

44

**STANDING COMMITTEE
ON FINANCE
(2006-2007)**

FOURTEENTH LOK SABHA

MINISTRY OF COMPANY AFFAIRS

**COMPETITION (AMENDMENT)
BILL, 2006**

FORTY-FOURTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2006 / Agrahayana, 1928 (Saka)

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Presented to Lok Sabha on 12.12.2006

Laid in Rajya Sabha on 12.12.2006



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COMPOSITION OF STANDING COMMITTEE ON
FINANCE (2006-2007)

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Shyama Charan Gupta
5. Shri Vijoy Krishna
6. Shri A. Krishnaswamy
7. Dr. Rajesh Kumar Mishra
8. Shri Bhartruhari Mahtab
9. Shri Madhusudan Mistry
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17. Shri Lakshman Seth
18. Shri A.R. Shaheen
19. Shri G.M. Siddeshwara
20. Shri M.A. Kharabela Swain
21. Shri Bhal Chand Yadav

*Nominated to this Committee *w.e.f.* 31.8.2006 *vice* Shri Raosaheb Danve Patil.

Rajya Sabha

22. Shri Santosh Bagrodia
23. Shri Raashid Alvi
24. Shri M. Venkaiah Naidu
25. Shri Yashwant Sinha
26. Shri Mahendra Mohan
27. Shri Chittabrata Majumdar
28. Shri S.P.M. Syed Khan
29. Shri Mangani Lal Mandal
30. Shri C. Ramachandraiah
31. Vacant

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri A. Mukhopadhyay — *Joint Secretary*
3. Shri S.B. Arora — *Deputy Secretary*
4. Smt. Anita B. Panda — *Under Secretary*

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized to submit the Report on their behalf, present this Forty-fourth Report on the Competition (Amendment) Bill, 2006.

2. The Competition (Amendment) Bill, 2006 introduced in Lok Sabha on 9th March, 2006 was referred to the Committee on 17th April, 2006 for examination and report thereon, by the Hon'ble Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained written information on various provisions contained in the aforesaid Bill from the Ministry of Company Affairs who also briefed them at their sitting held on 31st May, 2006.

4. Written views/memoranda were received from: (i) Reserve Bank of India; (ii) Securities and Exchange Board of India, Mumbai; (iii) Insurance Regulatory and Development Authority; (iv) Competition Commission of India; (v) Chambers of Commerce *viz.* PHD Chambers of Commerce & Industry, Federation of Indian Chambers of Commerce and Industry and Confederation of Indian Industry; (vi) Law firms *viz.* Amarchand Mangaldas, Kesar Dass B. & Co. and Luthra & Luthra; (vii) Central Electricity Regulatory Commission; (viii) The Institute of Costs and Works Accountants of India & the Institute of Chartered Accountants of India; (ix) Experts *viz.* Dr. Vijay Kelkar, Chairman, Infrastructure, Development and Finance Corporation Private Equity Company Ltd., Dr. S. Chakravarthy, IAS (R) & Former Member, MRTPC, Dr. Pronab Sen, Principal Advisor, Planning Commission, Dr. Aditya Bhattacharjee, Delhi School of Economics and Shri M.R. Umarji, Chief Advisor (Legal), Indian Banks Association, Mumbai; (x) Consumer Fora *viz.* Consumer Unity and Trust Society and Voluntary Organisation on Interest of Consumer Education; (xi) National Manufacturing Competitiveness Council; (xii) The Energy and Resource Institute; (xiii) All India Association of Industries; and (xiv) the Department of Industrial Policy and Promotion.

5. On 26th July, 2006, the representative of Competition Commission of India gave a power point presentation on the overall functioning of the Commission and further briefed the Committee on the provisions contained in the Bill. The representatives of Ministry of Commerce and Industry briefed the Committee and, thereafter representatives of Department of Industrial Policy and Promotion gave a power point presentation on various provisions of the Bill at their sitting held on

27th July, 2006. Dr. Pronab Sen, Principal Advisor, Planning Commission also briefed the Committee on the provisions of the Bill.

6. The Committee at their sitting held on 3rd August, 2006 heard the views of PHD Chambers of Commerce and Industry, Confederation of Indian Industry, Federation of Indian Chambers of Commerce and Industry and Dr. S. Chakravarthy, IAS (R), Former Member, MRTPC and Expert.

7. The Committee at their sitting held on 18th September, 2006 took oral evidence of the representatives of Amarchand Mangaldas (Law Firm) and Consumer Unity and Trust Society (CUTS). At their sitting held on 28th September, 2006, the Committee took oral evidence of the representatives of the Ministry of Company Affairs.

8. On 16th November, 2006, the Committee took oral evidence of the representatives of Ministry of Company Affairs and Ministry of Law and Justice.

9. The Committee, at their sitting held on 7th December, 2006 considered the draft report. The Committee made certain modifications in the draft report. In addition, the Committee strongly felt that there was a need to bring about certain changes in the Principal Act also, which have been included from paragraph 94 onwards in the report. The Committee then approved and adopted the draft report.

10. The Committee wish to express their thanks to the officers of the Ministry of Company Affairs, Ministry of Law & Justice, Ministry of Commerce and Industry, representatives of the CII, FICCI, PHD, Chamber of Commerce, Competition Commission of India, Amarchand Mangaldas & Co., Consumer Unity and Trust (CUTS), Dr. Vijay Kelkar, Dr. S. Chakravarthy, IAS (R) and Dr. Pronab Sen Experts for their cooperation in placing before them their considered views and perceptions on the provisions of the Bill and for furnishing written notes and information that the Committee had desired in connection with the examination of the Competition (Amendment) Bill, 2006.

11. For facility of reference, recommendations/observations of the Committee have been printed in thick type.

NEW DELHI;
7 December, 2006
16 Agrahayana, 1928 (Saka)

MAJ. GEN. (RETD.) B.C. KHANDURI,
Chairman,
Standing Committee on Finance.

REPORT

BACKGROUND

A dynamic competitive environment supported by effective competition policy and law is an essential element of a successful market economy. Many developing countries that have undertaken market-based reforms have recognized the need to have a law to safeguard competition. The benefits that flow from competition are increased economic efficiency, innovation, and consumer welfare. However, competition law is a relatively new area for most developing countries including India. It is a complex economic law and its enforcement requires a highly professional competition commission.

2. The Monopolies and Restrictive Trade Practices Act, 1969 which came into effect on 1st June, 1970, was the first enactment to deal with competition issues. In the wake of economic reforms since 1991, it was felt that this Act has become obsolete in the light of international economic developments which relate more particularly to competition laws and thus there was a need to shift the focus from curbing monopolies to promoting competition. Therefore, a High Level Committee on Competition Policy and Law was constituted by the Central Government which submitted its Report on 23 May, 2002. In accordance with the recommendations of this Committee, the Competition Act 2002 (hereinafter referred to as the Act) was passed by both Houses of Parliament in the Winter Session of 2002 and received the assent of President in January 2003. It provided for setting up of a quasi-judicial body to be called the Competition Commission of India (CCI), comprising of a Chairperson and two to ten other Members, to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto.

3. In accordance with the provisions of the Act, the Competition Commission of India (Selection of Chairperson and Members of the Commission) Rules, 2003 were notified on 4th April, 2003 and a Selection Committee was constituted as per these rules. On the basis of the recommendation of the Selection Committee, the Appointments Committee of the Cabinet approved appointments of the Chairperson

of CCI and a Member, CCI, Notifications for their appointments were issued on 14th October, 2003.

4. However, two writ petitions were filed in the Madras High Court, first by Shri R. Gandhi challenging certain provisions of the Competition Act and the Selection Rules and another by Shri Brahm Dutt in the Supreme Court. The essential challenge in the writs was that the Competition Commission envisaged by the Act was more of a judicial body having adjudicatory powers and that in the background of the doctrine of separation of powers recognized by the Constitution of India, the Chairman of the Commission had necessarily to be a retired Chief Justice or Judge of the Supreme Court or of a High Court, to be nominated by the Chief Justice of India or by a Committee presided over by the Chief Justice of India and further the right to appoint the Judicial Members of the Commission should also rest with the Chief Justice of India or his nominee. The Supreme Court in its interim order dated 31.10.2003 stayed the judicial functioning of the Commission and the operation of Rule 3 of the Competition Commission of India (Selection of Chairperson and other Members of the Commission) Rules, 2003.

5. The Government then submitted before the Supreme Court that it intended to bring about certain changes in the Competition Act, in the light of the issues raised in the Writ Petition. The Supreme Court delivered its judgment in the matter on 20.1.2005. It closed the writ petition leaving open all questions regarding the validity of the enactment, including the validity of the Rules 3 of the Rules to be decided after the amendment of the Act and declined to pronounce on the matters argued before it in a theoretical context and based only on general pleadings.

6. Accordingly, taking into account the orders of the Supreme Court, the submissions made by the Government before the Court, and consultations with various Ministries, the Competition (Amendment) Bill 2006 was drafted and introduced in the Parliament in 9th March 2006. The Bill was referred to the Standing Committee on Finance on 17th April, 2006 by the Hon'ble Speaker of Lok Sabha for detailed examination and report thereon.

7. The Statement of 'Objects and Reasons' of the Competition (Amendment) Bill, 2006 stipulated as under:

“(a) to provide that CCI would be an expert body which will function as a market regulator for preventing anti-competitive practices in the country and it would also have advisory and advocacy functions in its role as a regulator;

- (b) to omit the provisions relating to adjudication of disputes between two or more parties by the CCI and to provide for investigation through the Director General in case there exist a *prima facie* case relating to anti competitive agreements or abuse of dominant position under the Competition Act, 2002 and conferring power upon the CCI to pass orders on completion of an inquiry and impose monetary penalties and in doing so the CCI would work as collegium and its decisions would be based on simple majority;
- (c) to provide for establishment of the Competition Appellate Tribunal (CAT), which shall be a three-member quasi-judicial body headed by a person, who is or has been a retired Judge of the Supreme Court or the Chief Justice of High Court and selection of the Chairperson and other Members of CAT to be made by a Selection Committee headed by the Chief Justice of the Supreme Court of India or his nominee, and having Secretaries of Ministries of Company Affairs and Law as its members;
- (d) to provide for hearing and disposing of appeals by the CAT against any direction issued or decision made or order passed by the CCI;
- (e) to provide for adjudication by CAT of claims on compensation and 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 Competition Act, 2002;
- (f) to provide for implementation of the orders of the CAT as a decree of a Civil Court;
- (g) to provide for filing of appeal against the orders of the CAT to the Supreme Court;
- (h) to confer powers to sectoral regulators to make *suo motu* reference to CCI on competition issues, in addition to the present provision of making reference, when such request is made by any party in a dispute before it.

The Bill also aims at continuation of the Monopolies and Restrictive Trade Practices Commission (MRTPC) till two years after constitution of CCI, for trying pending cases under the Monopolies and Restrictive Trade Practices Act, 1969 after which it would stand dissolved. The Bill also provides that MRTPC would not entertain any new cases after the CCI is duly constituted. Cases still

remaining pending after this two year period, would be transferred to CAT or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases.”

8. To meet these objectives, the Bill seeks to carry out certain amendments in the Competition Act, 2002, which are the following:

1. Substitution of Section 9 of the Competition Act, 2002 relating to selection of chairperson and other Members of the Competition Commission of India. The New clause provides that the Chairperson and Members of the CCI shall be appointed by the Central Government from a Panel of names recommended by Selection Committee consisting of Chief Justice of India or his nominee, the Secretary, in the Ministry of Company Affairs and the Secretary in the Ministry of Law and Justice.
2. Amendment of Section 12 of the Competition Act, 2002 relating to restriction on re-employment of Chairperson and other Members of the CCI by increasing the said restriction from one year to two years.
3. Substitution of Section 13 of the Competition Act, 2002 relating to financial and administrative powers of Member Administration by a new section providing that the Chairperson shall have the powers of general superintendence, direction, and control in respect of all administrative matters of the Commission.
4. Substitution of Section 17 of the Competition Act, 2002 relating to Registrar and officers and other employees by a new section conferring power upon the Commission to appoint a Secretary instead of Registrar and such experts and professionals of integrity and outstanding ability who have special knowledge and experience in economics, law, business and other disciplines to competition.
5. Amendment of Section 19 of Competition Act, 2002 relating to inquiry into certain agreements and dominant position of enterprise by substituting the word “complaint” by “information”.
6. Amendment of Section 21 of the Competition Act, 2002 relating to reference by statutory authority so as to provide that any statutory authority may make a reference in respect of an issue to the Commission on its own and on receipt of opinion of the Commission the statutory authority shall pass orders recording reasons thereon.

7. Substitution of Section 22 of the Competition Act, 2002 relating to Benches of the Commission by providing that all questions that come up before 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 shall have a casting vote. Thus, instead of benches, the Commission shall function as a collegium.
8. Substitution of Section 26 of the Act relating to procedure for inquiry on complaints under section 19 which *inter alia* proposes to provide that on receipt of a reference from the Central Government or State Government or a Statutory Authority or its own knowledge or information received under section 19, the Commission direct the Director-General to cause an investigation to be made in the matter.
9. Amendment of Section 27 of the Competition Act, 2002 relating to orders by the Commission wherein the power to award compensation is proposed to be conferred upon the Appellate Tribunal by a new Section 53 N proposed to be inserted by Clause 34 of the Bill.
10. Amendment of Section 28 of the Act so as to confer power of division of enterprise enjoying dominant position to the Commission instead of the Central Government.
11. Amendment of Section 29 of the Act relating to procedure for investigation of combination by way of inserting a new sub-section (1A) to provide that the Commission may call for a report from the Director-General within 60 days and based on sufficient reason, upto 60 days more.
12. Substitution of Section 30 of the Act relating to inquiry into disclosures under sub-section (2) of Section 6 so as to provide that where any person or enterprise has given a notice under the above sub-section, the Commission shall examine such notice and form its *prima facie* opinion and proceed in accordance with the provisions of Section 29.
13. Amendment (Clarificatory) of Section 32 of the Act relating to acts taking place outside India but having an effect on competition in India.
14. Substitution of Section 39 of the Act relating to execution of orders of the Commission which provided that if a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such a penalty in the manner as may be specified by regulations.

15. Substitution of Section 42 of the Competition Act, 2002 relating to contravention of orders of Commission so as to provide that a Civil Court having jurisdiction shall order for civil prison and additional penalty on a complaint made by the Commission.
16. Insertion of a new Chapter VIII A of the Competition Act, 2002 relating to establishment of Competition Appellate Tribunal, its composition, procedure for appeal, awarding compensation, execution of orders, contravention of orders, appeal to Supreme Court, power to punish for contempt etc.

9. With a view to have expert opinion on the various provisions of the Bill, the Committee received written views/suggestions from (i) experts *i.e.* Dr. Pronab Sen and Dr. K. Chakravarthy (ii) Law firms *i.e.* Amarchand Mangaldas & Co., Kesar Das and Associates, Luthra & Luthra, (iii) MRTPC, (iv) RBI, (v) SEBI, (vi) IRDA, (vii) CERC, (viii) National Manufacturing Competitiveness Council, (ix) Indian banks Association, (x) All India Association of Industries, (xi) Consumer Fora, *i.e.* CUTS and VOICE, (xii) Chambers of Commerce *i.e.* FICCI, ASSOCHAM, CII, PHDCCI, (xiii) ICSI and (xiv) IDFC. The Committee also had personal hearings of the views of some of these experts/ organizations *i.e.* Competition Commission of India, PHDCCI, FICCI, Adviser, Planning Commission, Dr. K. Chakravarthy, Smt. Pallavi Shroff from Amarchand Mangaldas & Co. and Shri Pradeep Mehta from CUTS.

In order to seek clarification with regard to the provisions contained in the Bill, the Committee also took evidence of the representatives of the Ministries of Company Affairs, Law & Justice and Commerce and Industry (Deptt. of Industrial Policy and Promotion) to further enlighten themselves on the various aspects of the proposed legislation.

10. After having considered the views of the representatives of the Ministries of Company Affairs, Law & Justice, Commerce & Industry (Deptt. of Industrial Policy and Promotion), Competition Commission of India, PHDCCI, CCI, FICCI, Amarchand Mangaldas Law Firm, CUTS and VOICE and the experts Dr. Pronab Sen & Dr. K. Chakravarthy, for and against the various proposals contained in the Bill; the Committee felt that certain provisions of the Bill could be recast to serve the intended objectives better. Such provisions and the recommendations and observations of the Committee thereon are dealt with in the subsequent paragraphs of this Report.

Clause 4: Substitution of new section for Section 8—(Composition of Competition Commission—Selection and appointment of members)

11. Clause 4 reads as under:

“For Section 8 of the principal Act, the following section shall be substituted, namely:

- “(1) The Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.
- (2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who has special knowledge of, and professional experience of not less than fifteen years in, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, which, in the opinion of the Central Government, may be useful to the Commission.
- (3) The Chairperson and other Members shall be whole-time Members”.”

Clause 34: Insertion of new Chapter VIII A (New Sections: 53A to 53U) (Composition of Appellate Tribunal)

Clause 34, *inter-alia*, reads as follows:

53C. The Appellate Tribunal shall consist of a Chairperson and not more than two other members to be appointed by the Central Government.

Qualifications for appointment of Chairperson and members of Appellate Tribunal

53D. (1) The Chairperson of the Appellate Tribunal shall be a person, who is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court.

(2) A member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in, competition, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal.

12. The amendments/additions proposed in the above clauses of the Competition (Amendment) Bill *inter alia* seek to specify, among other things, the eligible fields for selection as Chairpersons and Members of the CCI and CAT. In this connection, many of the experts that had deposed before the Committee, were of the opinion that it would be desirable to specify the field of 'competition' in the qualifications prescribed for the Chairperson and Members of CCI and 'competition law and policy' in qualifications prescribed for the Chairpersons and Members of CAT. Some of the comments are as under:—

13. Dr. Vijay Kelkar, IDFC:

"...The eligibility for membership of the Competition Commission of India (CCI) and the Competition Appellate Tribunal (CAT) should be more or less identical. This would mean adding the field "competition" as one of the qualifications for becoming a member of CCI..."

14. Shri Vinod Dhall, CCI:

"Section 8 of the Act prescribes that the Chairperson and every other member shall be a person who has special knowledge of, and professional experience of not less than 15 years in the fields specified therein. Similarly Clause 34 proposes to insert section 53D (2) prescribing therein qualification and experience which a person is required to have to become member of the Competition Appellate Tribunal and these *inter-alia* include the field of "Competition."

- (i) There is need perhaps to harmonise the qualifications for the membership of the Commission as well as the Appellate Tribunal.
- (ii) Also, it may be more appropriate to incorporate the words "competition law & policy" in place of the word "competition" as the latter does not convey the appropriate meaning for the purpose of this section."

15. When asked, the Ministry of Company Affairs stated as follows:

"The field of 'competition' is being proposed to be included in the list of eligible fields of experience for eligibility to become a Member of Appellate Tribunal under Clause 34 (proposed section 53D) of Amendment Bill so as to enable the Appellate Tribunal to carry out its adjudicatory functions with inputs relating to subjects

of competition and its regulation. However, CCI has a provision of having a Chairperson and six members who may be experts in economics, international trade, law or business, and who could also be specialists in competition matters. In addition under Clause 17, CCI would be able to engage experts and professionals in disciplines related to competition who would help it in discharging its functions. Hence it was not felt necessary to change the existing eligible fields of experience and add the qualification of 'competition' also as an eligible condition."

