from the CCI.”

3.65 The Ministry of Corporate affairs commented on the above suggestions as under:

“As per the provisions of the Competition Act, 2002 there is no mandatory requirement for appointment of a judicial member. Section 8(1) of the Act states that “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.

Further Section 8(2) of the Act states that “The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and such professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.

Taking cognizance of the directions of the Delhi High Court, the Ministry sought the advice of the Department of Legal Affairs (DLA) on the matter. DLA has opined that it is a well settled principle of law that every statute is to be interpreted in accordance with the intention of the legislature or maker of the statute.

When a statute vests certain power in authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. There is no specific mention of a judicial member in the relevant provision of the Act. The provision indicates that a person having special knowledge of law can be considered for appointment as a member.”

3.66 The recommendation of The Competition Law Review Committee, 2019 reads as under :

“The Committee noted that determination of competition issues – antitrust as well as combinations – involves sifting through large volumes of papers, consideration of a large number of factors, and adherence to principles of natural justice. Such issues may also involve cross-cutting sectoral knowledge depending on the kind of business and market the enterprise is operational in. Therefore, it was agreed that a balance should be struck between efficient distribution of work and plurality of views. The Committee concluded that the Chairperson and WTMs may sit in panels of three for meetings in relation to adjudication. The composition of the panel may be determined by the Chairperson to ensure that the best equipped set of members is appointed to dispose of a matter. The attention of the Committee was drawn to the decision of the Delhi High Court in the Mahindra case, where the Hon’ble Court held that the CCI shall ensure that at all times, during the final hearing, a judicial member is present and participates in the hearing. In this regard, the Committee noted that necessary action may be considered by the Central Government.”

3.67 The Committee note that the Delhi High Court in the Mahindra V. CCI held that it is imperative for the CCI to have a judicial member when issuing its final orders. The Committee also note that CLRC in its Report had recommended for

having judicial member in the CCI. However, since the matter is now subjudice in Supreme Court of India, the suggestions to have judicial member in CCI may await decision of Supreme Court.

8) IPR as Defence of Abuse of Dominant Position

3.68 Clause 5 of the bill reads as under:

In section 4 of the principal Act, in sub-section (2), in clause (a), in the Explanation, for the words "discriminatory condition or price", the words "condition or price" shall be substituted.

3.69 The stakeholder submitted the following suggestions/ views on the above issue:

"We understand that unlike Section 3 of the Competition Act which carves out an exception for reasonable exercise of intellectual property rights in relation to anti-competitive agreements, Section 4 of the Competition Act does not provide for any such provision in relation to abuse of dominance cases. It would, accordingly, be more desirable for the CCI to specifically take into consideration the rights that a party may have in relation to reasonable exercise of its intellectual property when dealing with abuse of dominance cases to avoid any uncertainty.

It is therefore recommended to include a defence allowing reasonable conditions and restrictions for protecting intellectual property rights in cases relating to alleged abuse of dominance under Section 4 of the Competition Act."

3.70 The Ministry of Corporate affairs commented on the above suggestions as under:

"IPR defence need not be explicitly included for Section 4 since in the era of New Age Economy, mention of IPR defence explicitly, may allow a dominant player to abuse its position of dominance.

Moreover, adequate defence is available at present in Section 4 when charged by CCI."

3.71 Elaborating further on the issue, the stakeholders submitted the following suggestions/ views:

“The Competition Act does not currently recognise the reasonable protection of IP rights as a valid defence in cases of abuse of dominance (while this is specifically carved out in relation to anticompetitive agreements). A specific carve out in this regard is essential in abuse of dominance cases since IP rights by their very nature, bestow a degree of market power upon their owners, including the right to prevent others from infringing on such IP rights. Accordingly, the CCI may view conduct relating to the legitimate and permitted protection of one’s IP rights as abusive conduct, if the conduct falls within any of the categories mentioned under Section 4(2) of the Competition Act. This can lead to a dichotomy and lead to conflicting determination (between say a Court/ IP authority on the one hand and the CCI on the other) around the same set of facts. The absence of this express defence handicaps IP holders in defending abuse of dominance allegations even if their conduct was only to reasonably and legitimately protect their intellectual property rights.”

3.72 The Ministry of Corporate affairs commented on the above suggestions as under:

“IPR defence need not be explicitly included for Section 4 since in the era of New Age Economy, mention of IPR defence explicitly, may allow a dominant player to abuse its position of dominance.

Moreover, in Section 4 concerning abuse of dominance, already provisions do exist which allow the IPR holders to defend its position, that while exercising its IPR's, it is not abusing its position at the marketplace.”

3.73 The stakeholders on the above issue submitted as under:

The CLRC Report recommended that a defence allowing reasonable conditions and restrictions for protecting IPR may be provided in cases of abuse of dominance in line with the international jurisdictions i.e., EU, U.S and U.K which provides for such an exemption. Whilst it was mentioned in the CLRC Report that

reasonable exercise of IPR may be an obvious defence and may not need to be stated expressly, it was discussed that a specific defence should be provided under Section 4 to avoid any uncertainty as it is explicitly mentioned in Section 3(5)(i) of the Competition Act.

The CCI's decisional practice shows that it exercises a "reasonability" threshold with respect to the use of IPR while deciding on abuse of dominance cases. This might have been one of the potential reasons to not include an explicit IPR protection in Section 4 to avoid any misuse of such an exception.

However, as recommended in the CLRC Report, it would be more desirable for the CCI to specifically take into consideration the rights that a party may have in relation to reasonable exercise of its IPR when dealing with abuse of dominance cases to avoid any uncertainty.

3.74 Regarding IPR as Defence of Abuse of Dominant Position, the recommendation of The Competition Law Review Committee, 2019 reads as under :

"The Committee decided that in cases of abuse of dominance, a defence allowing reasonable conditions and restrictions for protecting IPR may be provided. It was mentioned that reasonable exercise of IPR may be an obvious defence and may not need to be stated expressly.

However, the Committee discussed that since the Act explicitly mentions this defence in Section 3(5)(i), a specific defence should also be provided in relation to Section 4 to avoid any uncertainty. For both Sections 3 and 4, the provision providing IPR defences should be wide and, in addition to the existing IPR laws, should also include 'any other law in force relating to protection of IPR rights' meted to other regulatory bodies, the Committee agreed that the CCI should be provided similar exemption from taxes.

And with regard to the above CLRC recommendation, the Ministry in their post evidence replies submitted the following rationale for not including in the draft bill:-

(i) There already exists Competition Fund which is administered by the Commission itself without any interference by the Central Government.

(ii) Additional clause to Section 51 of the Act, seeks to broaden the sources from where funds could be received by the Commission, for crediting to the Competition Fund. Such sources of funding will have to be approved by the Central Government.

Charging of Ad-valorem fee may come in the way of additional cost burden on companies and consequently.”

3.75 The Committee note that while an IPR exemption is granted in case of anti-competitive agreements in the principal Act, it does not extend this exception, explicitly, to section 4 in the Bill that deals with abuse of dominant position. The Committee is of the opinion that in the absence of such an explicit defence enshrined under the Act, the CCI will not allow any dominant entity to provide for reasonable protection of its IPR, while being investigated for alleged abuse of dominance. The CLRC report had recommended that this defence may be allowed in cases involving dominant position. It had also remarked that this exemption may not necessarily establish excessive market power. The current Bill, however, does not address this issue. The Committee further feel that no strong argument has been put forth by the Ministry for IPR not to be used as a defence in cases of abuse of dominant position. The Committee is of the opinion that as recommended in the CLRC Report, it would be more desirable for the CCI to specifically take into consideration the rights that a party may have in relation to reasonable exercise of its IPR when dealing with abuse of dominant cases to avoid any uncertainty. The Committee, thus, recommend that a similar defence (as currently included under section 3(5) of the Act) be also added under section 4 of the Act. Accordingly, a Section 4(3) may be inserted in Section 4 of the Principal Act as under:

Nothing contained in this section shall restrict the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred upon him under—

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

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

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

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

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

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

(g) any other law for the time being in force relating to the protection of other intellectual property rights (37 of 2000);

9) Effects-Based Test

3.76 The effect-based test does not exist in the Act but can be added in the Section 4 of the existing Act.

Abuse of dominant position

4. [(1) No enterprise or group shall abuse its dominant position.] (2) There shall be an abuse of dominant position 4 [under sub-section (1), if an enterprise or a group]. — (a) directly or indirectly, imposes unfair or discriminatory— (i) condition in purchase or sale of goods or service; or (ii) price in purchase or sale (including predatory price) of goods or service.

