

**Bill No. 118 of 2009**

THE COMPETITION (AMENDMENT) BILL, 2009

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BILL

*further to amend the Competition Act, 2002.*

BE it enacted by Parliament in the Sixtieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Competition (Amendment) Act, 2009.

Shrot title and commencement.

(2) It shall be deemed to have come into force on the 14th day of October, 2009.

2. In section 66 of the Competition Act, 2002,—

Amendment of section 66 of Act 12 of 2003.

(a) in sub-section (1), the proviso and the *Explanation* thereto shall be omitted;

(b) in sub-section (3),—

(i) for the words, brackets and figure “after the expiry of two years referred to in the proviso to sub-section (1)”, the words, brackets and figures “on the commencement of the Competition (Amendment) Act, 2009” shall be substituted;

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

“*Explanation.*— For the removal of doubts, it is hereby declared that all cases referred to in this sub-section, sub-section (4) and sub-section (5) shall be deemed to include all applications made for the losses

or damages under section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 as it stood before its repeal;

54 of 1969.

(c) in sub-section (4),—

(i) for the words, brackets and figure “on or before the expiry of two years referred to in the proviso to sub-section (1)”, the words, brackets and figures “immediately before the commencement of the Competition (Amendment) Act, 2009, shall, on such commencement” shall be substituted;

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

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to the Appellate Tribunal and be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed.”;

(d) in sub-section (5), for the words, brackets and figure “after the expiry of two years referred to in the proviso to sub-section (1)”, the words, brackets and figures “on the commencement of the Competition (Amendment) Act, 2009” shall be substituted;

(e) in sub-section (7), the following proviso shall be inserted, namely:—

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

Repeal and savings.

**3.** (1) The Competition (Amendment) Ordinance, 2009 is hereby repealed.

Ord. 6 of 2009.

(2) Notwithstanding such repeal, anything done or any action taken under the Competition Act, 2002, as amended by the said Ordinance, shall be deemed to have been done or taken under the said Act as amended by this Act.

12 of 2003.

## STATEMENT OF OBJECTS AND REASONS

The Competition Act, 2002 was enacted in 2002 keeping in view the economic developments that resulted in opening up of the Indian economy, removal of controls and consequent economic liberalisation which required that the Indian economy be enabled to allow competition in the market from within the country and outside. It was subsequently amended in 2007. The Competition Act, 2002, *inter alia*, provides for the following, namely:—

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

(B) establishment of the Competition Appellate Tribunal, which shall be a three member quasi-judicial body headed by a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission and to adjudicate claims on compensation and for passing of orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Act.

2. Sub-section (1) of section 66 of the Act provides for repeal of the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) and dissolution of the Monopolies and Restrictive Trade Practices Commission (MRTPC) established thereunder. However, the MRTPC was allowed to continue under the said sub-section to exercise jurisdiction and powers under the repealed Act for a period of two years from the date of the commencement of this Act in respect of all cases or proceedings filed before the commencement of this Act.

3. Sub-section (3) of section 66 of the Act, *inter alia*, provides that all cases pertaining to monopolistic trade practices or restrictive trade practices and sub-section (5) of section 66 of the Act provides that all cases pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the MRTP Act, pending before the MRTPC shall, after the expiry of two years referred to in sub-section (1) of section 66 stand transferred to the Appellate Tribunal, and, be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act.

4. Sub-section (4) of section 66 of the Act, *inter alia*, provides that all cases pertaining to unfair trade practices other than those referred to in clause (x) of sub-section (1) of section 36A of the MRTP Act before the MRTPC shall, on or before the expiry of two years stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 and the National Commission shall dispose of such cases as if they were cases filed under that Act.

5. Section 66 of the Act was brought in force on the 1st September, 2009. The post of Chairperson of the MRTPC was vacant on the said date and there were only two Members in the said Commission out of five Members. Both Members in the said Commission demitted their office on the day of the 14th September, 2009 and on the day of the 1st October, 2009 respectively on completion of their tenure. Efforts were made to fill up the posts but were of no avail. The MRTPC became non-functional and a gap was created for the disposal of the cases pending with the Commission. On the other hand, the Competition Appellate Tribunal established under the Competition Act, 2002 was not having adequate workload.

6. As both the Houses of Parliament were not in session and the President was satisfied that the circumstances existed which rendered it necessary for her to take immediate action, the Competition (Amendment) Ordinance, 2009 was promulgated on the 14th October, 2009 so as to transfer immediately the cases pending with the Monopolies and Restrictive Trade Practices Commission to the Competition Appellate Tribunal and National Commission from the date of issue of the Ordinance.

7. Since the National Commission expressed its inability to accept the transfer of cases and also the investigations or proceedings as many of the cases were not covered by the definition of 'consumer' under the Consumer Protection Act, 1986 and due to lack of investigating machinery with them, certain further amendments are proposed to section 66 of the Act which, *inter alia*, contains that—

(i) all the cases relating to unfair trade practices pending before the National Commission on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President, shall, on and from that date, stand transferred to the Appellate Tribunal and be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed;

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

8. The Bill seeks to replace the aforesaid Ordinance with the above amendments.

NEW DELHI;  
*The 4th December, 2009.*

SALMAN KHURSHID.

*Memorandum explaining the modifications contained in the Bill to replace the  
Competition (Amendment) Ordinance, 2009*

The Competition (Amendment) Bill, 2009 which seeks to repeal and replace the Competition (Amendment) Ordinance, 2009 proposes to make the following modifications apart from modifications of consequential or drafting nature in the provisions contained in the said Ordinance, namely:—

(i) it is proposed to insert an *Explanation* to sub-section (3) of section 66 of the Competition Act, 2002 so as to clarify that the expression “all cases” referred to in sub-sections (3), (4) and (5) shall be deemed to include all applications made for the losses or damages under section 12B of the Monopolies and Restrictive Trade Practices Act, 1969 as it stood before its repeal;

(ii) it is proposed to insert a second proviso to sub-section (4) of section 66 of the Act to the effect that all the cases relating to the unfair trade practices pending, before the National Commission under this sub-section, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President, shall, on and from that date, stand transferred to the Appellate Tribunal and be adjudicated by the Appellate Tribunal in accordance with the provisions of the repealed Act as if that Act had not been repealed;

(iii) it is also proposed to insert a proviso to sub-section (7) of section 66 of the Act to the effect that all investigations or proceedings, relating to unfair trade practices pending before the National Commission, on or before the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President shall, on and from that date, stand transferred to the Appellate Tribunal and the Appellate Tribunal may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

These two provisos shall come into force on and from the date on which the Competition (Amendment) Bill, 2009 receives the assent of the President.

ANNEXURE

EXTRACT FROM THE COMPETITION ACT, 2002

(12 OF 2003)

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Repeal and saving.

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

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

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

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

(4) Subject to the provisions of sub-section (3), all cases pertaining to unfair trade practices other than those referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 and pending before the Monopolies and Restrictive Trade Practices Commission on or before the expiry of two years referred to in the proviso to sub-section (1), stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 and the National Commission shall dispose of such cases as if they were cases filed under that Act: 54 of 1969. 68 of 1986.

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

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

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further to amend the Competition Act, 2002.

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*(Shri Salman Khurshid, Minister of State for Corporate Affairs and Minority Affairs)*