16. Further, the Committee received suggestions from experts on the need to specify the rank and status of Chairpersons and Members of CCI & CAT clearly in the Bill.

17. When, the Committee questioned as to why the Bill doesn't specify the rank and status of the Chairpersons or the Members of the CCI and the CAT, since in such a situation, officials of the lower rank and status of the Government may intervene in the functioning of the Commission as well as CAT, the Ministry responded as follows:

"...due care would be taken, while framing the rules fixing their salary and terms and conditions of service to ensure that the rank and status of the Chairpersons and Members of the CCI and CAT are of the level appropriate to their position and requirements for effectiveness."

18. In this connection the Secretary, Department of Industrial Policy & Promotion suggested as under during the oral evidence:

"Hon'ble Chairman mentioned about the rank. I would be inclined to go along with your suggestion that since the Chairman of the Commission is somebody who could be of the rank of CAT or Supreme Court Judge—here, it is a person eligible to be a High Court Judge etc.—the status of Minister of State for him would be desirable and members could have a lower status that of a Secretary".

19. With regard to Clause 4 that prescribes qualifications for Chairperson and Members of CCI and Clause 34 that prescribes qualifications for Chairperson and Members of CAT, the Committee take note of the views expressed by various experts, wherein there has been an almost unanimous opinion that the fields of "Competition" and "Competition Law" need to be included in the eligibility criteria for chairperson and Members of the Commission and the CAT, respectively so that the two bodies remain relevant in

being done on the directive of the Supreme Court in their Judgment, the Ministry stated as under:

“Chief Justice of India or his nominee is being suggested as the Chairperson of the Selection Committee for the CCI under clause 5 of the Amendment Bill as it is felt that this would enable the selection of the members of the CCI to be seen as more transparent and fair. This however, is not based on any direction of the Supreme Court.....”

“...the Apex Court did not give any directions about any specific amendments to be carried out. The Government, while making its submissions to the Apex Court had made it clear that legislation was the domain of the Parliament and that the Government was only in a position to propose the amendments and set the process in motion for this purpose. It was, however, felt by the Government, in light of its examination of the issues raised during the process associated with the legal challenge as also the experience gained through practice in the case of other existing regulators, that certain changes in the Competition Act, 2002, would enable the regulatory structure under the Act to function better. The Government has examined the issues raised in the legal challenge, and has proposed some changes where felt appropriate, to enable a better functioning of the competition regime. The concern of the Government is to provide a structure that is constitutionally unsustainable and functionally effective.”

22. In this connection, the Committee had observed as under:

“...why does the Government including such amendments which give the perception to common people that we are trying to bend backwards and give authority to courts which need not be given...”

23. Further, it was observed:

“...one can understand that the courts may have some say in the selection of members. But why should they have a say in the selection of the whole CCI?”

24. While responding to a similar point, the Ministry, in their post-evidence reply, informed *inter-alia* as follows:

“The Supreme Court also acknowledged in its judgment that the Central Government has pointed out “that the question of amendment had ultimately to rest with the Parliament and the

Government was only in a position to propose the amendments as indicated in the additional affidavits.”

25. However, when the Committee desired to know as to whether the proposed amendments, if enacted, will be subjected to judicial review again, the Ministry submitted as under:

“The powers of judicial review are available with the Supreme Court under the Constitution, under which it can always scrutinize and legislation including the Competition Act, with or without amendments, and pronounce a judgement on its constitutionality. As stated above, while the existing writ petition filed in the Supreme Court has been closed, the Hon’ble Court has left open all relevant questions to be decided after the amendment of the Act as held out is made or attempted. It has also clarified in the judgement of the Apex court dated 20.1.2005, that this was “without prejudice to the rights of the petitioner to approach this Court again with specific averments in support of the challenge with reference to various sections of the Act on the basis of the arguments that were raised before us at the time of hearing.”

26. When the Committee desired to know as to whether representation to relevant disciplines can be given in the Selection Committee, the Ministry stated:

“Selection Committee is required to ensure that the persons being considered for appointment as Chairperson/Members of the Commission are subjected to a fair scrutiny with regard to their capacity to discharge their statutory duties. Besides, it needs to be compact to enable speedy decision making. Giving representation to each relevant discipline could result in a large and unwieldy Selection Committee...”

27. When further questioned, the Ministry, in their post evidence reply stated as under:

“...It is felt that the combination of domain knowledge on competition and law with judicial experience as proposed in the Selection Committee would ensure that the persons being considered for appointment as Chairperson/Members of the Commission are subjected to an appropriate level of scrutiny.”

28. Dr. Pronab Sen, Adviser, Planning Commission, had submitted before the Committee that instead of a “Selection Committee” a “Search-cum-Selection Committee” be constituted. He had deposed as under:

“Instead of a “Selection Committee”, I would suggest a “Search-cum-Selection Committee”. Typically, a “Selection Committee” is constrained to select from formal applicants for the post; whereas a “Search Committee” can consider candidates who may not have formally applied, but who are eminently suitable for the post. This distinction is important since the positions in the CCI and the CAT are of such eminence that the most suitable candidates may not even be aware of such vacancies or be interested without further persuasion. Consequently, a pure selection process may lead to the appointment of sub-optimal candidates.”

29. Further, it was also suggested by him that the “Search and Selection Committee” for the CAT should consist of only of the principals and not the nominees since the Tribunal is vested with the powers of and is deemed to be a civil court.

30. When asked by the Committee to respond to the above-mentioned suggestions, the Ministry stated as under:

- “(a) The procedure to be followed by the Selection Committee for selection of a panel of names for recommendation to Government would be provided for in the Rules to be made under the Act. The method of identifying candidates suitable for the job would thus be based on the Rules to be framed for the purpose. As such the process is expected to enable an objective and transparent mode of selection.
- (b) The Secretaries of Ministry of Company Affairs and Law Ministry have been included as Members of the Selection Committee of the CAT in their principal capacity only, and cannot be represented by their nominees. However, the Chairperson of the Committee can be the Chief Justice of India or anyone else nominated by him. It is proposed to retain this provision, as the Chief Justice of India being the highest judicial authority in the country may not be always available for heading the Selection Committee and it is felt that it would be best left to him to decide whether he would himself head the Selection Committee or nominate some other suitable person for the task.”

31. In so far as the composition of the Selection Committee under Clause 5 is concerned, the Committee observe that the Government proposes to include Chief Justice of India or his nominee as heard of the Selection Committee selecting the Chairperson and Members of CCI, which they do not find to be tenable. In their justification

advanced, the Ministry have taken the stand that this would enable the selection to be seen as more fair and transparent. The Committee do not agree with this view as bringing transparency and fairness in selection of suitable candidates is definitely possible otherwise too. They are of the opinion, that CCI is intended to be an expert body in the field of Competition, which apart from law, also involves expert knowledge in the domain of economics, commerce, business, finance, management, industry, international markets, companies, accounts, consumer welfare and so on. Bearing in mind the significance of the role that would be played by the CCI and the economic and financial stakes involved, it is absolutely critical to have a broad based Selection Committee of high stature and experience who are well aware of the trends in economics, commerce, trade and business etc. In this regard, the Committee note that Selection Committees for Chairpersons and Members of other statutory regulatory bodies like IRDA, SEBI, CERC etc. are also headed by experts, and not Chief Justice or his nominees. The Committee, therefore, feel that in the same manner, the Chairperson and members of the CCI can be selected by a broad based Selection Committee that can better appreciate the candidate's knowledge in the requisite areas. moreover, the Committee are of the opinion that the basic objection, raised in the Writ Petition, which suggested that CCI being a quasi-judicial body, requires to be headed by a retired Judge of the Supreme Court or High Court, has been adequately met by the very fact that the adjudicatory powers of the CCI have now been proposed through this Amendment Bill, to be conferred on a quasi-judicial body, *i.e.* CAT, which will be headed by a person, who is or has been, a Judge of the Supreme Court or the Chief Justice of a High Court. They therefore, desire that the Ministry may review Clause 5 in this light and suitably amend it in a way so that the Selection Committee for Chairperson and Members of the Commission is broad based and headed by an expert of proven track record in the chosen fields.

32. With regard to the nomenclature of the Selection Committee, the Committee are in agreement with the views expressed by the experts that it would be more appropriate to call it a 'Search-cum-Selection Committee' so as to enable this Committee to consider such candidates, who may not have formally applied to be a Chairperson/Member yet are suitable for the same. They, therefore, desire the Government to suitably amend Clause 5 of the Bill. Moreover, the Committee also expect the Government to ensure while framing the rules relating to Selection Committee under Section 9 of the Act that the vacancy, that arises, other than that of unforeseen

nature, is filled up well in advance so that there is no vacuum created in the functioning of the Commission.

Clause 7: Amendment of section 12 (Restriction on re-employment)

33. Clause 7 reads as under:

In Section 12 of the principal Act, for the words “one year”, the words “two years” shall be substituted.

In this connection, on being asked to elaborate further, the Ministry informed as follows:

“Section 12 of the Act, providing for Chairperson and Members of the Commission not being eligible to take employment for one year after ceasing to hold office, was introduced in the Act to ensure independence of the Chairperson and Members. The Section does not provide for a blanket ban on re-employment but only on re-employment with the management or administration of any enterprise which has been a party to a proceeding before the Commission. This clause is essential to ensure that proceedings of the Commission itself do not become suspect in the eyes of public at large by the Chairperson or Members taking up employment with demitting office.

It is now being proposed to increase this period to two years to further strengthen the provision for maintaining the impartiality and independence of the Chairperson and Members of the Commission. Regulation on employment upto two years after ceasing to hold office is also provided in the Insurance Regulatory and Development Authority Act, 1999 (section 8) and the Electricity Act, 2003, [section 89 (5)], while it is five years in the case of MRTP Act, 1969 [section 6 (8)]”.

34. The Committee is broadly in agreement with the proposed amendment of Section 12, which proposes to prohibit the Chairperson and Members of the Commission to take employment in any enterprise that had been a party to a proceeding before the Commission, for two years after ceasing to hold office. However, they feel that the restriction of 2 years on re-employment should also be made applicable for the Director-General, who has a very significant position in conducting inquiries and other investigative functions of the Commission, if he is borne permanently on the cadre of Competition Commission. In this connection, the Committee understand that at present the Director-General is a Joint Secretary

level officer on deputation to the Commission. In such a situation, the suggestion for 2 year restriction on his re-employment will not be applicable. Therefore, the Committee are of the view that while framing the rules, Government should see that the Director-General is an officer who is an expert borne permanently on the cadre of Competition Commission and not a deputationist on whom such a restriction could be imposed. The Committee recommend that the Government may examine the matter and carry out necessary changes in Clause 7 to that effect.

Clause 11: Amendment of section 19 (Replacement of the word 'Complaint' with 'Information')

35. The Clause reads as under:

In section 19 of the principal Act, in sub-section (1), in clause (a),f or the words "receipt of a complaint,", the words "receipt of any information, in such manner and" shall be substituted.

36. As per the Ministry, the replacement of the word 'complaint' with 'information' has been sought as:

"The term information is wider and has an inclusive meaning. Even a complaint may be treated as information and action taken. Also, this change would enable the Commission to inquire into any information received on controvention of provisions of the Act, instead of only on receipt of a complaint. In fact, the ability to act on information gives CCI a better articulated regulatory role."

37. In this regard, Smt. Pallavi Shroff, representative of the law firm Amarchand Mangaldas, stated as under:

"The next aspect is power to make interim orders. The Act as it stands today requires that these be filed on an affidavit so that the authenticity of the facts stated are guaranteed before the Commission. The question that arises is that if there cannot be a complaint and it is only an information or if somebody is in informant who is going to make an application for injunction? Originally the complainant of course would have the right; but would informant have the right?"

"...Even if the person, furnishing the information, doesn't have a 'claim' or doesn't seek any 'relief' he or she shall be entitled to approach the CCI. This may open the floodgates for frivolous litigation which the companies may have to defend at great expense."

“Section 20 of the Competition Act does not provide the parties an opportunity to be heard with regards to proceedings under the same. This incongruity has surfaced because of the proposed deletion of the term ‘complainant’ by the Bill.”

38. In a written memorandum, she further submitted as under:—

“The substitution has also resulted in diluting the position of an aggrieved party, as can be seen from the amendments of proposed to Section 26 of the Act in the Amendment Bill. Under the proposed amendments to Section 26 of the Act, the CCI is not required to mandatorily give a copy of the inquiry report to the informant; the CCI will invite objections to the report from concerned ‘parties’ but there is no provision for hearing the affected party. The provisions of Section 26 of the Act which provided for furnishing a copy of the report to the complainant before taking final decision are proposed to be deleted. In complex economic matters orders cannot and ought not to be passed without hearing the affected parties particularly the “complainant.

The proposed amendments to Section 26 of the Act also dilute the right of the complainant to be in charge of the proceedings as Section 26(7) of the Act is proposed to be deleted.”

38A. The Ministry in a subsequent reply stated as under:—

“Clause 24 of the Bill provides that under section 36 (1), the Commission shall be guided by the principles of natural justice which shall ensure that in the process of an inquiry by the Commission, the concerned parties would be given opportunity of being heard before any final order is made.”

39. Further, proviso 1(a) of Section 19 of the Principal Act reads as under:—

“receipt of a complaint, accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association.”

40. In this regard, the Ministry, in one of their post evidence replies, had *inter-alia* stated that:—

“Since information is to be accompanied by prescribed fees, it is expected that frivolous information may be minimized.”

41. However, when further probed by the Committee on whether an informant would be required to pay fee, the Ministry later stated as under:—

“This would be kept in consideration while framing the rules under section 19. However, it has to be ensured that access to CCI is not used for vexatious or frivolous purposes.”

42. The Committee note that the Government has sought to replace the word ‘complaint’ with ‘information’ in Section 19 of the Act that deals with inquiry into certain agreements and dominant position of enterprise by the Commission. They have been given to understand that the word ‘information’ has a much wider meaning in the context of laws on competition as compared to ‘complaint’ and use of ‘Information’ in the proposed Amendments would ultimately give CCI a better regulatory role. However legal experts have questioned the authenticity of facts stated in an ‘Information’ as well as about the right of the parties to be heard in inquiries initiated as a result of an ‘information’ which is not so in the case of a ‘complaint’. Therefore, the Committee are of the view that adequate prior consultation with experts in different fields be undertaken by the Government on this point. The Committee recommend that appropriate changes be made in the provision accordingly thereafter and then only any such amendment be given effect to.

Clause 18: Amendment of section 29 (Period for conducting of Investigation by DG)

43. Clause 18 reads as under:—

In section 29 of the principal Act,—

(a) in sub-section (1), after the words “where the commission is of the”, the words “*prima facie*” shall be inserted;

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

“(1A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within sixty days:

Provided that the Commission may, if it is satisfied that the Director General was prevented by sufficient cause from submitting the report

within the said period, allow the Director General to submit the report within a further period not exceeding sixty days.”

(c) In sub-section (2), after the words “parties to the combination”, the words, brackets, figure and letter “or the receipt of the report from Director General called under sub-section (1A), whichever is later” shall be inserted.

44. The suggestion received by the Committee from the representative of one of the law firms in this regard is stated below:—

“As far as the merger is concerned, the Act calls it investigating combinations under section 6, a new tier has been introduced after *prima facie* receiving all the evidence from the parties, of an investigation by the Director General, which could take 60 days to 120 days. My first submission is that there are going to be a number of tiers of investigation that is taking place, and I think there is a scope for substantial amount of delay. When the Bill was introduced, there were discussions among the chambers of commerce and industry across the country; one of the apprehensions that business and industry had expressed was the time taken in these investigations because it could be open-ended, if you are doing a merger. On the one hand, you have agreements to merge which could take two years to complete. So, what happens to the businesses during this period? That is why, the Act had contemplated a certain time limit of 90 days. While I personally feel that the time limit is rather short to complete the investigation and a more realistic time period should be looked at, but putting in another lawyer may only delay the matters without serving much purpose.”

45. Questioned on the additional 60 days proposed to be given to the DG for investigation, the Ministry in their written reply submitted as under:—

“The existing section 29 of the competition Act does not have any provision for the Competition Commission of India (CCI) to call for a report of the Director General (DG) in course of enquiry into any combination. This legal loophole is sought to be plugged through Clause 18 of the Amendment Bill by providing for CCI calling for DG’s report and same to be furnished by the latter within 60 days. It is only if the DG is prevented by sufficient cause from submitting the report within 60 days, and if the Commission is satisfied with the reasons for delay, the powers would be with the Commission to give further time of 60 days to DG. Thus, the provision of additional 60 days for DG to submit his report is not automatic.”

46. The Committee find that under Clause 18 of the Bill, the time frame proposed for the Director-General to submit his investigation report on a combination is 60 days at the first instance which can be extended to another 60 days. In the course of their interaction with the representatives of law firms, the Committee learnt that every additional layer of review of facts only increases the delays. At the same time, the Committee, while agreeing to the fact that investigating a combination can prove to be a very complex task requiring sufficient time, also feel that time lines prescribed in the provision are rather tight and a more realistic time frame needs to be provided enabling an all-compassing investigation by the DG. The Committee, therefore, expect the Government to give consideration to this issue and bring forth suitable changes in Clause 18.

Clause 21: Substitution of new section for section 33

47. Clause 21 reads as under:—

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

Power to issue interim orders

“33. Where during an inquiry, the Commission is satisfied that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, grant a temporary injunction restraining any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems necessary.”

48. The Bill *inter alia* seeks to omit sub section (3) of section 33 which provides for the applicability of the relevant provisions of Code of Civil Procedure, 1908 to a temporary injunction issued by the Commission under the Act.

49. Suggestion given by law firm Kesardass and Co. in this regard is as follows:—

“It is proposed to omit sub section (3) of section 33 which provides for the applicability of the relevant provisions of Code of Civil Procedure, 1908 to a temporary injunction issued by the Commission under the Act. It is proposed that the word “injunction” be substituted with the words “order or direction”.

50. In this connection, when the Committee enquired from the Ministry as to whether it will be appropriate to replace the word

“injunction” with the words “order or direction”, the Ministry stated as follows:—

“Suggestion noted for examination in consultation with the Legislative Department for suitable drafting consistent with the intent under the proposed section.”

51. The Committee opine that ‘injunction’ is a word used in legal parlance for a court order that prohibits or compels a party from continuing a particular activity. As the Committee have been given to understand that the Commission would be an expert body with regulatory, advisory and advocacy functions and the adjudicatory functions will be carried out by the Appellate Tribunal—an essentially judicial body, they are of the opinion that it would be appropriate to replace the word ‘injunction’ in the Clause 21 dealing with the functioning of the Commission with either the word ‘order’ or ‘direction’ for the sake of clarity. As the Ministry have already agreed to the suggestion for consultation with the Legislative Department, the Committee desire that an appropriate change may be made in the Clause under question.