Explanation.— For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory

price) or service referred to in sub-clause (ii) shall not include such discriminatory condition or price which may be adopted to meet the competition; or

(b) limits or restricts—

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

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

(c) indulges in practice or practices resulting in denial of market access 5 [in any manner]; or (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

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

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

planation.—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—

operate independently of competitive forces prevailing in the relevant market; or 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.

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

3.77 During the course of examination of the Bill, on the above issue an independent witness in a written submission stated as under:

No express rule of reason test in abuse of dominance cases.

“Section 4 of the Competition Act does not expressly require the DG/ CCI to conduct an “effects-based” analysis (i.e., an analysis of the actual effects of the

conduct in question) while examining abuse of dominance cases. Under the current scheme of the Competition Act, any conduct which falls under the categories of conduct specified under Section 4(2) of the Competition Act can be held to be an abuse of dominance, regardless of the actual effects of such conduct in the market. As a result, dominant enterprises are unnecessarily prosecuted for indulging in conduct listed under Section 4(2) of the Competition Act, when their actions do not actually cause anti-competitive harm and could in fact be pro-competitive or beneficial for consumers / the market in general. This also contrasts with the legal standard prescribed for other conduct (such as vertical agreements), which mandatorily requires an effects-based analysis.

Whilst the CCI has in some abuse of dominance cases sought to apply an effects-based analysis, this has not been done in all cases, given that this requirement has not been built into the law. The addition of a mandatory effects-based analysis in Section 4 of the Competition Act would facilitate more responsible, comprehensive, and reasoned decisions from the CCI, and will focus on remedying conduct which has an actual adverse effect on competition. A necessary effects-based analysis would also eliminate the possibility of over-enforcement in new age markets and allow parties to legally defend their actions based on pro-competitive effects and efficiencies arising from their conduct.”

3.78 The Ministry of Corporate affairs commented on the above suggestions as under:

- After analysing the decisional practice on abuse of dominance in India, the CLRC observed that the CCI has interpreted Section 4(2) keeping in mind that one of the key aims of the Act is to prevent practices which adversely affect competition in India.
- It has therefore, wherever appropriate, analysed the effects of alleged abusive conduct by dominant entities before passing orders regarding such conduct. The CCI has relied on the effects built into some of the clauses of Section 4(2) to support its approach, e.g. “denial of market access in any manner” in Section 4(2)(c).

- Thus, CLRC did not find any significant issues with the decisional practice of CCI, and found it to be in line with global best practices. After conducting an analysis of the CCI's orders, the Committee came to the conclusion that the current text of Section 4(2) has not proven to be a hindrance to the CCI's ability to assess effects in abuse of dominance disputes.

Therefore, it was concluded that no legislative amendment is required in this regard.

3.79 On the above issue, the recommendation of The Competition Law Review Committee, 2019 reads as under:

The Committee discussed that the CCI has interpreted Section 4(2) keeping in mind that one of the key aims of the Act is to prevent practices which adversely affect competition in India. It has therefore, wherever appropriate, analysed the effects of alleged abusive conduct by dominant entities before passing orders regarding such conduct. The CCI has relied on the effects built into some of the clauses of Section 4(2) to support its approach, e.g. "denial of market access in any manner" in Section 4(2)(c).

The Committee did not find any significant issues with the decisional practice of CCI discussed above, and found it to be in line with global practices. After conducting an analysis of the CCI's orders, the Committee came to the conclusion that the current text of Section 4(2) has not proven to be a hindrance to the CCI's ability to assess effects in abuse of dominance disputes. It was agreed that since it may not be necessary to undertake an effects analysis in all kinds of abuse, e.g. exploitative abuse, it may not be appropriate to mandate an effects analysis in Section 4(2). Therefore, it was concluded that no legislative amendment is required in this regard.

3.80 The Committee note that the Act does not expressly mandate the CCI to undertake an effects-based analysis while determining abuse of dominance under section 4 of the Act. Under this test, a regulator looks at different factors like impact on consumers, innovation and competition before adjudicating a conduct as violative of the competition law. The Committee

therefore recommend that in section 4 of the existing Act under Section 4(1), the following may be inserted as Section 4(1)(a):

“An enterprise or group shall in contravention of sub section (1), if it causes or likely to cause appreciable adverse effect on competition”.

Section 19(3) of the Act may also be accordingly be amended as follows:

“The commission shall, while determining whether an agreement or conduct has an appreciable adverse effect on competition under section 3 or section 4 of the Act (as applicable) have due regard to all or any of the following factors.....”

New Delhi
08 December 2022
17 Agrahayana, 1944 (Saka)

Shri Jayant Sinha
Chairperson
Standing Committee on Finance

Minutes of the First sitting of the Standing Committee on Finance (2022-23)
The Committee sat on Friday, the 28th October, 2022 from 1400hrs. to 1700hrs. in
Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha - Chairperson

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Subhash Chandra Baheria
4. Dr. Subhash Ramrao Bhamre
5. Smt. Sunita Duggal
6. Shri Sudheer Gupta
7. Shri Nama Nageswara Rao
8. Prof. Sougata Ray
9. Shri P.V Midhun Reddy
10. Shri Gopal Chinayya Shetty
11. Shri Balashowry Vallabbhaneni

RAJYA SABHA

12. Dr. Radha Mohan Das Agarwal
13. Shri Raghav Chadha
14. Shri Ryaga Krishnaiah
15. Shri Sushil Kumār Modi
16. Dr. Amar Patnaik
17. Dr. C.M. Ramesh

SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Kulmohan Singh Arora - Additional Director

PART I

1400 hrs onwards

2.	XX	XX	XX	XX	XX	XX
	XX	XX	XX	XX	XX	XX.

PART II

1430 hrs onwards

WITNESSES

Ministry of Corporate Affairs

1. Ms. Anuradha Thakur, Additional Secretary
2. Shri Manoj Pandey, Joint Secretary
3. Dr. Abhijit Phukon, Director

Competition Commission of India

1. Smt. Sangeeta Verma, Chairperson (I/C)
2. Ms. Jyoti Jindgar Bhanot, Secretary(I/C) and Adviser(Eco)
3. Shri (Dr.) Kapil Dev Singh, Director(Law)

Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs)

1. Shri Rohit Kumar Singh, Secretary
2. Shri Anupam Mishra, Joint Secretary

Ministry of Commerce (Department for Promotion of Industry and Internal Trade)

1. Ms. Shruti Singh, Joint Secretary
2. Ms. Supriya Devasthali, Director

4. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the 'Competition (Amendment) Bill, 2022'. The major issues discussed during the meeting included prohibition of anti competitive horizontal and vertical agreements, abuse of dominant position, deals with combination and combinations advocacy, deal value threshold, provision for settlement and commitments, introduction of leniency plus for cartel cases, International Competition

Network which provides information and literature support, contest of commitments by the third parties, decriminalization of the Act, definition of relevant product market, material influence and decisive influence, powers and duties of Director General, Commission's suo moto powers to investigate, transparency in issuing regulation, widening the restriction of two years for post tenure employment of chairperson and Members of Competition Commission of India (CCI), additional criteria for notifying merger and acquisition, introduction of settlement and commitment framework to achieve faster market correction, broadening the scope of inter-regulatory consultation, timeline for framing prima-facie opinion, Hub and spoke Agreements, mandatory deposit of 25% of the penalty for filing an appeal with the appellate tribunal, shortening of time taken by CCI for approving mergers and acquisition from 210 days to 150 days and global practices with respect to asset threshold.

5. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Second sitting of the Standing Committee on Finance (2022-23)
The Committee sat on Friday, the 04th November, 2022 from 1400 hrs. to 1650 hrs.
in Committee Room '2' PHA E Block A, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Subhash Chandra Baheria
4. Shri Manoj Kishorbhai Kotak
5. Shri Ravi Shankar Prasad
6. Shri Nama Nageswara Rao
7. Prof. Sougata Ray
8. Shri Gopal Chinayya Shetty
9. Shri Balashowry Vallabhaneni
10. Shri Rajesh Verma

RAJYA SABHA

11. Dr. Radha Mohan Das Agarwal
12. Shri P. Chidambaram
13. Shri Damodar Rao Divakonda
14. Shri Ryaga Krishnaiah
15. Shri Sushil Kumar Modi
16. Dr. Amar Patnaik
17. Dr. C.M. Ramesh
18. Shri G.V.L Narasimha Rao

SECRETARIAT

1. Shri Ramkumar Suryanarayanan - Director
2. Shri Kulmohan Singh Arora - Additional Director

LIST OF WITNESSES

Touchstone Partners

1. Shri Vinod Dhall, Senior Adviser – Competition
2. Shri Gaurav Desai, Partner
3. Ms. Apurva Badoni, Associate

FICCI (Federation of Indian Chambers of Commerce and Industry)

1. Ms Avaantika Kakkar, Partner – Head Competition Practice, Cyril Amarchand Mangaldas
2. Mr Arjun Goswami, Director & Head-Public Policy, Cyril Amarchand Mangaldas
3. Mr Rajbeer Sachdeva, President, Group Legal, JK Papers
4. Mr Sanaula Khan, Company Secretary, Wipro
5. Ms Abha Seth, Senior Director, FICCI

CUTS India

1. Shri Pradeep S. Mehta, Secretary General
2. Ms. Vidushi Sinha, Senior Research Associate

AZB & Partners

1. Shri Samir R. Gandhi, Senior Adviser
2. Shri Ramkumar Poornachandran, Partner
3. Ms. Hemangini Dadwal, Partner
4. Shri Bharat Budholia, Partner

Independent Witnesses

1. Prof. Aditya Bhattacharjea, Delhi School of Economics, University of Delhi.
2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the 'Competition (Amendment) Bill, 2022' and the major issues discussed include Deal Value threshold, hub and spoke cluster issue,

definition of substantial business operation in India, issue of material influence and decisive influence, merger and control, settlement and commitment framework, overlapping of function between two regulators, issue of collective abuse of dominance, need for national competition policy and to expand the competition advocacy, market monitoring mechanism in Competition Commission of India, safeguards against arbitrariness in enforcement of commitments and settlements by commission, guidelines for penalties computation, appointment of Director General, involvement of third parties in settlement mechanism.

3. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Fifth sitting of the Standing Committee on Finance (2022-23) The Committee sat on Tuesday, the 29th November, 2022 from 1130 hrs. to 1400 hrs. in Committee Room '2' E PHA Block A, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Subhash Chandra Baheria
4. Dr. Subhash Ramrao Bhamre
5. Smt. Sunita Duggal
6. Shri Manoj Kishorbhai Kotak
7. Shri Pinaki Misra
8. Shri Nama Nageswara Rao
9. Prof. Sougata Ray
10. Shri P.V Midhun Reddy
11. Shri Gopal Chinayya Shetty
12. Dr. (Prof.) Kirit Premjibhai Solanki
13. Shri Balashowry Vallabbhaneni

RAJYA SABHA

14. Shri Raghav Chadha
15. Shri Sushil Kumar Modi
16. Dr. Amar Patnaik

SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Kulmohan Singh Arora - Additional Director

LIST OF WITNESSES

Ministry of Corporate Affairs

1. Dr. Manoj Govil, Secretary
2. Shri Manoj Pandey, Joint Secretary
3. Dr. Abhijit Phukon, Director

Competition Commission of India

1. Smt. Sangeeta Verma, Chairperson (I/C)
2. Ms. Jyoti Jindgar Bhanot, Secretary(I/C) and Adviser(Eco)
3. Shri (Dr.) Kapil Dev Singh, Director(Law)

2. At the outset, the Chairperson welcomed the Members and the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Chairperson initiated the discussion on the 'Competition (Amendment) Bill, 2022' and the major issues discussed include Deal Value threshold, the idea of local business operation, prima facie opinion of the Competition Commission of India (CCI), ability of the Director-General to depose legal advisors, settlement and commitments, inclusion of cartels in settlement and commitment framework, IPR as a defense against the abusive dominant position, requirement of a judicial member, Hub and spoke cartels, effect-base test, definition of control, material and decisive influence, the ability to withdraw from settlements and commitment, issue of admission of guilt, process of identifying business operation in India, abuse of dominant position, sou moto investigation power of Competition Commission of India (CCI) and introduction of linency plus regime..

3. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Sixth sitting of the Standing Committee on Finance (2022-23) The Committee sat on Thursday, the 8th December, 2022 from 1500hrs. to 1615 hrs. in Committee Room '3', Parliament House Annexe Extension Block A, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Dr. Subhash Ramrao Bhamre
4. Smt. Sunita Duggal
5. Shri Manoj Kishorbhai Kotak
6. Shri Pinaki Misra
7. Prof. Sougata Ray
8. Shri Gopal Chinayya Shetty

RAJYA SABHA

9. Shri P. Chidambaram
10. Dr. Amar Patnaik
11. Shri G.V.L Narasimha Rao

SECRETARIAT

- | | | | |
|----|------------------------------|---|-----------------|
| 1. | Shri Siddharth Mahajan | - | Joint Secretary |
| 2. | Shri Ramkumar Suryanarayanan | - | Director |

PART I

2. XX XX XX XX XX XX
XX XX XX XX XX XX.

The witnesses then withdrew.

3. At the outset, the Chairperson welcomed the Members to the sitting of the Committee. Thereafter, the Committee took up the draft Report on Competition (Amendment) Bill, 2022" for consideration and adoption. After some deliberations, the Committee adopted the draft Report and authorised the Chairperson to finalise and present the Report to the Parliament.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

LOK SABHA

CORRIGENDUM

to--

THE COMPETITION (AMENDMENT) BILL, 2022

[To be/As introduced in Lok Sabha]

1. Page 7, line 32,-

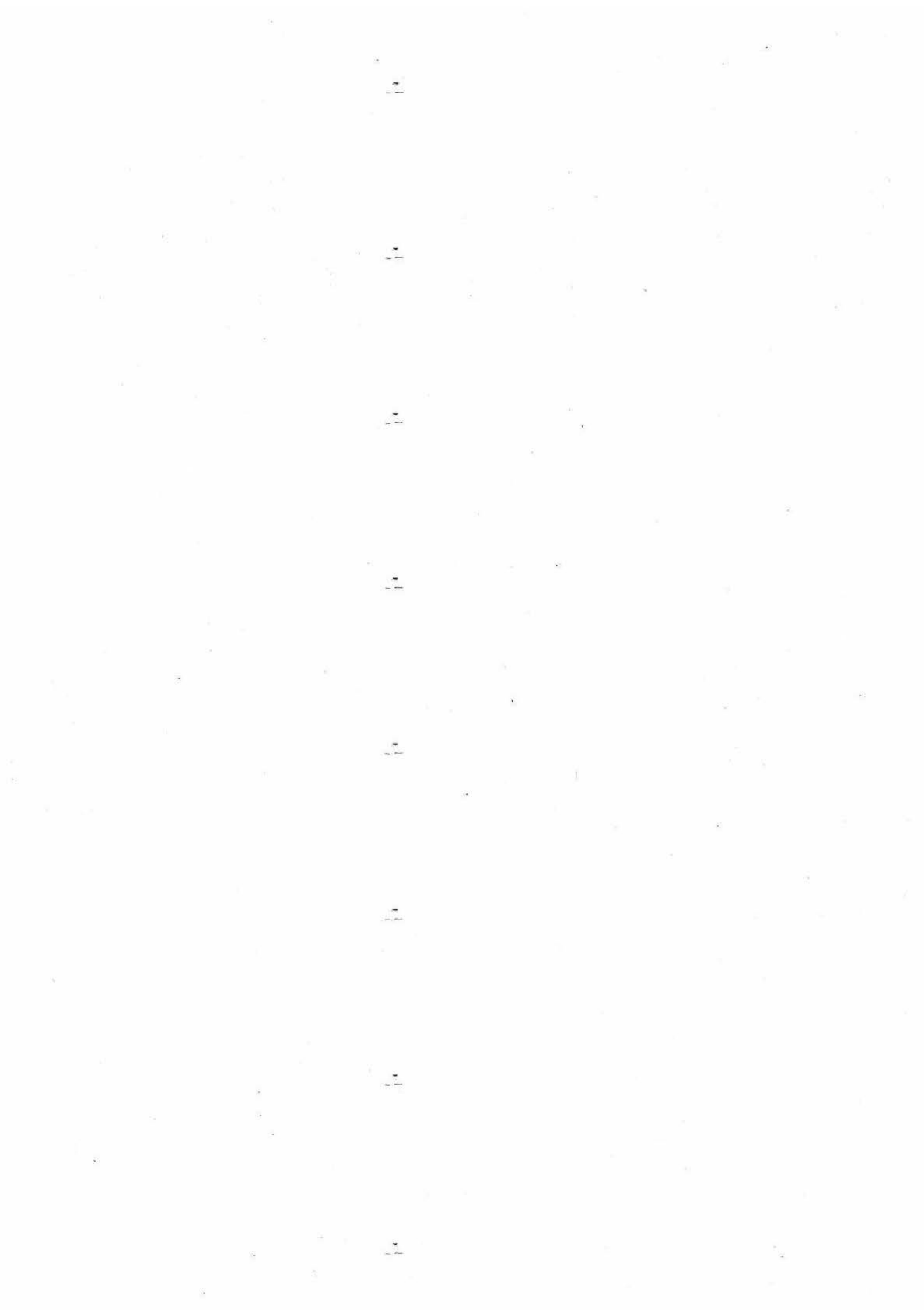
for "other member after"

read "other Members after"

NEW DELHI;

August 3, 2022

Sravana 12, 1944 (Saka)



Bill No. 185 of 2022

THE COMPETITION (AMENDMENT) BILL, 2022

A

BILL

further to amend the Competition Act, 2002.

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

1. (1) This Act may be called the Competition (Amendment) Act, 2022.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification
5 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.

Substitution
of references
to certain
expressions
by certain
other
expressions

Amendment
of section 2

2. In the Competition Act, 2002 (hereinafter referred to as the principal Act),— 12 of 2003.
- (a) for the words and figures "the Companies Act, 1956", wherever they occur, 1 of 1956.
the words and figures "the Companies Act, 2013" shall be substituted; 18 of 2013
- (b) for the figures and word "1 of 1956", wherever they occur, the figures and
word "18 of 2013" shall be substituted. 5
3. In section 2 of the principal Act,—
- (a) after clause (e), the following clause shall be inserted, namely:—
- (ea) "commitment" means the commitment referred to in section 48B;;
- (b) in clause (h), for the portion beginning with the words "a person or a
department of the Government" and ending with the words "defence and space", the 10
following words shall be substituted, namely:—
- "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 15
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 20
the Government including all activities carried on by the departments of the
Central Government dealing with atomic energy, currency, defence and space,";
- (c) after clause (k), the following clause shall be inserted, namely:—
- (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 25
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;;
- (d) in clause (l), in sub-clause (vi), for the words and figures "section 617 of the
Companies Act, 1956", the words, brackets and figures "clause (45) of section 2 of the 30 1 of 1956.
Companies Act, 2013" shall be substituted; 18 of 2013.
- (e) for clause (p), the following clause shall be substituted, namely:—
- (p) "public financial institution" means public financial institution as
defined in clause (72) of section 2 of the Companies Act, 2013 and includes a 18 of 2013.
State Financial Corporation, State Industrial Corporation or State Investment 35
Corporation;;
- (f) for clause (t), the following clause shall be substituted, namely:—
- (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 40
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 45
them in the short term without incurring significant additional costs or
risks in response to small and permanent changes in relative prices;;

(g) after clause (u), the following clause shall be inserted, namely:—

'(ua) "settlement" means the settlement referred to in section 48A;'

4. In section 3 of the principal Act,—

Amendment
of section 3.

(a) in sub-section (3), after the proviso, the following proviso shall be inserted,
namely:—

"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 actively participates in the furtherance of such agreement.";

(b) in sub-section (4),—

(i) for the words "Any agreement amongst enterprises or persons", the words "Any other agreement amongst enterprises or persons including but not restricted to agreement amongst enterprises or persons" shall be substituted;

(ii) in clause (b), for the word "supply", the word "dealing" shall be substituted;

(iii) before the *Explanation*, the following proviso shall be inserted, namely:—

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

(iv) in the *Explanation*,—

(i) for clauses (a) and (b), the following clauses shall be substituted, namely:—

(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;';

(ii) in clause (c), after the word "goods", at both the places where it occurs, the words "or services" shall be inserted;

(iii) in clause (d), after the word "goods", at both the places where it occurs, the words "or services" shall be inserted;

(iv) in clause (e), for the words "includes any agreement to sell goods on condition", the words "includes, in case of any agreement to sell goods or provide services, any direct or indirect restriction" shall be substituted;

(c) in sub-section (5), in clause (i), after sub-clause (f), the following sub-clause shall be inserted, namely,—

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

5. In section 4 of the principal Act, in sub-section (2), in clause (a), in the *Explanation*, for the words "discriminatory condition or price", the words "condition or price" shall be substituted.

Amendment
of section 4.

6. In section 5 of the principal Act,—

(A) in clause (c), in sub-clause (ii), in item (B), for the word "India.", the words "India; or" shall be substituted;

(B) after clause (c), the following clauses shall be inserted, namely:—

"(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: 5

Provided that the enterprise which is a party to the transaction 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."; 10

(C) for the *Explanation*, the following *Explanation* shall be substituted, namely:— 15

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 20

(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— 25

(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; 30

(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; 35 40

(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 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 45 50

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.!

7. In section 6 of the principal Act,—

Amendment
of section 6.

(a) in sub-section (2),—

(i) for the words "within thirty days of", the words "after any of the following, but before consummation of the combination" shall be substituted;

(ii) in clause (a), after the word, brackets and letter "clause (c)", the words, brackets and letter "and clause (d)" shall be inserted;

(iii) in clause (b), after the word, brackets and letter "clause (a)", the words, brackets and letter "and clause (d)" shall be inserted;

(iv) the following *Explanation* shall be inserted, namely:—

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 for acquisition of shares, voting rights or control such public document.;

(b) in sub-section (2A),—

(i) for the words "two hundred and ten days", the words "one hundred and fifty days" shall be substituted;

(ii) the following proviso shall be inserted, namely:—

"Provided that in case the party to the combination requests for additional time to furnish relevant information or remove defects to the notice filed under sub-section (2), the Commission may, by order, grant additional time which shall not be more than thirty days for furnishing relevant information or removing defects, as the case may be.";

(c) in sub-section (3), for the words and figures "sections 29, 30 and 31", the words, figures and letter "sections 29, 29A, 30 and 31" shall be substituted;

(d) for sub-sections (4) and (5) and the *Explanation*, the following shall be substituted, namely:—

(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

(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). 10

(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: 15

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). 20

(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, 2022 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 25

(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, 2022, 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. 30 35

(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. 40

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; 45

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; 50

15 of 1992.