Clause 26: Substitution of new section for section 39 (Execution of orders of Commission imposing monetary penalty)

52. For section 39 of the principal Act, the following section shall be substituted, namely:—

- “(1) If a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty, in such manner as may be specified by the regulations.
- (2) In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.
- (3) Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the assessee in default under the Income-tax Act, 1961 and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and, the Second Schedule to that Act and any rules made thereunder shall in so far as may be, apply as if the said provisions were the provisions

of this Act and referred to sums by way of penalty imposed under this Act instead of to income-tax and sums imposed by way of penalty, fine and interest under the Income-tax Act, 1961 and to the Commission instead of the Income-tax officer and Commissioner of Income-tax.

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

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

53. During their deliberations with the experts, the Committee had noted the apprehensions being expressed by them that provision to make a reference to concerned Income tax authorities for recovery of penalty as tax due under the Income Tax Act, is likely to delay recovery. Responding to this point, the Ministry submitted as under:—

“It has been proposed in Clause 26 of the Bill that under the new section 39 (1), the Commission shall proceed to recover monetary penalties in such manner as specified in the regulations. The provision to recover the penalty as arrears of Income tax is an additional procedure being made available to the Commission to use an existing machinery to recover the penalty, which would ordinarily be used only when the Commission is unable to recover the same under section 39(1)# using its own procedures.”

#This section deals with execution of orders of Commission, which states as follows:—

39. Every order passed by the Commission under this Act shall be enforced by the Commission in the same manner as if it were a decree or order made by a High Court or the principal civil court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court, as the case may be, within the local limits of whose jurisdiction,—

(a) in the case of an order against a person referred to in sub-clause (iii) or sub-clause (vi) or sub clause (vii) of clause (1) of section 2, the registered office or the sole or principal place of business of the person in India or where the person has also a subordinate office, that subordinate office, is situated;

(b) in the case of an order against any other person, the place, where the person concerned voluntarily resides or carries on business or personally works for gain, is situated, and thereupon the court to which the order is so sent shall execute the order as if it were a decree or order sent to it for execution.

54. The Committee while noting that in sub Section (3) of Section 39, the words "Income Tax Officer" and "Commissioner of Income Tax" have been used, observed that these designations do not find place in any of the recovery provisions mentioned in the Income Tax Act as the term 'Income tax officer' has been substituted with the word 'assessing officer' therein by the Direct Tax Laws (amendment) Act, 1987. Therefore, when asked about replacing the words that find mention in the clause by the words "Assessing Officer", the Ministry responded as under:—

"Suggestion noted. Appropriate terminology would be provided in consultation with the Legislative Department."

55. Further the Committee had received a suggestion that it would be appropriate to incorporate in Clause 26 that any reference to 'appeal' in Chapter XVIII and Schedule II of IT Act 1961 will mean 'appeal before the Competition Appellate Tribunal' under Section 53B of the Competition Act.

56. When asked to comment thereupon, the Ministry stated:—

"Suggestion noted. The intention is to provide that the appeals arising out of recovery proceedings of demand relating to the Commission are filed with the Competition Appellate Tribunal. Necessary corrections would be made, as appropriate, in consultation with the Legislative Department."

57. Further, it was also suggested to the Committee that it needs to be incorporated in the explanation part of Section 39 that "Intimation to Tax Recovery Officer by Competition Commission would amount to drawing of a Certificate by the Tax Recovery Officer as far as demand relating to penalty under Competition Act 2002 is concerned". When asked to furnish their opinion on the suggestion, the Ministry stated:

"Suggestion noted. Necessary corrections would be made, as appropriate, in consultation with the Legislative Department".

58. The Committee note that while Clause 26 seeks to substitute Section 39 of the Principal Act with a new Section, there are certain flaws in the wording of the same. For instance, the words 'Income Tax Officer' and 'Commissioner of Income Tax' need to be replaced with the words 'assessing officer' as those words do not find any place in the recovery provisions in the Income Tax Act, 1961. The Committee also feel that there is a need to incorporate in the

explanation part of Section 39 that 'intimation to Tax Recovery Officer by the commission would amount to drawing of a certificate by the Tax Recovery Officer as far as demand relating to penalty under Competition Act, 2002 is concerned'. Further, the Committee feel that it would be more appropriate to incorporate in this Clause that any reference to 'appeal' in Chapter XVIII and Schedule II of IT Act, 1961 will mean 'appeal before the Competition Appellate Tribunal under Section 53B of the Competition Act' to ensure that the appeals arising out of recovery proceedings of demands relating to the Commission are filed with the Tribunal. Therefore, the Committee recommend that necessary changes may be carried out accordingly in the Clause 26 of the Amendment Bill.

Clause 30: Amendment of section 46 (Provisional for Lesser Penalty)

59. Clause 30 reads as under:—

In section 46 of the principal Act,—

(a) for the first proviso, the following proviso shall be substituted, namely:—

“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 such disclosure”;

(b) in the second proviso, for the word “first”, the word “has” shall be substituted.

60. The representative of CII submitted the following before the Committee in this regard:

“...the proposed amendment could lead to collusion and the leniency provision may be misused for securing lower penalty.”

The submission of FICCI was as follows:—

“...The underlying idea of the Competition Law is to avoid cartelisation and Government must ensure that this should not happen and the law should be implemented in letter and spirit.”

61. The Committee observed that the amendment provides that all parties who wish to divulge information may do so until the time the report of the Director General is submitted. When the Ministry was asked to elaborate on whether the proposed amendment will not lead

to collusion and the leniency provision being misused for securing lower penalty, it was stated as under:

“This is being done to enable leniency to ‘whistle blowers’. As per existing section 46 of the Competition Act, 2002, a party to a cartel who makes full and true disclosure to the violations, and if the disclosure is vital, then the Commission may levy a lesser penalty to the party, provided he satisfies the following two conditions, amongst others:

- (a) the proceedings should not have been instituted and investigations should not have been directed to be made before such a disclosure.
- (b) The party must have been the first one to make the full, true and vital disclosure.

In the Amendment Bill, the above two conditions are being further relaxed, through Clause 30, as follows:

- (a) Lesser penalty may be given till the stage of submission of investigation report directed by the Commission, instead of the present provision of till the ordering of investigation report.
- (b) Parties subsequent to the first party making disclosure shall also be eligible for lesser penalty, instead of the present provision of only the first party being eligible.

Cartels, internationally, are difficult to break, without one of the parties to the cartel coming forward with vital information relating to cartel. The provision of lesser penalty is essential to induce such parties to volunteer information. Since lesser penalty is to be given only in case of true, full and vital disclosure, and the full Commission would have to decide on the issue of awarding lesser penalty, instead of any individual, chances of misuse of this provision is remote. Further, with appeals lying to CAT, any decision of the CCI would be scrutinized by the appellate body, ensuring that lesser penalties are given only in genuine cases.”

62. On the issue regarding the deciding authority to consider a piece of information as ‘vital’, the Ministry responded as follows:

“It would be for the Commission to decide, sitting as a collegium, on whether any information, furnished by any person involved in a cartel, is vital or not. The Commission would apply the ‘Rule of

Reason' in arriving at such a conclusion, and the same would be appealable before the Appellate Tribunal".

63. When questioned on the quantum of reduction in punishment which can be given, the Ministry informed as under as follows:

"The quantum of reduction would be left to the Commission sitting as a collegium, and is expected to be based on the relevance of the information furnished, and the time of disclosure. It would be open for the Commission to frame guidelines on the nature and extent of reduction for various situations, instead of deciding the same on a case to case basis. It would also be open to the Commission to give total amnesty, since the Act does not prescribe any limit on the extent of reduction of punishment".

64. The Committee note that under Section 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 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. The proposed amendment under Clause 30 of the Bill applicable to this Section replaces the first proviso with a new proviso which states that "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 such disclosure". The Committee feel that cartels are difficult to break. they, further feel that Section 46 of the Act does not lay down the extent of reduction or what kind of information will be considered to be vital, nor does it require the firm's continued cooperation in prosecuting other cartel members. In this connection, the Committee have been given to understand that it would be for the Commission to decide, based on the 'Rule of Reason', on whether any information is vital or not. The Committee feel that the provision needs to be more specific on this point. Further, the Committee are of the opinion that such incentives should be structured in a way so that each cartel member remains in a hurry to come forward with the necessary evidence before do so, thus destabilizing the cartel. Therefore, the Committee feel that this Section should be amended in such a way so as to guarantee complete amnesty to the first firm that gives enough evidence to commence an investigation by the Commission, and reduced penalties for those giving useful evidence subsequently, provided they continue to collaborate in investigations

against the remaining cartelists. This, in the Committee's view, will lead to a substantial increase in the number of firms willing to provide information. Since the CCI has not been given powers of search and seizure, this arrangement would go a long way in discouraging cartels. The Committee desire the Government to give serious thought to the matter and come forth with an appropriate amendment in clause 30 of the Bill.

Clause 31 of the Bill: Amendment of section 49 (Competition Advocacy—Reference by Central and State Governments on Policy matters relating to Competition)

65. Clause 31 reads as under:

In Section 49 of the principal Act, in sub-section (1), for the words and brackets "In formulating a policy on competition (including review of laws related to competition), the Central Government may make a reference", the following shall be substituted, namely:—

"The Central Government may, in formulating a policy on competition (including review of laws related to competition) and a State Government may, in formulating a policy on competition, make a reference".

66. The Committee observed that proviso (2) of the Section 49 of the Act reads as under:

"The opinion given by the Commission under Sub-section (1) shall not be binding upon the Central Government in formulating such policy."

67. With respect to this Section, the following suggestions have been received by the Committee:

PHDCCI:

"It is suggested that the CCI may also be enabled to study the impact of various legal provisions and regulatory framework on its own (not only when a reference is made to it), and participate in policy formulation. The CCI should also be able to suggest policy alternatives to ensure that competition is not stifled."

Luthra & Luthra Law Firm:

"It is suggested that the scope of Section 49 (1) be amplified and it be made unambiguously clear that an opinion of CCI be sought

on all policies/laws and procedures of the Central and State Governments in so far as impact on competition is concerned. There is a need to incorporate in enabling provision permitting the Competition Commission to give its opinion on its own knowledge or information on policies/laws of Central/State Governments which are inconsistent with principles of competition. The opinion being advisory does not in any way affect the prerogative of the State to enact laws and to formulate policies as it desires.”

Dr. Kelkar, IDFC:

“Reference should be permitted on any policy which impacts competition substantially rather than only on policy of competition, as it stands now. However, the Government should retain its power to accept or not to accept recommendations of the CCI.

A competition authority should be able to advise or send its opinion to the government on a policy issue on its own though the advice/opinion may not be binding on Government. The Competition Act should be amended to confer such powers on the CCI.”

68. When questioned that reference should be permitted on any policy which impacts competition substantially rather than only on policy of Competition, the Ministry, in a written reply, stated as under:

“The role of CCI is to regulate competition in accordance with the statutory provisions. The Act clearly places policy within the domain of the Government which operates in a democratic framework prescribed by the Constitution, responsive to public interest. Section 49(1) of the Competition Act provides that Central Government may consult CCI while formulating a ‘policy on competition’, and not on any ‘policy impacting competition’. Policy, due to its broader implications, is proposed to be retained in the domain of the Government. It is not proposed that all government policies be brought under the scanner of CCI and pre-audited before they are finalized. It may be noted that ‘policy on competition’ as may be formulated by the Government, is expected to be prepared taking into account a wider range of issues, impacting public interest. A reference to ‘policy impacting competition’ however, would have the effect of subjecting all policies of the Government to a pre-audit. Therefore, scope of 49(1) had been restricted only to policies on competition at the time of enactment of the Competition Act in 2002 and no change is required in this formulation.”

69. The Committee further desired to know whether the CCI may also be enabled to *suo motu* study the impact of various legal provisions and regulatory framework on its own, and also *suo motu* participate in the policy formulation and suggest policy alternatives. The Ministry stated as under:

“The Commission could undertake such studies as a part of its advocacy work. It is envisaged that in this manner, CCI would be able to use its expertise to examine an issue in-depth and provide various aspects and options that could then be considered in policy formulation. The law on matters affecting competition is laid down in the Competition Act, and CCI has full powers on inquiring on such matters relating to competition. However, its jurisdiction does not extend to policy-making powers of the Government, which is a sovereign function of the Government. However, an exception has been made in case of policy on competition, in which the “Act provides, through section 49, that the Central Government may refer the matter to CCI for opinion.

Since the final accountability on policy issues lies with the Government, it is felt that it is best to leave it to Government’s discretion to refer any matter of policy on competition to the Commission for its opinion, and not expand these powers any further.”

70. The Ministry further informed as under:

“Competition angle is one of the many factors considered by the Government in policy formulation.

Further the CCI is not intended to be a body charged with pre-audit of policy which is a sovereign function discharged by the Government within the framework of the Constitution.

Besides Competition Commission is empowered to carry out competition advocacy to convince policy makers of the force of its arguments on the basis of its capacity to focus expertise on the issue.”

71. In view of the importance of giving the CCI to function effectively, the Committee felt that apart from the Central Government the State Governments may be required to make reference to CCI not only in respect of formulation of policy on competition, but in

formulation of other policies affecting competition. The Ministry responded to this point as under:

“State Governments exist and operate in a constitutional framework that recognizes federal nature of the Indian constitutional system and as in the case of Central Government, need to exercise their policy making role on issues over which they have jurisdiction.”

72. Section 49 allows Central Government and the State Governments to seek the opinion of CCI on formulating the policy on Competition. In this connection, several suggestions received by the Committee had hinted upon the need to further amplify the scope of this Section so that an opinion of CCI could be sought on all policies of Central and State Governments that can impact competition. However, the Committee take note of the response furnished by the Government wherein it has been, *inter-alia*, informed that policy, in its wider implications, is proposed to be retained in the domain of the Government and the CCI is not intended to be a body charged with pre-audit of policy. Nevertheless the Committee expect that the CCI would make sincere efforts to utilize its expertise to pinpoint such policies of the Government which are inconsistent with the principles of Competition. Further, the Committee observe that while under this Section the opinion of CCI is not binding on the Central Government, this provision has not been extended to the State Governments, which in all probability, is due to drafting oversight. Therefore, the Committee desire that in Section 49 (2) of the principal Act, the words “or State Governments” should be inserted after the words “Central Government”.

Clause 34: Insertion of new Chapter VIII A (New Sections: 53A to 53U) (Competition Appellate Tribunal)

73. After Chapter VIII of the principal Act, a new Chapter namely VIIIA, Competition Appellate Tribunal has been proposed to be inserted through clause 34. The clause *inter-alia* includes as follows:

53K (Removal from office)

(1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any other member of the Appellate Tribunal, who—

- (a) has been adjudged an insolvent; or
- (b) has engaged at any time, during his term of office, in any paid employment; or

- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has become physically or mentally incapable of acting as such Chairperson or other member of the Appellate Tribunal; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or member of the Appellate Tribunal; or
- (f) has so abused his position as to render his continuance in office prejudicial to the public interest.

74. 53N (Awarding 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 and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of any contravention of the provisions of Chapter II, having been committed by enterprise.
- (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.
- (3) The Appellate Tribunal may, after an inquiry made into the allegations mentioned in the application made under sub-section (1), pass an order directing the enterprise to make payment to the applicant, of the amount determined by it as realizable from the enterprise as compensation for the loss or damage caused to the applicant as a result of any contravention of the provisions of Chapter II having been committed by such enterprises:

Provided that in a case no decision or order has been made or direction issued on the contravention alleged on the application by the Commission, the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

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

75. During evidence, the Committee desired to know as to why the power of awarding compensation was being taken away from CCI. To this, the Ministry responded as follows:

“In light of the issues raised in the legal challenges against certain provisions of the Act, Government has decided to amend all provisions which give a judicial character to the Commission. Since awarding of compensation involves a process of adjudication, it has been proposed to give the powers of awarding compensation to the Appellate Tribunal, which has a judicial character, being headed by a member of the judiciary.”

76. Comments received from two experts in this regard are as under:

Luthra & Luthra Law Firm:

“It needs to be unambiguously provided in the newly proposed Section 53 N of the Act that the application for the award of compensation shall be entertained by the Competition Appellate Tribunal only after an enterprise has been found to have violated the provisions of the Act after an inquiry by the Competition Commission of India.”

Dr. Vijay Kelkar from IDFC:

“The language of the proposed section 53N needs to be carefully worded so as to prevent any possibility of parallel proceedings in CCI & CAT since this could lead to forum shopping.”

77. When asked whether in the absence of a provision to enable the Competition Commission to give its recommendations to the Appellate Tribunal, a need arises to suitably amend the provision to

enable the Commission to do the same, the Ministry stated as under:

“Proposed section 53N provides for procedure to be adopted by the CAT while adjudicating on claims for compensation. The provisions make it necessary for the CAT to consider the order passed by the Commission and where necessary, to obtain the recommendations of the Commission before passing any order of compensation. This would ensure that the views of the Commission are firmly taken into account by the CAT before pronouncing in the matter. Thus, the possibility of a compensation order being made in absence of views/recommendations of the Commission would not be there. In view of the proposed provisions of clause 53N (3) under clause 34 of the Amendment Bill, such provision, as suggested, does not appear to be necessary.”

78. Further questioned on the use of the words “if any” in sub-clause (2) of the Section 53N that gives rise to the possibility of compensation claims being filed with the Appellate Tribunal without any findings of the Commission, the Ministry stated:

“This is being examined in consultation with Ministry of Law”.

79. It was apprehended that the use of the words “after an inquiry made into the allegations” in sub-clause (3) of the Section 53N could be interpreted as allowing a parallel inquiry into the substantive allegations which, perhaps was not intended as the Appellate Tribunal is an appellate body without an investigating agency. When asked to comment, the Ministry submitted:

“The provision of enquiry here is included to determine the quantum of compensation to be provided. However, the matter is being examined in consultation with Ministry of Law so as to remove chances of wrongful interpretation.”

80. In view of the apprehensions that the CCI will become powerless due to the proposed amendments relating to transfer of its powers to enforce its orders to the civil courts, and its powers to award compensation to the Appellate Tribunal, the Committee desired to know the position of the Government on the matter. In their post-evidence reply, the Ministry submitted:

“while transferring the powers to the Appellate Tribunal, it has been provided that the Tribunal shall adjudicate on claims of compensation that may arise from findings of the Commission,

and its enquiry shall relate only to the admissibility and quantum of compensation and not to the findings of the Commission as such, unless the findings of the Commission are themselves appealed against before the Tribunal.”

81. Clause 34 of the Bill *inter-alia* proposes Section 53Q, which reads as under:

53Q (Contravention of orders of Appellate Tribunal)

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 to be detained in civil prison for a term which may extend to one year, unless in the meantime the civil court directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

82. The Clause 34 (section 53Q) does not explicitly specify the authority competent to pass the order. In this connection, when asked as to which authority shall be passing such an order, the reply of the Ministry was as under:

“The intention in the provision was to provide powers to the courts to order detention of a person or impose a fine for a contravention of an order of the CAT without any reasonable ground. Necessary changes would be made in clause 53Q in consultation with the Legislative Department to make this exercise of power by CAT unambiguous.”