	8. After section 6 of the principal Act, the following section shall be inserted, namely:—	Insertion of a new section 6A.
5	'6A. 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—	Open offers, etc.
	(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	
10	(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.	
15	<i>Explanation.</i> —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.		
	9. In section 8 of the principal Act, in sub-section (2), after the word "industry," the word "technology," shall be inserted.	Amendment of section 8.
20	10. In section 9 of the principal Act, in sub-section (1), in clause (d), after the word, "industry," the word "technology," shall be inserted.	Amendment of section 9.
	11. For section 12 of the principal Act, the following section shall be substituted, namely:—	Substitution of new section for section 12.
25	"12. (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—	Restriction on employment of Chairperson and other members.
	(a) any enterprise which is or has been a party to a proceeding before the Commission under this Act; or	
30	(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:	
35	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.		
40	12. In section 16 of the principal Act, in sub-section (1), for the words "Central Government may, by notification", the words "Commission may, with the prior approval of the Central Government," shall be substituted.	Amendment of section 16.
	13. For section 18 of the principal Act, the following section shall be substituted, namely:—	Substitution of new section for section 18.
45	"18. Subject to the provisions of this Act, it shall be the duty of the Commission to eliminate practices having adverse effect on competition, promote and sustain competition, protect the interests of consumers and ensure freedom of trade carried on by other participants, in markets in India:	Duties and functions of Commission

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."

Amendment
of section 19

14. In section 19 of the principal Act,—

(a) in sub-section (1), the following provisos shall be inserted, namely:—

"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: 10

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.": 15

(b) in sub-section (3),—

(i) in clause (c), the words "by hindering entry into the market" shall be omitted;

(ii) in clause (d), for the words "accrual of benefits", the words "benefits or harm" shall be substituted; 20

(c) in sub-section (6), after clause (h), the following clauses shall be inserted, namely:—

"(i) characteristics of goods or nature of services;

(j) costs associated with switching supply or demand to other areas."; 25

(d) in sub-section (7),—

(i) in clause (a), after the words "end-use of goods", the words "or the nature of services" shall be inserted;

(ii) after clause (f), the following clauses shall be inserted, namely:—

"(g) costs associated with switching demand or supply to other goods or services; 30

(h) categories of customers;"

Amendment
of section 20.

15. In section 20 of the principal Act,—

(a) in sub-section (1), for the words, brackets and letter "clause (c) of that section", the words, brackets, letters and figure "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" shall be substituted; 35

(b) in sub-section (3), after the words "value of turnover", the words "or the value of transaction" shall be inserted;

(c) in sub-section (4), in clause (c), for the word "combination", the word "concentration" shall be substituted. 40

Amendment
of section 21.

16. In section 21 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

"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."

17. In section 21A of the principal Act, in sub-section (1),—

Amendment of section 21A.

(a) for the words "this Act", the words "an Act" shall be substituted;

5 (b) for the proviso, the following proviso shall be substituted, namely:—

"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."

10 18. In section 22 of the principal Act, in sub-section (3), 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" shall be omitted.

Amendment of section 22.

19. In section 26 of the principal Act,—

Amendment of section 26.

(a) after sub-section (2), the following sub-section shall be inserted, namely:—

15 "(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.";

20 (b) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(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.

25 "(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.";

(c) in sub-section (4), for the word, brackets and figure "sub-section (3)", at both the places where they occur, the words, brackets, figures and letter "sub-sections (3) and (3B)" shall be substituted;

30 (d) in sub-section (5), for the word, brackets and figure "sub-section (3)", the words, brackets, figures and letter "sub-sections (3) and (3B)" shall be substituted;

(e) in sub-section (8), for the word, brackets and figure "sub-section (3)", the words, brackets, figures and letter "sub-sections (3) and (3B)" shall be substituted;

(f) after sub-section (8), the following sub-section shall be inserted, namely:—

35 "(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:

40 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."

45 20. In section 27 of the principal Act, for clause (b), the following clause shall be substituted, namely:—

Amendment of section 27.

"(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.—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.

Amendment
of section 29.

21. In section 29 of the principal Act,—

(a) in sub-section (1), for the words "within thirty days", the words "within fifteen days" shall be substituted;

(b) after sub-section (1A), the following sub-section shall be inserted, namely:—

"(1B) The Commission shall, within twenty days of receipt of notice under sub-section (2) of section 6, form its *prima facie* opinion referred to in sub-section (1).";

(c) in sub-section (2),—

(i) for the words "within seven working days", the words "within seven days" shall be substituted;

(ii) for the words "within ten working days", the words "within seven days" shall be substituted;

(d) in sub-section (3), for the words "within fifteen working days", the words "within ten days" shall be substituted;

(e) in sub-section (4), for the words "within fifteen working days", the words "within seven days" shall be substituted;

(f) in sub-section (5), for the words "within fifteen days", the words "within ten days" shall be substituted;

(g) for sub-section (6), the following sub-sections shall be substituted, namely:—

"(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)."

Insertion of
new section
29A.

Issue of
statement of
objections by
Commission
and proposal
of
modifications

22. After section 29 of the principal Act, the following section shall be inserted, namely:—

"29A. (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.

5 (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:
10

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

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

23. In section 31 of the principal Act,—

Amendment
of section 31.

(a) in the marginal heading, the word "certain" shall be omitted;

(b) in sub-section (1), the words "including the combination" shall be omitted;

(c) after sub-section (1), the following proviso shall be inserted, namely:—

20 "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.";

25 (d) for sub-sections (3), (4), (5) and (6), the following sub-sections shall be substituted, namely:—

30 "(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.

35 (5) Where—

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

40 (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,

45 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

Provided that the Commission may, by order, extend the said period of one hundred and fifty days by such further period as it thinks fit, but not exceeding thirty days in case parties to the combination request for additional time to furnish relevant information or remove defects to the notice filed under sub-section (2) of section 6." 10

(e) sub-sections (7), (8), (9), (10), (11) and (12) shall be omitted.

Amendment
of section 32.

24. In section 32 of the principal Act, for the figures and word "29 and 30", the figures, letter and word "29, 29A and 30" shall be substituted.

Amendment
of section 35.

25. Section 35 of the principal Act shall be numbered as sub-section (1) thereof,— 15

(a) in sub-section (1) as so numbered, for the words "A person or an enterprise", the words "A party" shall be substituted;

(b) after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

"(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." 20

Amendment
of section 41.

26. In section 41 of the principal Act,—

(a) for sub-section (3), the following sub-sections shall be substituted, namely:— 25

"(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 30

(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. 35

(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: 40

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: 45

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.

5

(6) The Director General may examine on oath—

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

10

(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.

15

(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.

20

(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.

25

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

30

(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:

35

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.

40

(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:

45

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, relating to search or seizure made under that Code." 2 of 1974

(b) for the *Explanation*, the following *Explanation* shall be substituted, namely:— 5

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 legal advisers of, and persons employed as auditors by, such person; 10

(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. 15

Amendment of section 42.

27. In section 42 of the principal Act,—

(a) in sub-section (2), for the words, figures and letters "sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine", the words, figures and letters "sections 6, 27, 28, 31, 32, 33, 42A, 43, 43A, 44 and 45 of the Act, he shall be liable to a penalty" shall be substituted; 20

(b) in sub-section (3), for the words, brackets and figure "pay the fine imposed under sub-section (2)", the words, brackets and figure "pay the penalty imposed under sub-section (2)" shall be substituted. 25

Amendment of section 42A.

28. In section 42A of the principal Act, for the words and figures "under sections 27", the words and figures "under sections 6, 27" shall be substituted.

Amendment of section 43.

29. In section 43 of the principal Act, for the words "shall be punishable with fine", the words "shall be liable to a penalty" shall be substituted.

Substitution of new section for section 43A.

30. For section 43A of the principal Act, the following section shall be substituted,— 30

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

"43A. 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: 35

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." 40

Amendment of section 44.

31. In section 44 of the principal Act, for the words "rupees one crore", the words "rupees five crore" shall be substituted. 45

32. In section 45 of the principal Act,—

Amendment
of section 45.

(a) in the marginal heading, for the word "offences", the word "contraventions" shall be substituted;

(b) in sub-section (1),—

5 (i) after the words "Without prejudice to the provisions of", the words, brackets and figures "sub-section (6) of section 6 and" shall be inserted;

(ii) for the words "punishable with fine", the words "liable to a penalty" shall be substituted.

10 33. For section 46 of the principal Act, the following section shall be substituted, namely:—

Substitution of
new section
for section 46.

15 "46. (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:

Power to
impose lesser
penalty.

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:

20 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:

25 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,—

30 (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,

35 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.

40 (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.

45 (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."

Amendment
of section 47

34. For section 47 of the principal Act, after the word "penalties", the words "and 5
recovery of legal costs by the Commission" shall be inserted.

Substitution of
new sections
for section 48.

35. For section 48 of the principal Act, the following sections shall be substituted,
namely:—

Contravention
by companies.

'48. (1) Where a person committing contravention of any of the provisions of
this Act or of any rule, regulation, order made or direction issued thereunder is a company, 10
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 15
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 20
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 25
contravention of any of the provisions of this Act or of any rule, regulation, order
made or direction issued thereunder has been committed by a company and it is
proved that the contravention has taken place with the consent or connivance of, or is
attributable to any neglect on the part of, any director, manager, secretary or other
officer of the company, such director, manager, secretary or other officer shall also be 30
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 35
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 40
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.!

Settlement.

48A. (1) Any enterprise, against whom any inquiry has been initiated under 45
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.

5 (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.

10 (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.

15 (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.

20 (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.

25 48B. (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. Commitment.

30 (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.

35 (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.

40 (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.

45 (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.

Revocation of the settlement or commitment order and penalty.	48C. 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.'	5
Amendment of section 49.	36. In section 49 of the principal Act, in sub-section (3), after the words "competition advocacy", the words "or culture" shall be inserted.	10
Amendment of section 51.	37. In section 51 of the principal Act, in sub-section (1), after clause (d), the following clause shall be inserted, namely:— "(e) all sums received by the Commission from such other sources as may be decided upon by the Government."	
Amendment of section 53A.	38. In section 53A of the principal Act, in sub-section (1), in clause (a), for the words, brackets and figures "sub-sections (2) and (6) of section 26", the words, brackets, figures and letter "sub-section (6) of section 6, sub-sections (2), (2A), (6) and (9) of section 26", shall be substituted.	15
Amendment of section 53B.	39. In section 53B, in sub-section (2), after the proviso, the following proviso shall be inserted, namely:— "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."	20
Amendment of section 53N.	40. In section 53N of the principal Act,— (a) in sub-section (1), for the words, brackets, figures and letter "under sub-section (2) of section 53Q", the words, brackets, figures and letters "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" shall be substituted; (b) in sub-section (2), after the words "findings of the Commission", the words "or Appellate Tribunal or the Supreme Court" shall be inserted; (c) in the <i>Explanation</i> ,— (i) in clause (a), after the words, brackets, figures and letter "sub-section (1) of section 53A", the words, figures and letter "or the Supreme Court on appeal under section 53T" shall be inserted; (ii) in clause (b), after the words "or the Appellate Tribunal", the words "or the Supreme Court," shall be inserted.	25
Amendment of section 53Q.	41. In section 53Q of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:— "(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."	30
Insertion of new section 59A	42. After section 59 of the principal Act, the following section shall be inserted, namely:—	
Compounding of certain offences.	"59A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with	45

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."

43. In section 63 of the principal Act, in sub-section (2),—

Amendment
of section 63.

5 (i) clause (a) shall be re-lettered as clause (ae) thereof, and before clause (ae) as so re-lettered, the following clauses shall be inserted, namely:—

"(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;

10 (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;"

(ii) after clause (mf), the following clause shall be inserted, namely:—

15 "(mg) the form of the publication of guidelines under sub-section (5) of section 64B;"

44. In section 64 of the principal Act, in sub-section (2),—

Amendment
of section 64.

(i) for clause (c), the following clauses shall be substituted, namely:—

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

20 (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;

25 (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;"

(ii) after clause (f), the following clauses shall be inserted, namely:—

30 "(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;"

35 (iii) after clause (g), the following clauses shall be inserted, namely:—

"(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;

40 (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; 5

(gg) the other details to be published along with draft regulations and the period for inviting public comments under clause (a) of section 64A;". 10

Insertion of new sections 64A and 64B.

45. After section 64 of the principal Act, the following sections shall be inserted, namely:—

Process of issuing regulations.

"64A. 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; 15

(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: 20

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. 25

Commission to issue guidelines.

64B. (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. 30

(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. 35

(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." 40

STATEMENT OF OBJECTS AND REASONS

The Competition Act, 2002 (hereinafter referred to as the said Act) was enacted in the year 2002, to provide for 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 India, and for matters connected therewith or incidental thereto.

2. There has been a significant growth of Indian markets and a paradigm shift in the way businesses operate in the last decade. In view of the economic development, emergence of various business models and the experience gained out of the functioning of the Commission, the Government of India constituted Competition Law Review Committee, to examine and suggest the modifications in the said Act. After review of the recommendations proposed by the Committee, public consultations and with a view to provide regulatory certainty and trust-based business environment, it is considered imperative to amend the said Act.

3. The Competition (Amendment) Bill, 2022, *inter alia*, provides for the following, namely:—

(a) changes in certain definitions like “enterprise”, “relevant product market”, “Group”, “Control”, etc., to provide clarity;

(b) broadening the scope of anti-competitive agreements and inclusion of a party facilitating an anti-competitive horizontal agreement under such agreements;

(c) provisions for reduction of time-limit for approval of combinations from two hundred and ten days to one hundred and fifty days and forming a *prima facie* opinion by the Commission within twenty days for expeditious approval of combinations;

(d) provisions for “value of transaction” as another criteria for notifying combinations to the Commission;

(e) limitation period of three years for filing information on anti-competitive agreements and abuse of dominant position before the Commission;

(f) appointment of the Director General by the Commission with the prior approval of the Central Government;

(g) introduction of Settlement and Commitment framework to reduce litigations;

(h) incentivising parties in an ongoing cartel investigation in terms of lesser penalty to disclose information regarding other cartels;

(i) substitution of a provision which provides for penalty up to rupees one crore or imprisonment up to three years or both in case of contravention of any order of the National Company Law Appellate Tribunal with provision for contempt;

(j) issuance of guidelines including on penalties to be imposed by the Commission.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 28th July, 2022.

NIRMALA SITHARAMAN

Notes on Clauses

Clause 1 of the Bill seeks to provide for short title and commencement of the Act.

Clause 2 of the Bill seeks to substitute the reference of Companies Act, 1956 to Companies Act, 2013 throughout the Act.

Clause 3 of the Bill seeks to amend certain definitions of the Act such as 'enterprise', 'relevant product market', etc.

Clause 4 of the Bill seeks to amend section 3 of the Act to broaden the scope of anti-competitive agreements and also to include a party facilitating an anti-competitive horizontal agreement under such agreements.

Clause 5 of the Bill seeks to amend section 4 of the Act to omit the word "discriminatory" in the *Explanation* to clause (a) of sub-section (2) of the said section.