Section 53T (Appeal to Supreme Court)

83. A new section 53T, proposed under clause 34 reads as under:

“Any person aggrieved by any decision on order of the appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him.

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

84. In this connection, the representative of the law firm Luthra & Luthra submitted as under:

“Since the inquiry can be initiated on a reference from the Central or State Government, it needs to be provided in Section 53T of the Act that the Central as well as State Government shall have liberty to file an appeal against the order passed by the Competition Appellate Tribunal and further appeal should lie only on a question of law as enshrined in the Code of Civil Procedure, 1908.”

85. The Committee note that Sub-section 53K, which forms part of the new Chapter VIII A concerning Competition Appellate Tribunal inserted vide Clause 34 of the Amendment Bill, deals with removal of the Chairperson or any other Member of the Tribunal on certain conditions. The Committee are surprised to note that this Sub-section provides the Central Government with the power to remove the Chairperson or any other Member on the grounds of insolvency, conviction to an offence, physical/mental disability etc. in consultation with the Chief Justice of India. They fail to understand the logic behind such an arrangement as the proviso (2) of the proposed Section 53K provides that the Chairperson or a member of the Appellate Tribunal shall be removed after an inquiry made in this behalf by a Judge of the Supreme Court. The Committee are of the opinion that since the removal is preceded by an inquiry by Supreme Court Judge, there is no need to again consult the Chief Justice of India for the same. The Committee, therefore, desire that the words “in consultation with the Chief Justice of India” may be deleted from Clause 53K of the Bill.

86. The Committee observe that through Clause 34, it is being proposed to create a Competition Appellate Tribunal, having adjudicatory powers. However, in their view, it is of utmost importance that CAT, being a quasi-judicial body and not an expert body, should not become parallel to the CCI. Therefore, the Committee desire that suitable amendments need to be made in this Clause to ensure that a party is able to approach the CAT only after the CCI has determined in a proceeding before it, that a violation of the Act has taken place. Therefore, they feel that the language of the proposed section 53N needs to be worded in such a fashion so that the application for award of compensation is entertained by the CAT only after CCI has conducted an enquiry and given its findings. The Committee also observe that the use of the words ‘if any’ in sub-clause (2) and the words ‘after an enquiry made into the allegations’ in sub clause (3) of section 53N give rise to certain

ambiguities. As the Ministry have already agreed in principle to examine the matter so as to remove any chances of wrongful interpretation, the Committee recommend that suitable amendments may be made in the said sections to prevent ambiguity.

87. In so far as the power to award compensation is concerned, the Committee note from the information furnished to them that this power is now proposed to be vested in CAT and not in CCI as this power has a judicial character which can be exercised only by a quasi-judicial body like CAT. The Committee further note that this proposal has taken shape in view of the issues raised in the writ petition filed against certain provisions of the principal Act. Most of the experts that had deposed before the Committee were of the opinion that the power to award compensation should vest with the Commission.

Clause 41: Amendment of section 66

88. Clause 41 reads as under:

In section 66 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

“(a) 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 (hereinafter referred to as the repealed Act) shall stand dissolved.

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

Explanation.—For the removal of doubts, it is hereby declared that nothing in this proviso shall confer any jurisdiction or power upon

the Monopolies and Restrictive Trade Practices Commission to decide or adjudicate any case or proceeding arising under the Monopolies and Restrictive Trade Practices Act, 1969 on or after the commencement of this Act.

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

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

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

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

(d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, confiscation or punishment as aforesaid,

and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty confiscation or punishment may be imposed or made as if that Act had not been repealed.”

(b) In sub-section (2),—

(i) for the second proviso, the following proviso shall be substituted, namely:—

“Provided further that the Director-General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General or Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission, employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Competition Commission of India or the Appellate Tribunal, in such manner as may be specified by the Central Government, with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred

to, and vested in, the Competition Commission of India or the Appellate Tribunal, as the case may be, and shall continue to do so unless and until his employment in the Competition Commission of India or the Appellate Tribunal, as the case may be, is duly terminated or until his remuneration, terms and conditions of employment are duly altered by the Competition Commission of India or the Appellate Tribunal, as the case may be.”;

(ii) in the third proviso, for the words “the Central Government”, the words “the Competition Commission of India or the Appellate Tribunal, as the case may be,” shall be substituted;

(iii) in the fourth proviso,—

(a) for the words “the Central Government shall, out of the monies standing”, the words “the Competition Commission of India or the Appellate Tribunal, as the case may be, shall, out of the monies standing” shall be substituted;

(b) for the portion beginning with the words “the Central Government and such monies” and ending with the words “as may be prescribed” the following shall be substituted, namely:—

“the Competition Commission of India or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the said Commission or the Tribunal, as the case may be, in such manner as may be prescribed”;

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

“(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 and on or after the expiry of two years referred to in the proviso to sub-section (1) shall, 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.”;

(d) in sub-section (4) for the words “on or before the commencement of this Act shall, on such commencement”, the words, brackets and figure “on or before the expiry of two years referred to in the proviso to sub-section (1), shall” shall be substituted:

(e) for sub-section (5), the following sub-section shall be substituted, namely:—

“(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 on or after the expiry of two years referred to in the proviso to sub-section (1), shall, stand transferred to the Competition Commission of India, and the Competition Commission of India shall dispose of such cases as if they were cases filed under that Act.”

89. This proposed section deals with transitional arrangements for dealing with cases pending before MRTPC as well as officers and employees of MRTPC to CCI. While the MRTPC has been allowed, under Clause 41, a two year's period to dispose of the pending cases after the commencement of the Act, it provides for the transfer to pending cases after two years to either the Competition Act. In this regard the Committee desired to know as to whether any corresponding amendment has been introduced in the Consumer Protection Act to facilitate such transfer of cases to avoid any inconvenience to the affected parties. The Ministry stated that the Department of Consumer Affairs has separately taken up an exercise for revision of said Act.

90. As regards transfer of MRTPC staff to CCI, several experts expressed their apprehensions on such an arrangement on the basis of the argument that this will not be very helpful because the Members and the staff of the present MRTP Commission are not trained or qualified to deal with the complex economic analysis dealing with competition, trade, finance, business or accounting. They were of the view that it would be desirable if these personnel are given training on these different fields before they are brought to the Commission.

91. When questioned by the Committee in this regard, the Ministry submitted as follows:

“The meaning of Commission being an expert body is that the Chairperson and Members of the Commission shall be experts. The officers and staff of the Commission would be there only to assist the Commission and would act under the control, guidance and supervision of the Commission.

The Staffing pattern of the Commission as well as the manner in which the services of such staff would be made available to the Commission would be so devised so that the Commission can carry out its functions effectively.

Under the proposed Amendment, CCI can also take recourse to utilization of services of experts and professionals, which may include experts to assist in capacity building of the staff.”

92. With regard to the transitional arrangements proposed under Clause 41 of the Bill for dealing with cases pending before MRTPC as well as with the officers and the staff of MRTPC following the dissolution of this commission after two years of the commencement of the Competition Act, the Committee feel that corresponding amendments must be introduced in the Consumer Protection Act 1986 to facilitate smooth transfer of pending cases. The Committee note from the information furnished by the Ministry that this requirement has already been indicated to the Department of Consumer Affairs. The Committee desire that the matter may be pursued so that necessary amendments in the Consumer Protection Act, 1986 are carried out well in time.

93. With regard to transfer of MRTPC staff to CCI, the Committee are of the opinion that some sort of a voluntary retirement scheme may first be offered to them. For the staff who do not opt for retirement under VRS, appropriate training must be imparted to them before their transfer to CCI so that they could prove equally useful to the Commission. Moreover, the Committee feel that as the CCI would be largely manned by personnel who will be deputationists, it would be in the fitness of things if a permanent cadre of officers can be put into place in view of the very specific, complex and serious nature of job involved as well as the fact that expertise in the field of Competition is scarce in India.

94. Apart from certain provisions in the Bill, which required recasting, the Committee strongly felt that there was a need to bring about certain changes in the Principal Act also. The following paragraphs deal with the same:

(1) Section 2(b), 2(b) (i) and 2(b)(ii)—Definitions

95. The Section reads as under:

(b) “agreement” includes any arrangement or understanding or action in concert,—

- (i) whether or not, such arrangement, understanding or action is formal or in writing; or
- (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

96. As the Committee felt that the words 'between enterprises' need to be inserted after the word 'understanding', the Ministry was asked to examine the same. In their reply, the Ministry stated as under:

"The existing provisions are wider in scope since they relate to "any arrangement or undertaking", and not only to those between enterprises. Besides the words "in concert" qualifies the act under Section 2(b). Therefore, no change is felt necessary."

97. Though the Ministry have taken the stand that the existing provisions under Section 2(b), 2(b)(i) and 2(b)(ii) are wider in scope, the Committee still feel that the words 'between enterprises' are required so that the interpretation of the word could be made in the right perspective as it was noticed that the MRTPC had wrongly interpreted the word 'understanding' in several cases and applied it to a single enterprise. Hence, they desire that Government may consider carrying out the necessary changes in Section 2(b), 2(b) (i) and 2(b) (ii) of the principal Act while bringing in the revised amendment Bill.

(2) Section 3, 4 & 5—Anti-Competitive Agreements, abuse of domination position and Regulation of Combinations

98. These Sections deal with the anti-competitive agreements, abuse of domination position by enterprise or association of enterprises, person or association of persons and combination by way of merger and amalgamation of enterprises. In this connection, there is no reference of inter-connected undertakings in these sections, which may have wide impact on the competition. The term 'interconnected undertakings' has been defined under Section 2 (g) of the MRTP Act as under:

"'inter-connected undertakings' means two or more undertakings which are interconnected with each other in any of the following manner, namely, if one owns or control the others, if the undertakings are owned or controlled by the same person, where the undertakings are owned by firms, if such firms have one or more common partners etc."*

99. Questioned by the Committee on the same, the Ministry submitted as under:

"The phrase 'inter connected undertakings' as defined under Section 2 (g) of the MRTP Act seeks to describe various kinds of combinations which may be possible between two entities.

*For details refer to MRTPC Act, PP 6 to 9.

In the Competition Act, 2002, this issue is addressed through the concept of action “in concert” in case of agreements [Section 3 read with Section 2(b)] and the concept of “control” in relation to combinations.

Section 5 of the Competition Act, 2002, defines various kinds of combinations, which are under the purview of the provisions of the Competition Act. This includes acquisition of shares acquisition of control, acquisition of assets and acquisition of voting rights. For the purpose of the Act, “control” includes controlling the affairs or management by one or more enterprises, either jointly or singly, over another enterprise or group or one or more groups, either jointly or singly, over another group or enterprise. Further “group” has been defined as two or more enterprises which, directly or indirectly, are in a position to exercise twenty-six per cent or more of the voting rights in the other enterprises; or appoint more than fifty percent, of the members of the board of directions in the enterprise; or control the management or affairs of the other enterprises.

The above provisions are considered to be broad enough to address different kinds of possible combinations and agreements. Such agreements and combinations can take place numerous forms. It would be restrictive to list the known forms in such cases in the Act.”

100. The Committee find that Sections 3, 4 and 5 of the Competition Act, that deal with the anti competitive agreements between enterprises, abuse of dominant position by enterprise or associations of enterprises, persons or associations of persons and combination by way of merger and amalgamation of enterprises, have no reference to inter-connected undertakings. In this connection, the Committee note that Section 2 (g) of the MRTPC Act very clearly defines the concept of inter-connected undertakings which have substantial impact on competition in markets. The Ministry in their explanation have taken the stand that this particular aspect is addressed through the concept of action ‘in concert’ in case of agreements [Section 3 read with Section 2 (b)] and the concept of ‘control’ in relation to combinations. The Ministry have also referred to Section 5, which defines various kinds of combinations and stated that these provisions are broad enough to address different kinds of possible combinations and agreements. While agreeing to the argument advanced by the Ministry, the Committee still feel that it would be worthwhile to include the concept of ‘inter-connected

undertakings' in line with the MRTPC Act for the sake of better clarity as well as to empower the Competition Commission to act effectively in case an adverse impact on competition is noticed due to certain undesirable actions on the part of inter-connected undertakings. Therefore, the Committee urge the Government to suitably amend Sections 3, 4 and 5 of the Act to that effect.

Section 6—Regulation of combinations

101. Section 6 (2) reads as under:

(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, may, at his or its option, give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within seven 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 (h) of that section.

102. In this regard, the Committee observed that since the notification of combination is optional it means the act envisages a voluntary pre-notification requirement for combinations/mergers above a certain threshold limit. However, if the merging companies decide not to notify, they would be at risk if subsequently the Commission feels that the merger is going to have an adverse effect on the competition. When asked to respond to this observation, the Ministry stated in a written reply as under:

“Section 6(2) of the Competition Act provides for a voluntary pre-notification of combinations above a threshold limit. This has been provided so as to enable parties to a combination to take approval of the Commission before going ahead with the Combination. This would avoid high costs involved, if a post merger unscrambling is ordered by the Commission. However, this provision has not been made mandatory, since prior approval of all cases may lead to delays and unjustified interventions. Where parties are reasonably confident that any combination is not likely to be violative of the

law, they may proceed with the combination. However, where parties anticipate or have reasonable apprehensions that a proposed combination may be violative of provisions of the Act, they may utilize the pre-notification route. Since a one year time limit has been provided under Section 20 (1) of the Act for the Commission to take up any inquiry into a combination, no unmerging of combination can take place after one year.”

102. The Committee note that the Section 6 (2) of the principal Act states that the notice by the concerned person or enterprise entering into a combination is optional. In this connection, the Committee are surprised to note the Ministry’s contention that the provision has not been made mandatory since prior approval of all cases may lead to delays and ‘unjustified interventions’. They are unable to understand as to why a high ranking expert body like the CCI cannot address problems like delay and unjustified interventions, if the clause is made mandatory on the enterprises entering into mergers/combinations. Moreover, the Committee feel that in the current economic scenario, combinations are very likely to cause appreciable adverse effect on competition within the relevant market in India. However, leaving the option of giving notice of entering into combination to the Commission at the discretion of the enterprise would mean that the Commission may miss out on certain important developments, which can ultimately hamper its functioning as a regulatory body. Thus the Committee recommend that the Clause 6(2) may be amended suitably to provide for mandatory pre-notification of combinations/mergers.

NEW DELHI;
08 December, 2006
17 Agrahayana, 1928 (Saka)

MAJ. GEN. (RETD.) B.C. KHANDURI,
Chairman,
Standing Committee on Finance.

NOTE OF DISSENT

Government has replaced the Monopoly & Restrictive Trade Practices Act, 1969 which was the first enactment to deal with competition issues, by the Competition Act 2002. Though, according to Government's viewpoint that MRTP Act has become obsolete in view of rapid changing economic developments but there were some specific provisions, which are still relevant in the present context. Since, Government is going on amend the Competition Act 2002, the following points, which neither been taken care of in the Competition Act 2002 nor in the amendment Bill, in my opinion, should be taken into consideration:

One of the most objectionable points is "predatory pricing". Predatory pricing is a type of anti-competitive event in which companies price their products below market values in an attempt to drive out competition. The predatory firm first lowers its price until it is below the average cost of its competitors. The competitors must then lower their prices below average cost, thereby losing money on each unit sold. If they fail to cut their prices, they will lose virtually their entire market share; if they do cut their prices, they will eventually go bankrupt. After the competition has been forced out of the market, the predatory firm raises its price, compensating itself for the money it lost while it was engaged in predatory pricing, and earns monopoly profits forever after. This may lead to conditions where one company has a monopoly in a certain product or industry. Competition laws forbid predatory dumping in many countries such as the U.S. and the European Union. In the explanation part of the Section 4 (2) of the Competition Act 2002, where the words "including *predatory pricing*" occur, should be deleted. Otherwise it will enable large firms with the financial ability to sustain losses to drive out more efficient rivals.

It is most important to note that most of the statutes of the land related to commercial and economic activities empower the authority for search and seizure. The MRTP Act also under section 12(5) gave the MRTP Commission the power of search and seizure. Though this is of vital importance since the documents, records and evidences may often be tampered, falsified and/or destroyed by the interested parties, the Competition Act 2002 has neither made any provision for search and seizure by the Competition Commission nor the Amendment Bill proposed for the same.

One of the major shortcomings is there in the Competition Act, which is also not mentioned in the draft report. No provision is there for the employees, who are the major stakeholders of any company, to present their views before the Commission during the merger proceedings. In the Competition Act of South Africa, a special provision allows trade unions to participate in the merger proceedings. Since, Labour and Capital form an industry, not the Capital alone, it is the just demand of the employees to take part in the merger proceedings. The Government should consider this aspect to allow the trade unions to present their views before the Competition Commission.

Sd/-
Chittabrata Majumdar

MINUTES OF THE TWENTY-EIGHTH SITTING OF
STANDING COMMITTEE ON FINANCE

The Committee sat on Wednesday, 31st May, 2006 from 1030 to 1220 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Shrinivas D. Patil
3. Shri M.A. Kharabela Swain

Rajya Sabha

4. Shri Chittabrata Majumdar
5. Shri S.P.M. Syed Khan
6. Shri Santosh Bagrodia
7. Smt. Shobhana Bhartia

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri S.B. Arora — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary (A)*
4. Smt. Anita B. Panda — *Under Secretary (B)*

WITNESSES

Ministry of Company Affairs

1. Shri Anurag Goel, Secretary
2. Shri Jitesh Khosla, Joint Secretary
3. Shri Y.S. Malik, Joint Secretary

2. At the outset, the Chairman welcomed the representatives of the Ministry of Company Affairs and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. Then, the representatives of the Ministry of Company Affairs briefed the Committee on the various provisions contained in the Competition (Amendment) Bill, 2006. The Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee later on.

4. The briefing was concluded.

5. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE THIRTY-SECOND SITTING OF
STANDING COMMITTEE ON FINANCE

The Committee sat on Wednesday, 26th July, 2006 from 9.30 to 10.45 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Bhartruhari Mahtab
3. Shri Rupchand Pal
4. Shri K.S. Rao
5. Shri Jyotiraditya Madhavrao Scindia
6. Shri Lakshman Seth
7. Shri Vijoy Krishna

Rajya Sabha

8. Shri M. Venkaiah Naidu
9. Shri Yashwant Sinha
10. Shri S.P.M. Syed Khan
11. Shri Santosh Bagrodia

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri A. Mukhopadhyay — *Joint Secretary*
3. Shri S.B. Arora — *Deputy Secretary*
4. Smt. Anita B. Panda — *Under Secretary (B)*

WITNESSES

The Competition Commission of India

1. Shri Vinod Dhall, Member
2. Shri Amitabh Kumar, Director General

3. Shri Augustine Peter, Economic Advisor
4. Shri G.R. Bhatia, Additional Director General

2. At the outset, the Chairman welcomed the representatives of the Competition Commission of India to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. Then, the representatives of the Competition Commission of India gave a power point presentation on the overall functioning of the Commission and further briefed the Committee on the various provisions contained in the Competition (Amendment) Bill, 2006. The Members asked clarificatory questions, which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members, which was not readily available with them, might be furnished to the Committee in a week's time.

4. The briefing was concluded.
5. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE THIRTY-FIFTH SITTING OF
STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, 3 August, 2006 from 1500 to 1610 hours and 1620 to 1735 hours.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Bhartruhari Mahtab
4. Shri Rupchand Pal
5. Shri Shriniwas D. Patil
6. Shri K.S. Rao
7. Shri Jyotiraditya Madhavrao Scindia
8. Shri M.A. Kharabela Swain

Rajya Sabha

9. Shri Chittabrata Majumdar
10. Smt. Shobhana Bhartia

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri S.B. Arora — *Deputy Secretary*
3. Smt. Anita B. Panda — *Under Secretary*

PART-I

(1500 to 1610 hours)

WITNESSES

A. PHD Chamber of Commerce and Industry

- (i) Smt. Sushma Berlia, President, PHDCCI
- (ii) Shri Sali Bhandari, Member, Managing Committee & Chairman, Corporate Affairs Committee, PHDCCI

- (iii) Shri G.L. Agarwal, Member, Managing Committee & Co-Chairman, Corporate Affairs Committee, PHDCCI
- (iv) Shri Harish Vaid, Member, PHDCCI
- (v) Prof. Bibek Debroy, Secretary General, PHDCCI
- (vi) Ms. Shalini Mathur, Joint Secretary, PHDCCI

B. Confederation of Indian Industry (CII)

- (i) Shri Dipankar Chatterjee, Past Chairman, CII (Eastern Region) & Senior Partner, L.B. Jha & Co.
- (ii) Shri M.S. Rathore, General Manager (Legal) and Company Secretary, Chambal Fertilisers
- (iii) Shri Munish Saraogi, Senior Manager, Pricewaterhouse Coopers
- (iv) Shri C. Banerjee, Senior Director, CII
- (v) Shri Vikram Badshah, Head—CII Public Policy

C. Federation of Indian Chambers of Commerce and Industry (FICCI)

- (i) Shri Lalit Bhasin, Co-Chairman, FICCI's Committee on Corporate Laws & Legal Affairs and Mg. Partner, Bhasin & Co.
- (ii) Shri Vivek Bharati, Advisor, FICCI
- (iii) Shri Suhaan Mukherji, Sr. Associate, Amarchand & Mangaldas
- (iv) Ms. Anuradha, R.V. Partner, Amarchand & Mangaldas
- (v) Shri S.B. Gupta, Consultant
- (vi) Ms. Jyoti Vij, Additional Director

2. At the outset the Chairman welcomed the representatives of the PHDCCI, CII and FICCI to the sitting of the Committee and invited their attention to the provisions contained in Direction 55(1) of the Directions by the Speaker, Lok Sabha.

3. Then, the representatives of PHDCCI, FICCI and CII briefed the Committee on certain aspects of the provisions contained in the Bill. The Members asked clarificatory questions which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members, which was not readily available with them, might be furnished to the Committee in a week's time.

4. The evidence was concluded.
5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

PART II

(1620 to 1735 Hours)

Witness

Dr. S. Chakravarthy, IAS (R), Former Member, MRTPC and Expert

2. At the outset the Chairman welcomed Dr. S. Chakravarthy to the sitting of the Committee and invited his attention to the provisions contained in Direction 55(1) of the Directions by the Speaker, Lok Sabha.

3. Then, Dr. Chakravarthy gave a powerpoint presentation on the various provisions contained in the Competition (Amendment) Bill, 2006. The Members asked clarificatory questions which were replied to by Dr. Chakravarthy. The Chairman, then, directed that a consolidated written statement, including oral replies to Members' queries given by him during the meeting as well as the queries which were not replied to, might be furnished to the Committee in a week's time.

4. The evidence was concluded.
5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE FOURTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Monday, 18th September, 2006 from 1030 to
1215 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Shyama Charan Gupta
5. Shri Madhusudan Mistry
6. Shri Rupchand Pal
7. Shri Prakash Paranjpe
8. Shri P.S. Gadhavi
9. Shri Jyotiraditya Madhavrao Scindia
10. Shri M.A. Kharabela Swain
11. Shri Bhal Chand Yadav

Rajya Sabha

12. Shri Santosh Bagrodia
13. Shri Raashid Alvi
14. Smt. Shobhana Bhartia
15. Shri M. Venkaiah Naidu
16. Shri Yashwant Sinha
17. Shri Chittabrata Majumdar
18. Shri Mangani Lal Mandal

SECRETARIAT

1. Shri A. Mukhopadhyay — *Joint Secretary*
2. Shri S.B. Arora — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary*
4. Smt. Anita B. Panda — *Under Secretary*

WITNESSES

Amarchand Mangaldas (Law Firm)

1. Ms. Pallavi Shroff, Partner (Member of the High Powered S.V.S. Raghvan Committee and Member of the Sub Group that prepared the first draft of the Concept Bill of the Competition Act.)
2. Ms. R.V. Anuradha, Partner
3. Shri Suhaan Mukherji, Senior Associate

Consumer Unity and Trust Society (CUTS)

1. Shri Pradeep S. Mehta, Secretary General
2. Mrs. Mani Lamba, Director

2. At the outset, the Chairman welcomed the representatives of the Amarchand Mangaldas (Law Firm) and Consumer Unity and Trust Society (CUTS) to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of the representatives in connection with the examination of the Competition (Amendment) Bill, 2006. The Members asked clarificatory questions, which were replied to by the representatives. The Chairman, then, directed the representatives that the information with regard to queries of the Members, which was not readily available with them, might be furnished to the Committee in a week's time.

4. The evidence was concluded.

5. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE SIXTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Thursday, 28th September, 2006 from
1100 to 1245 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Shyama Charan Gutpa
5. Shri Vijoy Krishna
6. Dr. Rajesh Kumar Mishra
7. Shri Bhartruhari Mahtab
8. Shri Prakash Paranjpe
9. Shri P.S. Gadhavi
10. Shri K.S. Rao
11. Shri A.R. Shaheen
12. Shri M.A. Kharabela Swain

Rajya Sabha

13. Shri Santosh Bagrodia
14. Shri Yashwant Sinha
15. Shri Mangani Lal Mandal

SECRETARIAT

1. Shri A. Mukhopadhyay — *Joint Secretary*
2. Shri S.B. Arora — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary*
4. Smt. Anita B. Panda — *Under Secretary*

WITNESSES

Ministry of Company Affairs

1. Shri Anurag Goel, Secretary
2. Shri Jitesh Khosla, Joint Secretary
3. Shri Y.S. Malik, Joint Secretary
4. Shri Ajay Nath, Director General (Investigation & Research, MRTPC)
5. Shri Amitabh Kumar, Director General (Competition Commission of India)
6. Shri Praveen Kumar, Director

2. At the outset, the Chairman welcomed the representatives of the Ministry of Company Affairs to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of the representatives in connection with the examination of the Competition (Amendment) Bill, 2006. The Chairman then asked the representatives to furnish written notes, on certain points raised by Members, in respect of which replies were not readily available with them during the discussion, to the Committee in three weeks' time.

4. The evidence was concluded.

5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE ELEVENTH SITTING OF
STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, the 16th November, 2006 from 1100 to 1310 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Vijoy Krishna
4. Shri Bhartruhari Mahtab
5. Shri P.S. Gadhavi
6. Shri K.S. Rao
7. Shri Jyotiraditya Madhavrao Scindia
8. Shri M.A. Kharabela Swain

Rajya Sabha

9. Shri Raashid Alvi
10. Shri Chittabrata Majumdar
11. Shri S.P.M. Syed Khan
12. Shri Mangani Lal Mandal

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Additional Secretary*
2. Shri A. Mukhopadhyay — *Joint Secretary*
3. Shri S.B. Arora — *Deputy Secretary*
4. Smt. Anita B. Panda — *Under Secretary (B)*

WITNESSES

Ministry of Company Affairs

1. Shri Anurag Goel, Secretary
2. Shri Jitesh Khosla, Joint Secretary
3. Shri Ajay Nath, Director, General (I&R)

4. Shri Amitabh Kumar, Director General (CCI)
5. Shri Praveen Kumar, Director

Ministry of Law and Justice

(Department of Legal Affairs)

Shri M.A. Khan Yusufi, Joint Secretary

(Legislative Department)

Dr. G. Narayana Raju, Additional Legislative Counsel

2. At the outset, the Chairman welcomed the representatives of Ministry of Company Affairs and Ministry of Law and Justice (Department of Legal Affairs and Legislative Department) to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee then took oral evidence of the representatives of both the Ministries on the provisions of the Competition (Amendment) Bill, 2006. The Members asked clarificatory questions which were replied to by the representatives of the Ministries. The Chairman, then, directed the representatives that the information with regard to queries of the Members which was not readily available with them might be furnished to the Committee later on.

4. The evidence was concluded.

5. A verbatim record of the proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE THIRTEENTH SITTING OF
STANDING COMMITTEE ON FINANCE

The Committee sat on Thursday, 7 December, 2006 from 1500 to
1610 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Shyama Charan Gupta
4. Shri Bhartruhari Mahtab
5. Shri Rupchand Pal
6. Shri Prakash Paranjpe
7. Shri P.S. Gadhavi
8. Shri K.S. Rao
9. Shri Lakshman Seth
10. Shri A.R. Shaheen
11. Shri G.M. Siddeshwara
12. Shri M.A. Kharabela Swain

Rajya Sabha

13. Shri Santosh Bagrodia
14. Shri Mahendra Mohan
15. Shri Chittabrata Majumdar

SECRETARIAT

1. Shri A. Mukhopadhyay — *Joint Secretary*
2. Shri S.B. Arora — *Deputy Secretary*
3. Shri T.G. Chandrasekhar — *Under Secretary*
4. Smt. Anita B. Panda — *Under Secretary*

2. At the outset, the Chairman welcomed the Members to the sitting of the Committee.

3. The Committee first took up for consideration the draft report on the Competition (Amendment) Bill, 2006. The Committee after deliberation adopted the draft Report with the modifications/ amendments shown in Annexure I.

4.	**	**	**
5.	**	**	**
6.	**	**	**

7. The Committee authorized the Chairman to finalise the Reports in the light of suggestions received from the Members and also make consequential verbal changes and present the same to Parliament.

The Committee then adjourned to meet again on 11 December, 2006.

ANNEXURE

[Modifications/Amendments made by Standing Committee on Finance in their Draft Report on the Competition (Amendment) Bill, 2006 at Their sitting held on 7 December, 2006]

Page 11
Para No. 19
Line 5

For

“Competition Law and Policy”

Substitute

“Competition Law”

Page 19
Para 34
Line 14

For

“Director-General is an officer borne permanently on the Cadre of the Competition Commission”.

Substitute

“Director-General is an officer who is an expert borne permanently on the Cadre of the Competition Commission”.

Page 22
Para 42
Line 12

For

“...adequate prior consultation with legal experts be undertaken...”

Substitute

“...adequate prior consultation with experts in different fields be undertaken...”

Page 46
Para 87
Line 7

Delete

“Although”

Page 46
Para 87
Line 9-10

Delete

“...however the Committee would like to refrain from making any further comments on the matter”.

Page 56
After para 93

Add

Paragraphs 94 to paragraphs 103 which read as under:

“94. Apart from certain provisions in the Bill, which required recasting, the Committee strongly felt that there was a need to bring about certain changes in the Principal Act also. The following paragraphs deal with the same:

(1) Section 2(b), 2(b)(i) and 2(b)(ii)-Definitions

95. The Section reads as under:

- (b) “agreement” includes any arrangement or understanding or action in concert,—
 - (i) whether or not, such arrangement, understanding or action is formal or in writing; or
 - (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

96. As the Committee felt that the words ‘between enterprises’ need to be inserted after the word ‘understanding’, the Ministry was asked to examine the same. In their reply, the Ministry stated as under:

“The existing provisions are wider in scope since they relate to “any arrangement or undertaking”, and not only to those between

enterprises. Besides the words “in concert” qualifies the act under Section 2(b). Therefore, no change is felt necessary.”

97. Though the Ministry have taken the stand that the existing provisions under Section 2 (b), 2(b)(i) and 2(b)(ii) are wider in scope, the Committee still feel that the words ‘between enterprises’ are required so that the interpretation of the word could be made in the right perspective as it was noticed that the MRTPC had wrongly interpreted the word ‘understanding’ in several cases and applied it to a single enterprise. Hence, they desire that Government may consider carrying out the necessary changes in Section 2(b), 2(b)(i) and 2(b) (ii) of the principal Act while bringing in the revised amendment Bill.

(2) Section 3, 4 & 5—Anti-Competitive Agreements, Abuse of domination position and Regulation of Combinations

98. These Sections deal with the anti-competitive agreements, abuse of domination position by enterprise or association of enterprises, person or association of persons and combination by way of merger and amalgamation of enterprises. In this connection, there is no reference of inter-connected undertakings in these sections, which may have wide impact on the competition. The term ‘interconnected undertakings’ has been defined under Section 2(g) of the MRTP Act as under:

“inter-connected undertakings’ means two or more undertakings which are interconnected with each other in any of the following manner, namely, if one owns or control the others, if the undertakings are owned or controlled by the same person, where the undertakings are owned by firms, if such firms have one or more common partners etc.”*

99. Questioned by the Committee on the same, the Ministry submitted as under:

“The phrase ‘inter connected undertakings’ as defined under Section 2 (g) of the MRTP Act seeks to describe various kinds of combinations which may be possible between two entities.

In the Competition Act, 2002, this issue is addressed through the concept of action “in concert” in case of agreements [Section 3 read with Section 2(b)] and the concept of “control” in relation to combinations.

Section 5 of the Competition Act, 2002, defines various kinds of combinations, which are under the purview of the provisions of

*For details refer to MRTPC Act, pp 6 to 9.

the Competition Act. This includes acquisition of shares acquisition of control, acquisition of assets and acquisition of voting rights. For the purpose of the Act, "control" includes controlling the affairs or management by one or more enterprises, either jointly or singly, over another enterprise or group or one or more groups, either jointly or singly, over another group or enterprise. Further "group" has been defined as two or more enterprises which, directly or indirectly, are in a position to exercise twenty-six per cent or more of the voting rights in the other enterprise; or appoint more than fifty percent, of the members of the board of directions in the enterprise; or control the management or affairs of the other enterprise.

The above provisions are considered to be broad enough to address different kinds of possible combinations and agreements. Such agreements and combinations can take place numerous forms. It would be restrictive to list the known forms in such cases in the Act."

100. The Committee find that Sections 3, 4 and 5 of the Competition Act, that deal with the anti-competitive agreements between enterprises, abuse of dominant position by enterprise or associations of enterprises, persons or associations of persons and combination by way of merger and amalgamation of enterprises, have no reference to inter-connected undertakings. In this connection, the Committee note that Section 2(g) of the MRTPC Act very clearly defines the concept of inter-connected undertakings which have substantial impact on competition in markets. The Ministry in their explanation have taken the stand that this particular aspect is addressed through the concept of action 'in concert' in case of agreements [Section 3 read with Section 2 (b)] and the concept of 'control' in relation to combinations. The Ministry have also referred to Section 5, which defines various kinds of combinations and stated that these provisions are broad enough to address different kinds of possible combinations and agreements. While agreeing to the argument advanced by the Ministry, the Committee still feel that it would be worthwhile to include the concept of 'inter-connected undertakings' in line with the MRTPC Act for the sake of better clarity as well as to empower the Competition Commission to act effectively in case an adverse impact on competition is noticed due to certain undesirable actions on the part of inter-connected undertakings. Therefore, the Committee urge the Government to suitably amend Sections 3, 4 and 5 of the Act to that effect.

Section 6—Regulation of Combinations

101. Section 6(2) reads as under:

(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, may, at his or its option, give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within seven 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 (h) of that section.

102. In this regard, the Committee observed that since the notification of combination is optional it means the act envisages a voluntary pre-notification requirement for combinations/mergers above a certain threshold limit. However, if the merging companies decide not to notify, they would be at risk if subsequently the Commission feels that the merger is going to have an adverse effect on the competition. When asked to respond to this observation, the Ministry stated in a written reply as under:

“Section 6(2) of the Competition Act provides for a voluntary pre-notification of combinations above a threshold limit. This has been provided so as to enable parties to a combination to take approval of the Commission before going ahead with the Combination. This would avoid high costs involved, if a post merger unscrambling is ordered by the Commission. However, this provision has not been made mandatory, since prior approval of all cases may lead to delays and unjustified interventions. Where parties are reasonably confident that any combination is not likely to be violative of the law, they may proceed with the combination, However, where parties anticipate or have reasonable apprehensions that a proposed combination may be violative of provisions of the Act, they may utilize the pre-notification route. Since a one year time limit has been provided under Section 20 (1) of the Act for the Commission to take up any inquiry into a combination, no unmerging of combination can take place after one year.”

103. The Committee note that the Section 6(2) of the principal Act states that the notice by the concerned person or enterprise entering into a combination is optional. In this connection, the Committee are surprised to note the Ministry's contention that the provision has not been made mandatory since prior approval of all cases may lead to delays and 'unjustified interventions'. They are unable to understand as to why a high ranking expert body like the CCI cannot address problems like delay and unjustified interventions, if the clause is made mandatory on the enterprises entering into mergers/combinations. Moreover, the Committee feel that in the current economic scenario, combinations are very likely to cause appreciable adverse effect on competition within the relevant market in India. However, leaving the option of giving notice of entering into combination to the Commission at the discretion of the enterprise would mean that the Commission may miss out on certain important developments, which can ultimately hamper its functioning as a regulatory body. Thus the Committee recommend that the Clause 6(2) may be amended suitably to provide for mandatory pre-notification of combinations/mergers.

THE COMPETITION (AMENDMENT) BILL, 2006

A

BILL

to amend the Competition Act, 2002

Be it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Competition (Amendment) Act, 2006.

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

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

Amendment of section 2.

2. In section 2 of the Competition Act, 2002 ^{12 of 2003.} (hereinafter referred to as the principal Act), after clause (b), the following clause shall be inserted, namely:—

‘(ba) “Appellate Tribunal” means the Competition Appellate Tribunal established under sub-section (1) of section 53A.’.

Amendment of section 4.

3. In section 4 of the principal Act, in sub-section (2), in clause (c), after the word “access”, the words “in any manner” shall be inserted.

Substitution of new section for section 8.

4. For section 8 of the principal Act, the following section shall be substituted, namely:—

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

Composition of Commission.

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

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

5. For section 9 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 9.

“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—

Selection Committee for Chairperson and Members of Commission.

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

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

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

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

6. In section 10 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:—

Amendment of section 10.

“Provided that the Chairperson or other Member shall not hold office as such after he has attained the age of sixty-five years.”.

Amendment of section 12. 7. In section 12 of the principal Act, for the words "one year", the words "two years" shall be substituted.

Substitution of new section for section 13. 8. For section 13 of the principal Act, the following section shall be substituted, namely:—

Administrative powers of Chairperson. "13. The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission:

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

Amendment of section 16. 9. In section 16 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

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

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

(b) in sub-section (2), for the words "such other advisers, consultants and officers," the words "such officers or other employees," shall be substituted;

(c) in sub-sections (3) and (4), for the words "such other advisers, consultants, or

officers,” the words “such officers or other employees,” shall be substituted.