Clause 6 of the Bill seeks to amend section 5 of the Act to insert new clauses (d) and (e) to provide that if the value of any transaction in connection with acquisition of any control, shares, voting rights, etc., exceeds Rs. 2,000 crore, it would require filing a notice of combination before the Commission and to empower the Central Government to exempt certain transactions from the requirement to file combination notice under the Act. It further provides to substitute the *Explanation* to define the terms of turnover, value of transaction, etc.

Clause 7 of the Bill seeks to amend section 6 of the Act to omit the reference of 30 days and to reduce the overall time limit of assessment of combinations to a period of 150 days from 210 days. It further provides to enable the Commission to extend the time limit up to a maximum period of 30 days to accommodate the request of parties to file additional information or to remove defects in the notice. It also provides to introduce a separate channel for certain combinations which shall be eligible for deemed approval upon filing of a notice under sub-section (4) of section 6 of the Act.

Clause 8 of the Bill seeks to insert a new section 6A after section 6 of the Act to provide that the provisions contained in sub-section (2A) shall not 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 with certain conditions.

Clause 9 of the Bill seeks to amend section 8 of the Act which refers to the composition of the Commission to amend sub-section (2) by including additional qualification for such Members in the field of technology.

Clause 10 of the Bill seeks to amend section 9 of the Act which refers to the composition of the selection committee for Chairperson and Members and also seeks to introduce knowledge and experience in the field of technology as additional criteria for the members of the selection committee.

Clause 11 of the Bill seeks to substitute section 12 of the Act to restrict the acceptance of employment by Chairperson and Members of the Commission within a period of 2 years from the date of ceasing the office.

Clause 12 of the Bill seeks to amend section 16 of the Act to empower the Commission to appoint the Director General with the prior approval of the Central Government.

Clause 13 of the Bill seeks to substitute section 18 of the Act to enable the Commission to eliminate practices having adverse effect on competition; promote and sustain competition,

Clause 31 of the Bill seeks to amend section 44 of the Act to enhance the penalty from rupees one crore to rupees five crore.

Clause 32 of the Bill seeks to amend section 45 of the Act to substitute the word "offences" with the word "contraventions" and to make a reference of sub-section (6) of section 6 and to substitute the words "punishable with fine" with the words "liable to a penalty".

Clause 33 of the Bill seeks to substitute section 46 of the Act which empower the Commission to impose lesser penalty as may be specified by regulation.

Clause 34 of the Bill seeks to amend section 47 of the Act to empower the Commission to recover legal cost in addition to penalty.

Clause 35 of the Bill seeks to substitute section 48 of the Act to provide for the liability of a person in case of contravention made by the company for contravention of any provisions of the Act, rules, regulations, order or directions issued or made thereunder, to a penalty which shall not be more than ten per cent. of the average of the income for the last three preceding financial years and with certain other provisions. It further seeks to insert new sections 48A, 48B and 48C to provide for various provisions with regard to settlement, commitment, order and, payment of legal costs with its revocation.

Clause 36 of the Bill seeks to amend section 49 of the Act to insert the word "or culture" after the words, "competition advocacy" in order to broaden the grounds of competition advocacy.

Clause 37 of the Bill seeks to amend section 51 of the Act to insert a new clause (e) in sub-section (1) to receive sums by the Commission from other sources as may be decided by the Government.

Clause 38 of the Bill seeks to amend section 53 of the Act to make reference of certain sub-sections of section 26.

Clause 39 of the Bill seeks to amend section 53B of the Act to insert a proviso in sub-section (2) to empower the appellate tribunal not to entertain an appeal unless the appellant deposits twenty-five per cent. of the amount of penalty imposed by the Commission.

Clause 40 of the Bill seeks to amend section 53N of the Act to allow the parties to file the application for compensation from orders of the Supreme Court in an appeal against the findings of the Appellate Tribunal under section 53T of the Act.

Clause 41 of the Bill seeks to amend section 53Q of the Act to provide contempt proceeding under section 53U if any person contraventions any order of the Appellate Tribunal.

Clause 42 of the Bill seeks to insert new section 59A of the Act to provide the offences punishable under this Act, not being an offence punishable with the imprisonment only or imprisonment and also with fine shall be compoundable.

Clause 43 of the Bill seeks to amend section 63 of the Act to provide certain provisions for the purpose of making rules by the Central Government.

Clause 44 of the Bill seeks to amend section 64 of the Act to provide certain provisions for the purpose of making regulations by the Commission.

Clause 45 of the Bill seeks to insert new sections 64A and 64B to provide for process of issuing regulations and guidelines.

protect the interest of consumers and enter into a memorandum or arrangement with department of Government or statutory bodies.

Clause 14 of the Bill seeks to amend section 19 of the Act to provide that the Commission shall not entertain any information or reference beyond the period of three years from the date of cause of action. However, the Commission may condone the delay if it is satisfied with the reasons given by the parties.

Clause 15 of the Bill seeks to amend section 20 of the Act to substitute the term "combination" with "concentration" and insert "value of transaction".

Clause 16 of the Bill seeks to amend section 21 of the Act in order to broaden the grounds on which the statutory authorities may *suo motu* make a reference to the Commission.

Clause 17 of the Bill seeks to amend section 21A of the Act to allow the statutory authority to make a reference *suo motu* to the Commission on any issue which involves any provision of the Act or is relating to promoting the objectives of this Act.

Clause 18 of the Bill seeks to amend section 22 of the Act to omit certain references.

Clause 19 of the Bill seeks to amend section 26 of the Act to enable the Commission to pass orders without conducting an inquiry for closure of certain cases; to direct the Director General to investigate the matter and to submit a supplementary report on his finding to enable the Commission to pass an order in this regard.

Clause 20 of the Bill seeks to amend section 27 to empower the Commission to pass orders in relation to anti-competitive agreements and the abuse of dominant position by inserting a reference to income.

Clause 21 of the Bill seeks to amend section 29 of the Act to provide that the Commission shall form *prima facie* opinion within 20 days of receipt of notice under sub-section (2) of section 6 and further to reduce the period of the completion of investigation within 150 days instead of 210 days.

Clause 22 of the Bill seeks to insert a new section 29A for issuance of statement of objections by the Commission and proposal of modifications.

Clause 23 of the Bill seeks to amend section 31 of the Act to omit the word "certain" and provides that combination shall be deemed to have been approved and no separate order shall be required if the Commission does not form a *prima facie* opinion within 20 days as provided under sub-section (1B) of section 29.

Clause 24 of the Bill seeks to amend section 32 of the Act to make a reference of 29A therein.

Clause 25 of the Bill seeks to amend section 35 of the Act to insert sub-section (2) to enable a party to call upon experts from the fields of economics, commerce, international trade or any other discipline for an expert opinion in relation to a case before the Commission.

Clause 26 of the Bill seeks to amend section 41 of the Act to provide procedure for investigation, inquiry, etc. and powers of the Director General to investigate the contravention of any provision of the Act.

Clause 27 of the Bill seeks to amend section 42 of the Act to substitute the words "punishable with fine" with the words "liable to a penalty" and to make a reference of sections 6, 43, 44 and 45 of the Act.

Clause 28 of the Bill seeks to amend section 42A of the Act to make a reference of section 6.

Clause 29 of the Bill seeks to amend section 43 of the Act to substitute the words "punishable with fine" with the words "liable to a penalty".

Clause 30 of the Bill seeks to amend section 43A of the Act to empower the Commission to impose penalty for non-furnishing of information in relation to combination.

FINANCIAL MEMORANDUM

The Bill does not involve any expenditure, recurring or non-recurring, from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 43 of the Bill seeks to amend section 63 of the Competition Act, 2002. This clause empowers the Central Government to make rules for the purposes of carrying out the provisions of the proposed legislation. Such rules, may, *inter alia*, provide for (i) the value of the assets or turnover of the enterprise to be acquired, taken control of, merged or amalgamated in India under clause (e) of section 5; (ii) the percentage of voting rights higher than twenty-six percentage under sub-clause (i) of clause (b) of the *Explanation* of section 5; (iii) the criteria for combinations under sub-section (4) of section 6; (iv) the criteria under sub-section (7) of section 6; (v) the form for the publication of guidelines under sub-section (5) of section 64B.