10. For section 17 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 17.

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

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

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

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

11. In section 19 of the principal Act, in sub-section (1), in clause (a), for the words “receipt of a complaint,” the words “receipt of any information, in such manner and” shall be substituted.

Amendment of section 19.

12. In section 21 of the principal Act,—

Amendment of section 21.

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

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

(b) for sub-section (2) and the proviso thereto, the following sub-section shall be substituted, namely:—

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

Substitution of new section for section 22. Meetings of Commission.

13. For section 22 of the principal Act, the following section shall be substituted, namely:—

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

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

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

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

Omission of sections 23, 24 and 25.

14. Sections 23, 24 and 25 of the principal Act shall be omitted.

Substitution of new section for section 26.

15. For section 26 of the principal Act, the following section shall be substituted, namely:—

Procedure for inquiry under section 19.

“26. (1) On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of

the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the matter.

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

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

(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.

(6) If, after consideration of the objections and suggestions referred to in sub-section (5), if any, the Commission agrees with the

recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

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

(8) If the report of the Director General referred to in 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.”.

Amendment of section 27.

16. In section 27 of the principal Act,—

(i) clauses (c) and (f) shall be omitted;

(ii) in clause (g), for the word “order”, the words “order or issue such direction” shall be substituted.

Amendment of section 28.

17. In section 28 of the principal Act,—

(a) in sub-section (1), for the words, brackets, letter and figures “Central Government on recommendation under clause (f) of section 27,”, the word “Commission” shall be substituted;

(b) in sub-section (2), clause (d) shall be omitted.

Amendment of section 29.

18. In section 29 of the principal Act,—

(a) in sub-section (1), after the words “Where the commission is of the”, the words “*prima facie*” shall be inserted;

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

“(1A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within sixty days:

Provided that the Commission may, if it is satisfied that the Director General was prevented by sufficient cause from submitting the report within the said period, allow the Director General to submit the report within a further period not exceeding sixty days.”.

(c) in sub-section (2), after the words “parties to the combination”, the words, brackets, figure and letter “or the receipt of the report from Director General called under sub-section (1A), whichever is later” shall be inserted.

19. For section 30 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 30.

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

Procedure in case of notice under sub-section (2) of section 6.

20. In section 32 of the principal Act, after clause (f)—

Amendment of section 32.

(a) after the words “have power to inquire”, the words and figures “in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 of the Act” shall be inserted;

(b) after the words “relevant market in India”, occurring at the end, the words

“and pass such orders as it may deem fit in accordance with the provisions of this Act” shall be inserted.

Substitution of new section for section 33.

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

Power to issue interim orders.

“33. Where during an inquiry, the Commission is satisfied that an act in contravention of sub-section (1) of section 3 of sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, grant a temporary injunction restraining any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary.”.

Omission of section 34.

22. Section 34 of the principal Act shall be omitted.

Amendment of section 35.

23. In section 35 of the principal Act, for the words “complainant or defendant”, the words “person or an enterprise” shall be substituted.

Substitution of new section for section 36.

24. For section 36 of the principal Act, the following section shall be substituted, namely:—

Power of Commission to regulate its own procedure.

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

(2) The Commission shall have, for the purposes of discharging its functions under the Act, the same powers as are vested in a Civil Court under the Code of Civil

5 of 1908.

Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

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

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

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

1 of 1872.

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

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

(4) The Commission may direct any person—

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

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

Omission of section 37.

25. Section 37 of the principal Act shall be omitted.

Substitution of new section for section 39.

26. For section 39 of the principal Act, the following section shall be substituted, namely:—

Execution of orders of Commission imposing monetary penalty.

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

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

(3) Where a reference has been made by the Commission under sub-section (2) for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be assessee in default under the Income-tax Act, 1961 and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act any rules made thereunder shall in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income-tax and sums imposed by way of penalty, fine and interest under the Income-tax Act, 1961 and to the Commission instead of the Income-tax officer and Commissioner of Income-tax.

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

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

27. Section 40 of the principal Act shall be omitted. Omission of section 40.

28. For section 42 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 42.

“42. (1) Without prejudice to the provisions of this Act, if any person violates and direction issued or contravenes, without any reasonable ground, any decision or order of the Commission issued under section 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 fails to pay the penalty imposed under this Act, then he shall, without prejudice to any proceeding under section 39, be liable for imposition of an additional penalty not exceeding rupees ten lakhs or imprisonment for a term up to one year or both as the Civil Court having jurisdiction in the matter may deem fit. Contravention of orders of Commission.

(2) The Commission may cause an investigation to be made into compliance of its orders and, based on the results of the investigation or otherwise, file a complaint before the Civil Court having jurisdiction in the matter, which shall pass such order under this section as it may deem fit:

Provided that the Civil Court shall not take cognizance of any offence punishable under this section, save on a complaint filed by the Commission or any of its officers authorised by it.”.

Amendment of section 43. 29. In section 43 of the principal Act, in clause (a), for the words, brackets and figure “under sub-section (5)”, the words, brackets and figures “under sub-section (2) and (4)” shall be substituted.

Amendment of section 46. 30. In section 46 of the principal Act,—
(a) for the first proviso, the following proviso shall be substituted, namely:—

“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 such disclosure;”;

(b) in the second proviso, for the word “first”, the word “has” shall be substituted.

Amendment of section 49. 31. In section 49 of the principal Act, in sub-section (1), for the words and brackets “In formulating a policy on competition (including review of laws related to competition), the Central Government may make a reference”, the following shall be substituted, namely:—

“The Central Government may, in formulating a policy on competition (including review of the laws related to competition) and a State Government may, in formulating a policy on competition, make a reference”.

Amendment of section 51. 32. In section 51 of the principal Act, in sub-section (1),—

(i) clause (b) shall be omitted;

(ii) in clause (d), for the words, brackets and letters “clauses (a) to (c)”, the words, brackets and letters “clause (a) and (c)” shall be substituted.

Amendment of section 52. 33. In section 52 of the principal Act, in sub-section (2), in the *Explanation*, for the words “Supreme Court”, the words “Appellate Tribunal or the Supreme Court” shall be substituted.

34. After Chapter VIII of the principal Act, the following Chapter shall be inserted, namely:—

Insertion of new Chapter VIII.

'CHAPTER VIIIA

COMPETITION APPELLATE TRIBUNAL

53A. (1) The Central Government shall, by notification, establish an Appellate Tribunal to be known as Competition Appellate Tribunal—

Establishment of Appellate Tribunal.

(a) to 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 44, section 45 or section 46 of the Act;

(b) to adjudicate on claim for compensation that may arise from the findings of the Commission and pass orders for the recovery of compensation under section 53N.

(2) The Headquarter of the Appellate Tribunal shall be at such place as the Central Government may, by notification, specify.

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

Appeal to Appellate Tribunal.

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

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said

period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

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

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

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

Composition of Appellate Tribunal.

53C. The Appellate Tribunal shall consist of a Chairperson and not more than two other members to be appointed by the Central Government.

Qualifications for appointment of Chairperson and members of Appellate Tribunal.

53D. (1) The Chairperson of the Appellate Tribunal shall be a person, who is, or has been, a Judge of the Supreme Court or the Chief Justice of a High Court.

(2) A member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional experience of not less than twenty-five years in, competition, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion that Central Government, may be useful to the Appellate Tribunal.

Selection Committee.

53E. (1) The Chairperson and members of the Appellate Tribunal shall be appointed by

the Central Government from a panel of names recommended by the Selection Committee composition of which has been specified in section 9.

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

53F. The Chairperson or a member of the Appellate Tribunal shall hold office as such for a term of five years from the date on which he enters upon his office, and shall be eligible for re-appointment:

Term of office of Chairperson and members of Appellate Tribunal.

Provided that no Chairperson or other member of the Appellate Tribunal shall hold office as such after he has attained,—

(a) in the case of Chairperson, the age of sixty-eight years;

(b) in the case of any other member of the Appellate Tribunal, the age of sixty-five years.

53G. (1) The salaries and allowances and other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal shall be such as may be prescribed.

Terms and conditions of service of Chairperson and members of Appellate Tribunal.

(2) The salaries, allowances and other terms and conditions of service of the Chairperson and other members of the Appellate Tribunal shall not be varied to their disadvantage after their appointment.

53H. If, for any reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a member of the Appellate Tribunal, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

Vacancies.

Resignation of Chairperson and members of Appellate Tribunal.

53-I. The Chairperson or a member of the Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a member of the Appellate Tribunal shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

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

53J. (1) In the event of the occurrence of any vacancy in the office of the Chairperson of the Appellate Tribunal by reason of his death, resignation, the senior-most member of the Appellate Tribunal shall act as the Chairperson of the Appellate Tribunal until the date on which a new Chairperson appointed in accordance with the provisions of this Act to fill such vacancy enters upon his office.

(2) When the Chairperson of the Appellate Tribunal is unable to discharge his functions owing to absence, illness or any other cause, the senior-most member or, as the case may be, such one of the member of the Appellate Tribunal, as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Removal and suspension of Chairperson and members of Appellate Tribunal.

53K. (1) The Central Government may, in consultation with the Chief Justice of India, remove from office the Chairperson or any other member of the Appellate Tribunal, who—

(a) has been adjudged an insolvent; or

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

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

(d) has become physically or mentally incapable of acting as such Chairperson or other member of the Appellate Tribunal; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or member of the Appellate Tribunal; or

(f) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), no Chairperson or a member of the Appellate Tribunal shall be removed from his office on the ground specified in clause (e) or clause (f) of sub-section (1) except by an order made by the Central Government after an inquiry made in this behalf by a Judge of the Supreme Court in which such Chairperson or member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

53L. The Chairperson and other members of the Appellate Tribunal 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 Appellate Tribunal under this Act:

Restriction on employment of Chairperson and other members of Appellate Tribunal in certain cases.

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

Staff of
Appellate
Tribunal.

53M. (1) The Central Government shall provide the Appellate Tribunal with such officers and other employees as it may think fit.

(2) The officers and other employees of the Appellate Tribunal shall discharge their functions under the general superintendence and control of the Chairperson of the Appellate Tribunal.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal shall be such as may be prescribed.

Awarding
compensation.

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 and to pass an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of any contravention of the provisions of Chapter II, having been committed by enterprise.

(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.

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

Provided that in a case no decision or order has been made or direction issued on the contravention alleged on the application by the Commission, the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

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

5 of 1908. 53-O. (1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Appellate Tribunal shall have power to regulate its own procedure including the places at which they shall have their sittings.

Procedure and powers of Appellate Tribunal.

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

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

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavit;

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

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

(f) reviewing its decisions;

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

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

(i) any other matter which may be prescribed.

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

Execution of orders of Appellate Tribunal.

53P. (1) Every order made by the Appellate Tribunal shall be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send, in case of its inability to execute such order, to the court within the local limits of whose jurisdiction,—

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

(b) in the case of an order against any other person, place where the person concerned voluntarily resides or carries on

business or personally works for gain, is situated.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

53Q. 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 to be detained in civil prison for a term which may extend to one year, unless in the meantime the civil court directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

Contravention of orders of Appellate Tribunal.

53R. No act or proceeding of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of existence of any vacancy or defect in the constitution of the Appellate Tribunal.

Vacancy or Appellate Tribunal not to invalidate acts or proceedings.

53S. (1) A person preferring an appeal to the Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

Right to legal representation.

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

Explanation.—The expressions “chartered accountant” or “company secretary” or “cost accountant” or “legal practitioner” shall have the meanings respectively assigned to them in the *Explanation* to section 35.

Appeal to
Supreme
Court.

53T. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him:

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

Power to
punish for
contempt.

53U. The Appellate Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 shall have effect subject to 70 of 1971. modifications that,—

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

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

Amendment
of section
57.

35. In section 57 of the principal Act, for the words “the Commission”, the words “the Commission or the Appellate Tribunal” shall be substituted.

Substitution
of new
section for
section 58.

36. For section 58 of the principal Act, the following section shall be substituted, namely:—

Members,
Director
General,
Secretary,

“58. The Chairperson and other Members and the Director General, Additional, Joint,

45 of 1860. Deputy or Assistant Directors General and Secretary and officers and other employees of the Commission and the Chairperson, members, officers and other employees of the Appellate Tribunal shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.”

officers
and other
employees,
etc.

37. In section 59 of the principal Act, for the words “the Registrar or officers or other employees of the Commission”, the words “the Secretary or officers or other employees of the Commission or the Chairperson, members, officers and other employees of the Appellate Tribunal” shall be substituted.

Amendment
of section 59.

38. In section 61 of the principal Act, for the word “Commission”, the words “Commission or the Appellate Tribunal” shall be substituted.

Amendment
of section 61.

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

Amendment
of section 63.

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

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

(ii) clause (c) shall be omitted;

(iii) after clause (d), the following clause shall be inserted, namely:—

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

(iv) in clauses (e) and (f), for the words “such other advisers, consultants or officers” the words “such officers or other employees” shall be substituted;

(v) in clause (g), for the word “Registrar”, the word “Secretary” shall be substituted;

(vi) clauses (h) and (i) shall be omitted;

(vii) after clause (m), the following clauses shall be inserted, namely:—

“(ma) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of section 53B and the fees payable in respect of such appeal;

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

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

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

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

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

5 of 1908.

(viii) for clause (n), the following clause shall be substituted, namely:—

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

40. In section 64 of the principal Act, in sub-section (2), for clauses (d) and (e), the following clauses shall be substituted, namely:— Amendment of section 64.

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

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

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

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

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

41. In section 66 of the principal Act,— Amendment of section 66.

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

“(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 (hereinafter referred to as the repealed Act) shall stand dissolved:

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

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

(1A) The repeal of the Monopolies and Restrictive Trade Practices Act, 1969 shall,^{54 of 1969.} however, not affect,—

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

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

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

(d) any proceeding or remedy in respect of any such right, privilege, obligation,

liability, penalty, confiscation or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.”.

(b) in sub-section (2),—

(i) for the second proviso, the following proviso shall be substituted, namely:—

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

(ii) in the third proviso, for the words “the Central Government”, the words “the Competition Commission of India or the Appellate Tribunal, as the case may be”, shall be substituted;

(iii) in the fourth proviso,—

(A) for the words “the Central Government shall, out of the monies standing”, the words “the Competition Commission of India or the Appellate Tribunal, as the case may be, shall, out of the monies standing” shall be substituted;

(B) for the portion beginning with the words “the Central Government and such monies” and ending with the words “as may be prescribed” the following shall be substituted, namely:—

“the Competition Commission of India or the Appellate Tribunal, as the case may be, and such monies which stand so transferred shall be dealt with by the said Commission or the Tribunal, as the case may be, in such manner as may be prescribed”;

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

“(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 and on or after the expiry of two years referred to in the proviso to sub-section (1) shall, 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.”;

(d) in sub-section (4), for the words "on or before the commencement of this Act shall, on such commencement", the words, brackets and figure "on or before the expiry of two years referred to in the proviso to sub-section (1), shall" shall be substituted;

(e) for sub-section (5), the following sub-section shall be substituted, namely:—

"(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 on or after the expiry of two years referred to in the proviso to sub-section (1), shall, stand transferred to the Competition Commission of India, and the Competition Commission of India shall dispose of such cases as if they were cases filed under that Act."

54 of 1969.

STATEMENT OF OBJECTS AND REASONS

The Competition Act was enacted in 2002 keeping in view the economic developments that have resulted in opening up of the Indian economy, removal of controls and consequent economic liberalisation which required that the Indian market be geared to face competition from within the country and outside. The Competition Act, 2002 provided for the establishment of a Commission to prevent practices having adverse effect on competition to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

2. The Competition Commission of India (CCI) was established on the 14th October, 2003 but could not be made functional due to filing of a writ petition before the Hon'ble Supreme Court. The Hon'ble Supreme Court delivered its judgment on the 20th January, 2005. While disposing of the Writ Petition, the Hon'ble Supreme Court observed that "if an expert body is to be created as submitted on behalf of the Union of India consistent with what is said to be the international practice, it might be appropriate for the respondents to consider the creation of two separate bodies, one with expertise that is advisory and regulatory and the other adjudicatory. This followed up by an appellate body as contemplated by the proposed amendment, can go a long way, in meeting the challenge sought to be raised in this Writ Petition based on the doctrine of separation of powers recognised by the Constitution. Any way, it is for those who are concerned with the process of amendment to consider that aspect. It cannot be gainsaid that the Commission as now contemplated, as a number of adjudicatory functions as well.". The Hon'ble Supreme Court left open all questions regarding the validity of the Competition Act, 2002 including rule 3 of the Competition Commission of India (Selection of Chairperson and Other Members of the Commission) Rules, 2003.

3. The Competition (Amendment) Bill, 2006, *inter alia*, seeks to make the following amendments to the Competition Act so as to address various legal issues and to make the CCI fully operational on a sustainable basis, namely:—

- (a) to provide the CCI would be an expert body which will function as a market regulator for preventing anti-competitive practices in the country and it would also have advisory and advocacy functions in its role as a regulator;

- (b) to omit the provisions relating to adjudication of disputes between two or more parties by the CCI and to provide for investigation through the Director General in case there exist a *prima facie* case relating to anti competitive agreements or abuse of dominant position under the Competition Act, 2002 and conferring power upon the CCI to pass orders on completion of an inquiry and impose monetary penalties and in doing so the CCI would work as a collegium and its decisions would be based on simple majority;
- (c) to provide for establishment of the Competition Appellate Tribunal (CAT), which shall be a three-member quasi-judicial body headed by a person who is or has been a retired Judge of the Supreme Court or the Chief Justice of a High Court and selection of the Chairperson and other Members of CAT to be made by a Selection Committee headed by the Chief Justice of the Supreme Court of India or his nominee, and having Secretaries of Ministries of Company Affairs and Law as its members;
- (d) to provide for hearing and disposing of appeals by the CAT against any direction issued or decision made or order passed by the CCI;
- (e) to provide for adjudication by CAT of claims on compensation and 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 Competition Act, 2002;
- (f) to provide for implementation of the orders of the CAT as a decree of a civil courts;
- (g) to provide for filing of appeal against the orders of the CAT to the Supreme Court;
- (h) to confer powers to sectoral regulators to make *suo motu* reference to CCI on competition issues, in addition to the present provision of making reference, when such request is made by any party in a dispute before it.

4. The Bill also aims at continuation of the Monopolies and Restrictive Trade Practices Commission (MRTPC) till two years after constitution of CCI, for trying pending cases under the Monopolies and Restrictive Trade Practices Act, 1969 after which it would stand

dissolved. The Bill also provides that MRTPC would not entertain any new cases after the CCI is duly constituted. Cases still remaining pending after this two year period, would be transferred to CAT or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases.

5. The Bill seeks to achieve the above objectives.

PREM CHAND GUPTA

NEW DELHI;
The 24th February, 2006.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 5/31/2003-IGC, dated the 24th February, 2006 from Shri Prem Chand Gupta, Minister of Company Affairs to the Secretary-General Lok Sabha]

The President, having been informed of the subject matter of the proposed Competition (Amendment) Bill, 2006 recommends introduction of the Bill in Lok Sabha under article 117(1) of the Constitution and also recommends to Lok Sabha the consideration of the Bill under article 117(3) of the Constitution.