Clause 44 of the Bill seeks to amend section 64 of the Competition Act, 2002. This clause empowers the Competition Commission of India to make regulations, consistent with the provisions of the Bill and rules made thereunder, for the purposes of carrying out the provisions of the proposed legislation. Such regulations may, *inter alia*, provide for (i) the manner of determination of substantial business operations in India under clause (d) of section 5; (ii) the form and fees for notice for combination under sub-section (4) of section 6; (iii) the time and manner for filing notice of acquisition under clause (a) of section 6A; (iv) 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; (v) the other details to be indicated in the show-cause notice under sub-section (9) of section 26; (vi) the manner of determining turnover or income under the *Explanation* to clause (b) of section 27; (vii) the manner in which modification may be proposed by parties to the combination to the Commission under sub-section (2) of section 29A; (viii) the lesser penalty to be imposed on producer, seller, distributor, trader or service provider under sub-section (1) of section 46; (ix) the manner and time for withdrawal of application for lesser penalty under sub-section (2) of section 46; (x) the lesser penalty to be imposed on producer, seller, distributor, trader or service provider under sub-section (4) of section 46; (xi) the manner of determining income under clause (c) of *Explanation* to section 48; (xii) the form of application and fee under sub-section (1), the time under sub-section (2) and the terms and manner of implementation and monitoring under sub-section (3) and the procedure for conducting settlement proceedings under sub-section (6) of section 48A, (xiii) the form of application and fee under sub-section (1), the time under sub-section (2), terms and manner of implementations and monitoring under sub-section (3) and procedure for commitments offered under sub-section (6) of section 48B; (xiv) the other details to be published along with draft regulations and the period for inviting public comments under clause (a) of section 64A.

The rules and regulations made under the proposed legislation shall be required to be laid before each House of Parliament.

The matter in respect of which rules and regulations may be made under the aforesaid provisions are matters of detail or of procedural in nature and administrative details and it is not practical to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE COMPETITION ACT, 2002

(12 OF 2003)

2. In this Act, unless the context otherwise requires,—

Definitions.

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

(l) "person" includes—

(vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956;

1 of 1956.

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

1 of 1956.

(t) "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;

CHAPTER II

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

Prohibition of agreements

3. (1)*

* Anti-competitive agreements.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

(a) directly or indirectly determines purchase or sale prices;

(b) limits or controls production, supply, markets, technical development, investment or provision of services;

(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:

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

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

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

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

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

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

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

(b) "exclusive supply agreement" includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;

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

(d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

(e) "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

* * * * *

Prohibition of abuse of dominant position

4. (1)* * * * *

Abuse of dominant position.

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

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

* * * * *

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

* * * * *

Regulation of combinations

5. The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if— Combination.

* * * * *

(c) any merger or amalgamation in which—

* * * * *

(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,—

* * * * *

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

Explanation.—For the purposes of this section,—

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

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

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

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

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

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

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

(c) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor,

registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

Regulation of combinations.

6. (1)*

(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within thirty days of—

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

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

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

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

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

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

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

(a) "foreign institutional investor" has the same meaning as assigned to it in clause (a) of the *Explanation* to section 115AD of the Income-tax Act, 1961; 43 of 1961.

(b) "venture capital fund" has the same meaning as assigned to it in clause (b) of the *Explanation* to clause (23 FB) of section 10 of the Income-tax Act, 1961. 43 of 1961.

Composition of Commission.

8. (1)*

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

Selection Committee for Chairperson and Members of Commission.

9. (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—

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

* * * * *

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

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

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

1 of 1956.

* * * * *

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

Appointment of Director General, etc.

* * * * *

CHAPTER IV

DUTIES, POWERS AND FUNCTIONS OF COMMISSION

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

Duties of Commission.

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

19. (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—

Inquiry into certain agreements and dominant position of enterprise.

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

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

* * * * *

(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:—

* * * * *

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

(d) accrual of benefits to consumers;

* * * * *

(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;

* * * * *

Inquiry into combination by Commission.

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

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

* * * * *

(3) Notwithstanding anything contained in section 5, the Central Government shall, on the expiry of a period of two years from the date of commencement of this Act and thereafter every two years, in consultation with the Commission, by notification, enhance or reduce, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, the value of assets or the value of turnover, for the purposes of that section.

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

* * * * *

(c) level of combination in the market;

* * * * *

Reference by statutory authority.

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

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

* * * * *

Reference by Commission.

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

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

* * * * *

Meetings of Commission.

22. (1)* * * * *

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

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

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26. (1)*

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Procedure for inquiry under section 19.

(4) The Commission may forward a copy of the report referred to in sub-section (3) to the parties concerned:

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

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

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(8) If the report of the Director General referred to in sub-section (3) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

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

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

(b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse:

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

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29. (1) Where the Commission is of the *prima facie* opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

Procedure for investigation of combinations.

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

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

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

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

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

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Orders of
Commission
on certain
combinations.

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

* * * * *

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

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

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

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

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

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

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

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

- (a) the acquisition referred to in clause (a) of section 5; or
- (b) the acquiring of control referred to in clause (b) of section 5; or
- (c) the merger or amalgamation referred to in clause (c) of section 5,

CHAPTER V

DUTIES OF DIRECTOR GENERAL

Director
General to
investigate
contraventions.

41. (1)*

* * * *

(3) Without prejudice to the provisions of sub-section (2), sections 240 and 240A of the Companies Act, 1956, so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority, as they apply to an inspector appointed under that Act. 1 of 1956.

Explanation.—For the purposes of this section,—

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

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

CHAPTER VI

PENALTIES

Contravention
of orders of
Commission.

42. (1)*

* * * *

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

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

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

Compensation
in case of
contravention
of orders of
Commission.

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

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

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

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

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

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

shall not be given effect to:

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

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

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

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

* * * * *

32. The Commission shall, notwithstanding that,—

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

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

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

* * * * *

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

Appearance before Commission.

Explanation.—For the purposes of this section,—

- 38 of 1949. (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 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- 56 of 1980. (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 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- 23 of 1959. (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 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.

* * * * *

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

Power to impose penalty for non-furnishing of information on combinations.

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

* * * * *

(b) omits to state any material particular knowing it to be material,

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

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

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

Penalty for offences in relation to furnishing of information.

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

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

(c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

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

* * * * *

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

Power to impose lesser penalty.

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 cooperate with the Commission till the completion of the proceedings before the Commission:

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

(a) not complied with the condition on which the lesser penalty was imposed by the Commission; or

(b) had given false evidence; or

(c) the disclosure made is not vital,

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

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

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

Contravention by companies.

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

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

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

Explanation.—For the purposes of this section,—

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

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

CHAPTER VII

COMPETITION ADVOCACY

Competition Advocacy.

49. (1)* * * * *

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

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CHAPTER VIII A

APPELLATE TRIBUNAL

Appellate Tribunal.

53A. The National Company Law Appellate Tribunal constituted under section 410 of the Companies Act, 2013 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Tribunal for the purposes of this Act and the said Appellate Tribunal shall— 18 of 2013. 7 of 2017.

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

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Appeal to Appellate Tribunal.

53B. (1)* * * * *

(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.

* * * * *

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

Awarding compensation.

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

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

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

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

* * * * *

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

Contravention of orders of Appellate Tribunal.

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

* * * * *

63. (1)*

Power to make rules.

(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:—

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

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Power to
make
regulations.

64. (1)*

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(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:—

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

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LOK SABHA

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BILL

further to amend the Competition Act, 2002.

(Smt. Nirmala Sitharaman, Minister of Finance and Corporate Affairs)

MGIPMRND—779LS(S3)—02-08-2022.