Notes on Clauses

Clause 2.—This clause seeks to amend section 2 of the Competition Act, 2002 relating to definitions. It is proposed to define the expression “Appellate Tribunal” used in the Bill.

Clause 3.—This clause seeks to amend section 4 of the Competition Act, 2002 relating to abuse of dominant position.

Under the existing provision contained in clause (c) of sub-section (2) of said section, there shall be an abuse of dominant position of an enterprise indulges in practice or practices resulting in denial of market access.

It is proposed to amend the said clause (c) and to insert the words “in any manner”. The proposed amendment is clarificatory in nature.

Clause 4.—This clause seeks to substitute section 8 of the Competition Act, 2002 relating to composition of Competition Commission of India.

The new clause provides that the Commission shall consist of a Chairperson and not less than two and not more than six other Members instead of ten Members under the existing provisions of section 8 to be appointed by the Central Government. It also proposes to remove from eligibility requirement that the person who has been or is qualified to be a Judge of a High Court, omit the special knowledge of, and professional experience of administration or in any other matter from the qualifications for appointment as Chairperson or any other Member.

Clause 5.—This clause seeks to substitute section 9 of the Competition Act, 2002 relating to selection of Chairperson and other Members of the Competition Commission of India.

Under the existing provisions, the Chairperson and other Members shall be selected in the manner as may be specified by the rules made by the Central Government. The Competition Commission of India (selection of Chairperson and other Members of the Commission) Rules, 2003 made under this section provide for selection of the Chairperson and other Members by a Selection Committee consisting of (a) a person, who has been a retired judge of the Supreme Court or a High Court or a retired Chairperson of a Tribunal established or constituted under

an Act of Parliament or a distinguished jurist or a Senior Advocate for five years or more—as Member, (b) a person who has special knowledge of, an professional experience of twenty-five years or more in international trade, economics, business, Commerce or Industry—as member, (c) a person who has Special Knowledge of, and Professional experience of 25 years or more in accountancy, management, finance, public affairs or administration—as Member, to be nominated by the Central Government.

The new clause provides that the Chairperson and other Members of the Competition Commission of India shall be appointed by Central Government from a panel of names recommended by a Selection Committee consisting of (a) the Chief Justice of India or his nominee, (b) the Secretary in the Ministry of Company Affairs—as Member and (c) the Secretary in the Ministry of Law and Justice—as Member:

It further provides that the term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

Clause 6.—The clause seeks to amend section 10 of the Competition Act, 2002 relating to term of office of Chairperson and other Members of the Competition Commission of India.

Under the existing provisions no Chairperson of the Competition Commission of India can hold office as such after he has attained the age of sixty-seven years and no other Member can hold office as such after he has attained the age of sixty-five years,

It is proposed to amend the said Section 10 to provide that the Chairperson or other Member shall not hold office as such after he has attained the age of sixty-five years.

Clause 7.—This clause seeks to amend section 12 of the Competition Act, 2002 relating to restriction or employment of Chairperson and other Members of the Competition Commission of India in certain cases.

Under the existing provisions contained in the said section, the Chairperson and other Members shall not, for a period of one year 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. However, this provision does not 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.

It is proposed to amend said section 12 to increase the said restriction on employment of Chairperson and other Members of the Competition Commission of India from one year to two years.

Clause 8.—This clause seeks to substitute section 13 of the Competition Act, 2002 relating to financial and administrative powers of Member Administration.

Under the existing provisions contained in the said section, the financial and administrative powers of Member Administration are vested in the Member Administration designated by the Central Government.

It is proposed to substitute the said section 13 by a new section to provide that the Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission. However, the Chairperson may delegate such of his powers relating to administrative matters of the Commission, as he may think fit to any other Member or officer of the Commission.

Clause 9.—This clause seeks to amend section 16 of the Competition Act, 2002 relating to appointment of Director-General, etc.

Under the existing provisions contained in the said section, the Central Government can appoint a Director General and as many Additional, Joint, Deputy or Assistant Directors General or such other advisers, consultants or officers, as it may think fit, for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of the Competition Act and for the conduct of cases before the Commission and for performing such other functions as are, or may be, provided by or under the Competition Act, 2002.

It is proposed to amend the said section so as to, *inter alia*, omit the “advisers” and “consultants” from the scope of section 16 and therefore the Central Government would not appoint “advisers” and “consultants” in the Competition Commission of India. The power to engage the “advisers”, and “consultants” is proposed to be conferred upon the Competition Commission of India.

Clause 10.—This clause seeks to substitute section 17 of the Competition Act, 2002 relating to Registrar and officers and other employees of the Competition Commission of India by a new section.

Under the existing provisions contained in the said section, the Commission may appoint a Registrar and such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

It is proposed to substitute said section to confer power upon the Commission to appoint a Secretary instead of Registrar and such experts and professionals of integrity and outstanding ability who have special knowledge of, and experience in economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in addition to officers and other employees in the discharge of its functions under the said Act.

Clause 11.—This clause seeks to amend section 19 of the Competition Act, 2002 relating to inquiry into certain agreements and dominant position of enterprise.

Under the existing provisions contained in clause (a) of sub-section (1) of said section, 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 receipt of a complaint.

It is proposed to amend said section so as to substitute “receipt of a complaint”, by the words “receipt of any information, in such manner” to enable the Commission to inquire into any alleged contravention on receipt of any information instead of receipt of a complaint.

Clause 12.—This clause seeks to amend section 21 of the Competition Act, 2002 relating to reference by statutory authority.

Under the existing provisions contained in sub-section (1) of said section 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 the Competition Act, 2002, then such statutory authority may make a reference in respect of such issue to the Commission.

It is proposed to amend said Sub-section (1) so as to provide that any statutory authority may make a reference on its own under that sub-section. It further provides that on receipt of opinion of the Competition Commission of India, the statutory authority shall pass orders recording reasons thereon.

Clause 13.—This clause seeks to substitute section 22 of the Competition Act, 2002 relating to Benches of the Competition Commission of India.

Under the existing provisions contained in the said section, the jurisdiction, powers and authority of the Commission may be exercised by Benches thereof.

It is proposed to substitute the said section for the meetings of the Competition Commission of India. It, *inter alia*, provides that the Commission shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by regulations. It further provides that 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 person presiding, shall have a second or casting vote. It also provides that the quorum for such meeting shall be three members.

Clause 14.—This clause seeks to omit sections 23, 24 and 25 of the Competition Act, 2002 relating to distribution of business of the Competition Commission of India amongst Benches, procedure for deciding a case where Members of a Bench differ in opinion and jurisdiction of Bench.

Clause 15.—This clause seeks to substitute section 26 of the Competition Act, 2002 relating to procedure for inquiry on complaints under section 19.

It is proposed to provide that on receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the matter. It further provides that on receipt of reference under the above provision, if the Commission is of the opinion that there exists no *prima facie* case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the person or consumer or their association or trade association, as the case may be. The Director General on receipt of direction under the above provision shall submit a report on his findings within such period as may be specified by the Commission. The Commission may forward a copy of the report to the parties concerned. It also provides that if the report of the Director General 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. It provides that if the Commission agrees to the recommendations of the Director General, he shall close the matter and pass such order as it deems fit and communicate its order to the authorities mentioned. It further provides that after consideration of the objections or suggestions referred to above, if any, the Commission is of the opinion that further investigations are called for, it may direct for further investigation. It further provides that if the report of the Director General recommends that there is contravention of any of the provisions of the Competition Act and the Commission is of the opinion that further inquiry is called for, it shall enquire into such contravention in accordance with the provisions of the Competition Act.

Clause 16.—This clause seeks to amend section 27 of the Competition Act, 2002 relating to Orders by the Competition Commission of India after inquiry into agreements or abuse of dominant position.

The provisions contained in the said section, *inter alia*, confer power upon the Competition Commission of India to pass orders awarding compensation to parties in accordance with the provisions contained in section 34.

The power to award compensation is proposed to be conferred upon the Appellate Tribunal by new section 53N proposed to be inserted by clause 34 of the Bill.

It is, therefore, proposed to omit clause (c) of the aforesaid section which confer power upon the Competition Commission of India to pass orders awarding compensation. The proposed amendment is of consequential in nature.

Clause 17.—This clause seeks to amend section 28 of the Competition Act, 2002, relating to decision of enterprise enjoying dominated parties.

Under the existing provisions contained in the said section, the Central Government can, on recommendation of the Commission order division of enterprise enjoying dominant position.

It is proposed to amend section 28 of the Act so as to confer said power upon the Competition Commission of India to order division of an enterprise, instead of the Central Government to order the division on recommendation of the Commission.

Clause 18.—This clause seeks to amend section 29 of the Competition Act, 2002 relating to procedure for investigation of combinations.

It is, *inter alia*, proposed to insert a new sub-section (1A) to provide that the Commission may, after receipt of the response of the parties to the combination under sub-section (1), call for a report from the Director General and such report shall be submitted by the Director General within sixty days. However, the Commission may, on sufficient reasons being submitted by the Director General for non-submission of report within sixty days, grant up to sixty days more to the Director General for submission of the report.

Clause 19.—This clause seeks to substitute section 30 of the Competition Act, 2002 relating to inquiry into disclosures under sub-section (2) of section 6.

Under the existing provisions contained in the said section, where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall inquire, (a) whether the disclosure made in the notice is correct (b) whether the combination has, or is likely to have, an appreciable adverse effect on competition.

It is proposed to substitute section 30 so as to provide that where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall examine such notice and form its *prima facie* opinion and proceed in accordance with the provisions of section 29.

Clause 20.—This clause seeks to amend section 32 of the Competition Act, 2002 relating to acts taking place outside India but having an effect on competition in India. The proposed amendment is clarificatory in nature.

Clause 21.—This clause seeks to substitute section 33 of the Competition Act, 2002 relating to power to grant interim relief.

Sub-section (2) of the said section confers specific power upon the Competition Commission of India to grant, by order, a temporary injunction restraining any party from importing such goods until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary and a copy of such order granting temporary injunction shall be sent to the concerned authorities in cases specified in the said sub-section. Sub-section (3) of the existing aforesaid section provides that the provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, apply to a temporary injunction issued by the Commission under this Act, as they apply to temporary injunction issued by a civil court.

It is proposed to omit said sub-sections (2) and (3).

Clause 22.—This clause seeks to omit section 34 of the Competition Act, 2002 relating to power to award compensation.

The power to award compensation is proposed to be conferred upon the Appellate Tribunal by new section 53N proposed to be inserted by clause 34 of the Bill. It is, therefore, proposed to omit aforesaid section 34 conferring power upon the Competition Commission of India to award compensation.

Clause 23.—This clause seeks to amend section 35 of the Competition Act, 2002 relating to appearance before of the Competition Commission of India.

Under the existing provisions contained in the said section, a complainant or defendant 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.

It is proposed to amend the said section so as to substitute the words “person or an enterprises”, for the words “a complainant or defendant” for appearance before the Commission.

Clause 24.—This clause seeks to substitute section 36 of the Competition Act, 2002 relating to power of Commission to regulate its own procedure.

The existing provisions confer powers upon the Competition Commission of India, *inter alia*, to dismiss an application in default or deciding it *ex parte* or exercise power in respect of any other matter which may be prescribed and provides that every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

It is proposed to omit said powers and provision.

Clause 25.—This clause seeks to omit section 37 of the Competition Act, 2002 relating to review of orders of the Competition Commission of India.

Clause 26.—This clause seeks to substitute section 39 of the Competition Act, 2002 relating to execution of orders of the Competition

Commission of India which provides that every order passed by the Commission under this Act shall be enforced by the Commission in the same manner as if it were a decree or order made by a High Court or the principal civil court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court, as the case may be.

It is proposed to substitute said section, *inter-alia*, to provide that if a person fails to pay any monetary penalty, in the manner as may be specified by regulations. Sub-section (2) of proposed new section provides that in a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under the Competition Act, 2002 in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under Income-tax Act, 1961 for recovery of the penalty as tax due under the said Act.

Clause 27.—This clause seeks to omit section 40 of the Competition Act, 2002 relating to appeal.

Under the existing provisions contained in the said section, any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission to him or one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908.

It is proposed to insert, by clause 34 of the Bill, new sections 53B and 53T to provide filing of appeal from any direction, decision or order referred to in clause (a) of new section 53A to the Appellate Tribunal and filing of an appeal to the Supreme Court from any decision or order of the Appellate Tribunal. Omission of section 40 is consequential in nature.

Clause 28.—This clause seeks to substitute section 42 of the Competition Act, 2002 relating to contravention of orders of the Competition Commission of India.

Under the existing provisions contained in the said section if any person contravenes, without any reasonable ground, any order of the Commission, or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakh.

It is proposed to substitute the said section so as to provide that a civil court having jurisdiction shall order for civil prison and additional penalty on a complaint made by the Commission.

Clause 29.—This clause seeks to amend section 43 of the Competition Act, 2002 relating to penalty for failure to comply with directions of the Competition Commission of India and Director General of the Commission. The proposed amendment is consequential in nature.

Clause 30.—This clause seeks to amend section 46 of the Competition Act, 2002 relating to power to impose lesser penalty.

Under the existing provisions of the said section the Competition Commission of India has been conferred power to impose lesser penalty in the circumstances mentioned in that section. The first proviso to said section provides that the Commission shall not impose lesser penalty in cases where proceedings for the violation of any of the provisions of this Act or the rules or the regulations have been instituted or any investigation has been directed to be made under section 26 before making of such disclosure.

It is proposed to substitute said first proviso to provide that the Commission shall not impose lesser penalty in cases where the report of investigation directed to be made under section 26 has been received before making of such disclosure.

Clause 31.—This clause seeks to amend section 49 of the Competition Act, 2002 relating to Competition advocacy.

Under the existing provisions contained in sub-section (1) of the said section the Central Government may, in formulating a policy on competition (including review of laws related to competition), make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit.

It is proposed to amend said sub-section (1) to enable a State Government, in formulating a policy on competition, make a reference to the Commission for its opinion under said section and provisions of this section would apply to the reference made by the State Government.

Clause 32.—This clause seeks to amend section 51 of the Competition Act, 2002 relating to constitution of fund.

The provisions contained in clause (b) of sub-section (1) of the existing said section, *inter alia*, provide that the monies received as costs from parties to proceedings before the Commission shall be credited to the “Competition Fund” constituted by that section.

It is proposed to omit said clause (b) so as to provide that the monies received as costs from parties to proceedings before the Commission shall not be credited to the Competition Fund.

Clause 33.—This clause seeks to amend section 52 of the Competition Act, 2002 relating to accounts and audit.

The Explanation to sub-section (2) of said section clarifies that the orders of the Commission, being matters appealable to the Supreme Court, shall not be subject to audit under this section.

It is, therefore, proposed to amend said *Explanation* so as to provide that the orders of the Commission, being matters appealable to the Competition Appellate Tribunal shall also not be subject to audit under this section.

Clause 34.—This clause seeks to insert new Chapter VIIIA of the Competition Act, 2002 relating to establishment of Competition Appellate Tribunal.

The new Chapter VIIIA contains provisions for (a) establishment of Appellate Tribunal, (b) appeal to Appellate Tribunal, (c) composition of Appellate Tribunal, (d) qualifications for appointment of Chairperson and members of Appellate Tribunal, (e) Selection Committee, (f) term of office of Chairperson and members of Appellate Tribunal, (g) terms and conditions of service of Chairperson and members, (h) vacancies, (i) resignation of Chairperson and members, (j) member to act as Chairperson in certain cases, (k) removal and suspension of Chairperson and members of Appellate Tribunal, (l) restriction on employment of Chairperson and other members in certain cases, (m) Staff of Appellate Tribunal, (n) Procedure for awarding compensation, (o) procedure and powers of Appellate Tribunal, (p) execution of orders of Appellate Tribunal, (q) contravention of orders of Appellate Tribunal, (r) vacancy or Appellate Tribunal not to invalidate acts or proceedings, (s) right to legal representation, (t) appeal to Supreme Court and (u) power to punish for contempt.

Clause 35.—This clause seeks to amend section 57 of the Competition Act, 2002 relating to restriction on disclosure of information.

Under the existing provisions contained in the said section, no information relating to any enterprise, being an information which has been obtained by or on behalf of the Commission for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of the Competition Act or any other law for the time being in force.

Clause 34 of the Bill proposes to insert new Chapter VIIIA in the Competition Act, 2002 relating to Competition Appellate Tribunal. It is proposed to bring the Appellate Tribunal within the scope of section 57 of the Competition Act, 2002. The proposed amendment is consequential in nature.

Clause 36.—This clause seeks to amend section 58 of the Competition Act, 2002 relating to Members, Director General, Registrar, officers and other employees, etc., of the Competition Commission of India, to be public servants.

Under the existing provisions contained in the said section, the Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Registrar and officers and other employees of the Commission shall be deemed, while acting or purporting to act in pursuance of any of the provisions of the Competition Act, 2002, to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 10 of the Bill proposes to confer power upon the Commission to appoint a Secretary instead of Registrar. Clause 34 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 to establish the Competition Appellate Tribunal. It is proposed to bring the Secretary or officers or other employees of the Commission, Chairperson, members, officers and other employees of the Appellate Tribunal within the scope of section 58 of the Competition Act, 2002. The proposed amendment is consequential in nature.

Clause 37.—This clause seeks to amend section 59 of the Competition Act, 2002 relating to protection of action taken in good faith.

Under the existing provisions contained in the said section, no suit, prosecution or other legal proceedings can lie against the Central

Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director General, Additional, Joint, Deputy or Assistant Directors General or Registrar or officers or other employees of the Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Clause 10 of the Bill proposes to confer power upon the Commission to appoint a Secretary instead of Registrar. Clause 34 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 proposing to establish the Competition Appellate Tribunal. It is proposed to bring the Secretary or officers or other employees of the Commission, Chairperson, members, officers and other employees of the Appellate Tribunal within the scope of the aforesaid section. The proposed amendment is consequential in nature.

Clause 38.—This clause seeks to amend section 61 of the Competition Act, 2002 relating to exclusion of jurisdiction of civil courts.

Under the existing provisions contained in the said section, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under this Act to determine and no injunction shall be granted by a court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Clause 34 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 proposing to establish the Competition Appellate Tribunal. It is proposed to exclude the jurisdiction of civil courts in respect of any matter in which the Commission or Appellate Tribunal is empowered to determine. The proposed amendment is consequential in nature.

Clause 39.—This clause seeks to amend section 63 of the Competition Act, 2002 relating to power to make rules.

It is proposed to amend said section so as to confer powers upon the Central Government to make rules in respect of certain matters specified in that section and to make certain other amendments which are consequential in nature.

Clause 40.—This clause seeks to amend section 64 of the Competition Act, 2002 relating to power to make regulations by the Competition Commission of India.

It is proposed to amend said section 64 so as to confer powers upon the Competition Commission of India to make regulations in respect of certain matters specified in the said section.

Clause 41.—This clause seeks to amend section 66 of the Competition Act, 2002 relating to repeal and saving.

Under the existing provisions, the Monopolies and Restrictive Trade Practices Act, 1969 is proposed to be repealed and upon such repeal, the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the repealed Act shall stand dissolved. Sub-sections (2) to (10) of the aforesaid section deals with the matters arising out of such repeal.

It is proposed to amend said section 66 so as to provide that the Monopolies and Restrictive Trade Practices commission may continue to exercise jurisdiction and power under that Act for a period of two years from the date of bringing into force of section 66 of the Competition Act, 2002, only in respect of all cases of proceeding filed before such commencement. It further provides that the transfer of pending cases after the two years period to the Appellate Tribunal or the National Commission under Consumer Protection Act, 1986 depending on the nature of cases. It also provides that the staff of the Commission who has been employed on regular basis by the Monopolies and Restrictive Trade Practices Commission shall, on its dissolution, become employees for the Competition Commission or the Appellate Tribunal in the manner as specified by the Central Government.

FINANCIAL MEMORANDUM

Clause 34 of the Bill seeks to establish a Competition Appellate Tribunal with a Chairperson and up to two members, along with associated staff, whose expenses would be paid from the Consolidated Fund of India. However clause (4) of the Bill seeks to reduce the strength of the Competition Commission from ten additional Members to six additional Members. Clause 13 of the Bill further provides for Commission to function as a collegium and not through Benches, leading to absence of need for provision of offices to these Benches, and the need for branches of Director General's office at these Benches.

2. The expenditure to be incurred on creation of the competition Appellate Tribunal would be rupees 109.61 lakh per annum. However, there would be a decrease in expenditure up to an extent of rupees 222.39 lakh in a year due to reduction of strength of Competition Commission of India from ten additional members to six additional members, and by removal of the concept of Benches functioning at different locations, and their associated Director General subordinate offices. Thus, there would be an overall saving of rupees 112.78 lakh per annum.

3. Thus, there would not be any additional financial outgo due to the changes proposed in the amendment Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 39 of the Bill seeks to amend section 63 of the Competition Act, 2002. This clause empowers the Central Government to make rules, by notification, to carry out the provisions of the proposed legislation. The matters in respect of which such rules may be made are specified therein. These matters relate to, *inter alia*, provide for (a) the term of selection committee and manner of selection of panel of names under sub-section (2) of section 9; (b) the number of Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner in which such Additional, Joint, Deputy or Assistant Directors or such officers or other employees may be appointed under sub-section (1A) of section 16; (c) the salary, allowances and other terms and conditions of service of the officers and other employees in addition to the Director General, Additional, Joint, Deputy or Assistant Directors General under sub-section (3) of section 16; (d) the qualifications for appointment of officers and other employees in addition to the Director General, Additional, Joint, Deputy or Assistant Directors General under sub-section (4) of section 16; (e) the salaries and allowances and other terms and conditions of service of the Secretary in addition to the officers and other employees payable, and the number of such officers and employees under sub-section (2) of section 17; (f) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of section 53B and the fees payable in respect of such appeal; (g) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 53E, (h) the salaries and allowances and other terms and conditions of the Chairperson and other members of the Appellate Tribunal under sub-section (1) of section 53G; (i) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 53M; (j) the fee which shall be accompanied with every application made under sub-section (2) of section 53N; (k) the other matters under clause (i) of sub-section (2) of section 53-O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure while trying a suit; and (l) the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal, as the case may be, shall be dealt with by that Competition Commission of India or the Appellate Tribunal under the fourth proviso to sub-section (2) of section 66;

2. Clause 40 of the Bill seeks to amend section 64 of the Competition Act, 2002. This clause empowers the Competition Commission of India to make regulations, by notification, to carry out the purposes of the proposed legislation. The matters in respect of which such regulations may be made are specified therein. These matters relate to, *inter alia*, provide for (a) the procedures to be followed for engaging the experts and professionals under sub-section (3) of section 17; (b) the rules procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 22; and (c) the manner in which penalty shall be recovered under sub-section (1) of section 39.

3. The rules made by the Central Government and the regulations made by the Competition Commission of India shall be laid, as soon as may be after they are made, before each House of Parliament.

4. The matters in respect of which rules and regulations may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power involved is of a normal character.

EXTRACTS FROM THE COMPETITION ACT, 2002

(12 OF 2003)

* * * * *

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

* * * * *

Prohibition of abuse of dominant position

Abuse of dominant position. 4. (1) No enterprise shall abuse its dominant position.

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

* * * * *

(c) indulges in practice or practices resulting in denial of market access; or

* * * * *

Composition of Commission. 8. (1) The Commission shall consist of a Chairperson and not less than two and not more than ten other Members to be appointed by the Central Government:

Provided that the Central Government shall appoint the Chairperson and a Member during the first year of the establishment of the Commission.

(2) The Chairperson and every other Member shall be a person of ability, integrity and standing and who, has been, or is qualified to be, a judge of a High Court, or, has special knowledge of, and professional experience of not less than fifteen years in international trade,

economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, may be useful to the Commission.

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

9. The Chairperson and other Members shall be selected in the manner as may be prescribed. Selection of Chairperson and other Members.

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

Provided that no Chairperson or other Member shall hold office as such after he has attained,—

(a) in the case of the Chairperson, the age of sixty-seven years;

(b) in the case of any other Member, the age of sixty-five years.

* * * * *

12. The Chairperson and other Members shall not, for a period of one year 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.

Financial and administrative powers of Member Administration.

13. The Central Government shall designate any Member as Member Administration who shall exercise such financial and administrative powers as may be vested in him under the rules made by the Central Government;

Provided that the Member Administration shall have authority to delegate such of his financial and administrative powers as he may think fit to any other officer of the Commission subject to the condition that such officer shall, while exercising such delegated powers continue to act under the direction, superintendence and control of the Member Administration.

* * * * *

Appointment of Director General, etc.

16. (1) The Central Government may, by notification, appoint a Director General and as many Additional, Joint, Deputy or Assistant Directors General or such other advisers, consultants or officers, as it may think fit, for the purposes of assisting the Commission in conducting inquiry into contravention of any of the provisions of this Act and for the conduct of cases before the Commission and for performing such other functions as are, or may be, provided by or under this Act.

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

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

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

or such other advisers, consultants or officers shall be appointed from amongst persons of integrity and outstanding ability and who have experience in investigation, and knowledge of accountancy, management, business, public administration, international trade, law or economics and such other qualifications as may be prescribed.

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

Registrar and officers and other employees of Commission.

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

* * * * *

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 a complaint, accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or

* * * * *

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 the Act, then such statutory authority may make a reference in respect of such issue to the Commission.

Reference by statutory authority.

(2) On receipt of a reference under sub-section (1), the Commission shall, after hearing

the parties to the proceedings, give its opinion to such statutory authority which shall thereafter pass such order on the issues referred to in that sub-section as it deems fit:

Provided that the Commission shall give its opinion under this section within sixty days of receipt of such reference.

Benches of Commission.

22. (1) The jurisdiction, powers and authority of the Commission may be exercised by Benches thereof.

(2) The Benches shall be constituted by the Chairperson and each Bench shall consist of not less than two Members.

(3) Every Bench shall consist of at least one Judicial Member.

Explanation.—For the purposes of this sub-section, “Judicial Member” means a member who is, or has been, or is qualified to be, a Judge of a High Court.

(4) The Bench over which the Chairperson presides shall be the Principal Bench and the other Benches shall be known as the Additional Benches.

(5) There shall be constituted by the Chairperson one or more Benches to be called the Mergers Bench or Mergers Benches, as the case may be, exclusively to deal with matters referred to in sections 5 and 6.

(6) The places at which the Principal Bench, other Additional Bench or Mergers Bench shall ordinarily sit, shall be such as the Central Government may, by notification, specify.

Distribution of business of Commission amongst Benches.

23. (1) Where any Benches are constituted, the Chairperson may, from time to time, by order, make provisions as to the distribution of the business of the Commission amongst the Benches and specify the matters, which may be dealt with by each Bench.

(2) If any question arises as to whether any matters falls within the purview of the business allocated to a Bench, the decision of the Chairperson thereon shall be final.

(3) The Chairperson may—

(i) transfer a Member from one Bench to another Bench; or

(ii) authorise the Members of one Bench to discharge also the functions of the Members of other Bench:

Provided that the Chairperson shall transfer, with the prior approval of the Central Government, a member from one Bench situated in one city to another Bench situated in another city.

(4) The Chairperson may, for the purpose of securing that any case or matter which, having regard to the nature of the questions involved, requires or is required in his opinion or under the rules made by the Central Government in this behalf, to be decided by a Bench composed of more than two Members, issue such general or special orders as he may deem fit.

24. If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

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

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

Jurisdiction of Bench.

(a) the respondent, or each of the respondents, where there are more than one, at the time of the initiation of inquiry or institution of the complaint or making of reference, as the case may be, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the respondents, where there are more than one, at the time of the initiation of the inquiry or institution of complaint or making of reference, as the case may be, actually and voluntarily resides or carries on business or personally works for gain provided that in such case either the leave of the Bench is given, or the respondents who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation.—A respondent, being a person referred to in sub-clause (iii) or sub-clause (vi) or sub-clause (vii) or sub-clause (viii) of clause (1) of section 2, shall be deemed to carry on business at its sole or principal place of business in India or at its registered office in India or where it has also a subordinate office at such place.

Procedure
for inquiry
on
complaints
under
section 19.

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

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

(3) Where on receipt of a complaint under clause (a) of sub-section (1) of section 19, the Commission is of the opinion that there exists no *prima facie* case, it shall dismiss the complaint and may pass such orders as it deems fit, including imposition of costs, if necessary.

(4) The Commission shall forward a copy of the report referred to in sub-section (2) to the parties concerned or to the Central Government or the State Government or the statutory authority, as the case may be.

(5) If the report of the Director General relates on a complaint and such report recommends that there is no contravention of any of the provisions of this Act, the complainant shall be given an opportunity to rebut the findings of the Director General.

(6) If, after hearing the complainant, the Commission agrees with the recommendation of the Director General, it shall dismiss the complaint.

(7) If, after hearing the complaint, the Commission is of the opinion that further inquiry is called for, it shall direct the complainant to proceed with the complaint.

(8) if the report of the Director General relates on a reference made under sub-section (1) and such report recommends that there is no contravention of the provisions of this Act, the Commission shall invite comments of the Central Government or the State Government or the statutory authority, as the case may be, on such report and on receipt of such comments, the Commission shall return the reference if there is no *prima facie* case or proceed with the reference as a complaint if there is a *prima facie* case.

(9) If the report of the Director General referred to in sub-section (2) recommends that

there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

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

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:—

* * * * *

(c) award compensation to parties in accordance with the provisions contained in section 34;

* * * * *

(f) recommend to the Central Government for the division of an enterprise enjoying dominant position;

(g) pass such other order as it may deem fit.

* * * * *

Division of enterprise enjoying dominant position.

28. (1) The Central Government, on recommendation under clause (f) of section 27, may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.

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

* * * * *

(d) the payment of compensation to any person who suffered any loss due to dominant position of such enterprise;

* * * * *

29. (1) Where the Commission is of the 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 or the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

Procedure for investigation of combinations.

(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, 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.

* * * * *

30. Where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall inquire—

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

(a) whether the disclosure made in the notice is correct;

(b) whether the combination has, or is likely to have, an appreciable adverse effect on competition.

* * * * *

32. The Commission shall, notwithstanding that,—

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

(a) an agreement referred to in section 3 has been entered into outside India; or

(b) any party to such agreement is outside India; or

(c) any enterprise abusing the dominant position is outside India; or

(d) a combination has taken place outside India; or

(e) any party to combination is outside India; or

(f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India,

have power to inquire 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.

Power to
grant interim
relief.

33. (1) Where during an inquiry before the Commission, it is proved to the satisfaction of the Commission, by affidavit or otherwise, that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, grant a temporary injunction restraining any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary.

(2) Where during the inquiry before the Commission it is proved to the satisfaction of the Commission by affidavit or otherwise that import of any goods is likely to contravene sub-section (1) of section 3 or sub-section (1) of section 4 or section 6, it may, by order, grant a temporary injunction restraining any party from importing such goods until the conclusion

of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary and a copy of such order granting temporary injunction shall be sent to the concerned authorities.

5 of 1908. (3) The provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, apply to a temporary injunction issued by the Commission under this Act, as they apply to temporary injunction issued by a civil court, and any reference in any such rule to a suit shall be construed as a reference to any inquiry before the Commission.

34. (1) Without prejudice to any other provisions contained in this Act, any person may make an application to the Commission for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of any contravention of the provisions of Chapter II, having been committed by such enterprise.

Power to award compensation.

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

(3) Where any loss or damage referred to in sub-section (1) is caused to numerous persons having the same interest, one or more of such persons may, with the permission of the Commission, make an application under that sub-section for and on behalf of, or for the benefit of, the persons so interested, and thereupon, the provisions of rule 8 of Order 1

of the First Schedule to the Code of Civil Procedure, 1908, shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon. 5 of 1908.

Appearance
before
Commission.

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

Explanation.—For the purposes of this section,—

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

(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; 56 of 1980.

(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; 23 of 1959.

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

Power of
Commission
to regulate
its own
procedure.

36. (1) The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by 5 of 1908.

the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have powers to regulate its own procedure including the places at which they shall have their sittings, duration of oral hearings when granted, and times of its inquiry.

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

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

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

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

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

(f) dismissing an application in default or deciding it *ex parte*;

(g) any other matter which may be prescribed.

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

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

(5) The Commission may direct any person—

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

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

(6) If the Commission is of the opinion that any agreement referred to in section 3 of abuse of dominant position referred to in section 4 or the combination referred to in section 5 has caused or is likely to cause an appreciable adverse effect on competition in the relevant market in India and it is necessary to protect, without further delay, the interests of consumers and other market participants in India, it may conduct an inquiry or adjudicate upon any matter under this Act after giving a reasonable oral hearing to the parties concerned.

Review of
orders of
Commission.

37. Any person aggrieved by an order of the Commission from which an appeal is allowed by this Act but no appeal has been preferred, may, within thirty days from the date

of the order, apply to the Commission for review of its order and the Commission may make such order thereon as it think fit:

Provided that the Commission may entertain a review application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from preferring the application in time:

Provided further that no order shall be modified or set aside without giving an opportunity of being heard to the person in whose favour the order is given and the Director General where he was a party to the proceedings.

* * * * *

39. Every order passed by the Commission under this Act shall be enforced by the Commission in the same manner as if it were a decree or order made by a High Court or the principal civil court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court, as the case may be, within the local limits of whose jurisdiction,—

Execution of orders of Commission.

(a) in the case of an order against a person referred to in sub-clause (iii) or sub-clause (vi) or sub-clause (vii) of clause (1) of section 2, the registered office or the sole or principal place of business of the person in India or where the person has also a subordinate office, that subordinate office, is situated;

(b) in the case of an order against any other person, the place, where the person concerned voluntarily resides or carries on business or personally works for gain, is situated,

and thereupon the court to which the order is so sent shall execute the order as if it were a decree or order sent to it for execution.

Appeal.

40. Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission to him on one or more of the grounds specified in Section 100 of the Code of Civil Procedure, 1908: 5 of 1908.

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filling the appeal within the said period, allow it to be filed within a further period not exceeding sixty days:

Provided further that no appeal shall lie against any decision or order of the Commission made with the consent of the parties.

* * * * *

CHAPTER VI

PENALTIES

Contravention of orders of Commission.

42. (1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Commission, or any condition or restriction subject to which any approval, sanction direction or exemption in relation to any matter has been accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

(2) The Commission may, while making an order under this Act, issue such directions to any person or authority, not inconsistent with

this Act, as it thinks necessary or desirable, for the proper implementation or execution of the order, and any person who commits breach of, or fails to comply with, any obligation imposed on him under such direction, may be ordered by the Commission to be detained in civil prison for a term not exceeding one year unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

43. If any person fails to comply with a direction given by—
- (a) the Commission under sub-section (5) of Section 36; or
 - (b) the Director General while exercising powers referred to in sub-section (2) of Section 41,

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

the Commission shall impose on such person a penalty of rupees one lakh for each day during which such failure continues.

* * * * *

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 proceedings for the violation of any of the provisions of this Act or the rules or the regulations have been instituted or any investigation has been directed to be made

under Section 26 before making of such disclosure:

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 first made the full, true and vital disclosure under this section;

Provided also that the Commission may, if it 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.

* * * * *

CHAPTER VII

COMPETITION ADVOCACY

Competition
advocacy.

49. (1) In formulating a policy on competition (including review of laws related to competition), the Central Government may make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit.

* * * * *

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

Constitution
of Fund.

* * * * *

(b) the monies received as costs from parties to proceedings before the Commission;

* * * * *

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

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52. (1) * * * * * Accounts and audit.

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

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

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

Restriction
on
disclosure of
information.

Members, Director General, Registrar, officers and other employees, etc., of Commission to be public servants.

58. The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Registrar and officers and other employees of the Commission shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of Section 21 of the Indian Penal Code. 45 of 1860.

Protection of action taken in good faith.

59. No suit, prosecution or other legal proceedings shall lie against the Central Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director General, Additional, Joint, Deputy or Assistant Directors General or Registrar or officers or other employees of the Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

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Exclusion of jurisdiction of civil courts.

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

* * * * *

Power to make rules.

63. (1) * * * * *

(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 manner in which the Chairperson and other Members shall be selected under Section 9;

* * * * *

(c) the financial and administrative powers which may be vested in the Member Administration under Section 13;

* * * * *

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

(f) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or such other advisers, consultants or officers under sub-section (4) of section 16;

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

(h) for securing any case or matter which requires to be decided by a Bench composed of more than two Members under sub-section (4) of Section 23;

* * * * *

(n) the manner in which the monies transferred to the Central Government shall be dealt with by that Government under the fourth proviso to sub-section (2) of Section 66;

64. (1) * * * * * Power to make regulations.

(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:—

* * * * *

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

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

* * * * *

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 (hereinafter referred to as the repealed Act) shall stand dissolved.

54 of 1969.

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

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

Provided further that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission,

employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment and duly altered by that Government:

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

Provided also that where the Monopolies and Restrictive Trade Practices Commission has established a provident fund, superannuation, welfare or other fund for the benefit of the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and

Registration or the officers and other employees employed in the Monopolies and Restrictive Trade Practices Commission, the monies relatable to the officers and other employee whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Monopolies and Restrictive Trade Practices Commission to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by the said Government in such manner as may be prescribed.

(3) All cases pertaining to monopolistic trade practices or restrictive trade practices pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act, including such cases, in which any unfair trade practice has also been alleged, shall, on such commencement, stand transferred to the Competition Commission of India and shall be adjudicated by that Commission in accordance with the provisions of the repealed Act as if that Act had not been repealed.

(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 commencement of this Act shall, on such commencement, 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:

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.

54 of 1969. (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 on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India shall dispose of such cases as if they were cases filed under that Act.

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LOK SABHA

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BILL
to amend the Competition Act, 2002.

(Shri Prem Chand Gupta, Minister of Company Affairs)