

2002

# The Monopolies and Restrictive Trade Practices Act, 1969



**BARE ACT**  
*With Short Notes*

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- ◆ Introduction
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**with  
SHORT NOTES**

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C-FF-1A, Ansal's Dilkhush Industrial Estate,

G.T. Karnal Road, Delhi-110 033

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# THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969

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# THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969

## INTRODUCTION

The Government of India, in April, 1964, appointed the Monopolies Inquiry Commission under the Chairmanship of Justice K.C. Das Gupta, a Judge of the Supreme Court, to inquire into the extent and effect of concentration of economic power in private hands and the prevalence of monopolistic and restrictive trade practices in important sectors of economic activity other than agriculture. The Monopolies Inquiry Commission submitted its report to the Government of India on 31st October, 1965. In accordance with the terms of reference, the Monopolies Inquiry Commission appended to its report a draft Bill — The Monopolies and Restrictive Trade Practices Bill, 1965.

There were lot of discussions on the recommendations of the Monopolies Inquiry Commission in the press, Parliament, business, and academic circles and it was felt that the recommendations of the Monopolies Inquiry Commission should be given effect to in order to strike out a balance between the twin objective of the social policy, *i.e.*, economic development and equity.

The Government of India agreed with the Monopolies Inquiry Commission that steps should be taken to ensure that the concentration of economic power in private hands did not operate to the common detriment and that a permanent commission should be established by law to control and regulate monopolistic and restrictive trade practices. Accordingly the Monopolies and Restrictive Trade Practices Bill was introduced in the Rajya Sabha on 18th August, 1967.

After a great deal of deliberations, the Bill was referred to a Joint Committee of both the Houses of Parliament whose report was presented to Parliament on 26th February, 1969. Recommendations of the Joint Committee were included in the Monopolies and Restrictive Trade Practices Bill which was later taken up for consideration by the Parliament.

## STATEMENT OF OBJECTS AND REASONS

The Bill is designated to ensure that the operation of the economic system does not result in the concentration of economic power to the common detriment and to prohibit such monopolistic and restrictive trade practices as are prejudicial to public interest.

2. It is in pursuance of the recommendations made by the Monopolies Inquiry Commission in their report submitted to the Government on the 31st October, 1965, and the resolution dated 6th September, 1966, containing Government decisions thereon laid before both the Houses of Parliament on 6th September, 1966. The structure of the Bill basically remains the same as recommended by the Monopolies Inquiry Commission. Certain modifications have been introduced in accordance with the terms of the Government Resolution dated 5th September, 1966, in so far as the powers of the proposed Monopolies and Restrictive Trade Practices Commission are concerned. Certain other modifications introduced include provisions for comprehensive control over undertakings

which, along with other inter-connected undertakings under the control of the same persons or groups, command assets of rupees twenty crores or more in order to more effectively control concentration of economic power.

3. The proposed Commission is sought to be vested with mandatory powers with regard to cases of restrictive trade practices and advisory powers in respect of cases concerning monopolistic trade practices and concentration of economic power. In respect of the latter category of cases, the final decision would lie with the Government.

4. The main provisions of the Bill fall under the following heads:—

- (i) Regulating expansions, mergers and amalgamations and appointment of directors in respect of 'dominant undertakings' having assets of rupees one crore and more and of undertakings which by themselves or with inter-connected undertakings have assets of not less than rupees twenty crores in value.
- (ii) Regulating the starting of new undertakings which would become inter-connected undertakings of such existing undertakings the total assets of which exceeds rupees twenty crores.
- (iii) Control over and prohibition of monopolistic and restrictive trade practices as are found to be prejudicial to public interest.

The notes on clauses explain briefly the reasons for the various provisions of the Bill.

#### **ACT 54 OF 1969**

The Monopolies and Restrictive Trade Practices Bill having been passed by both the Houses of Parliament received the assent of the President on 27th December, 1969. It came into force on 1st June, 1970 as THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969 (54 of 1969).

#### **LIST OF AMENDING ACTS**

1. The Companies (Amendment) Act, 1974 (41 of 1974).
2. The Monopolies and Restrictive Trade Practices (Amendment) Act, 1980 (60 of 1980).
3. The Monopolies and Restrictive Trade Practices (Amendment) Act, 1982 (30 of 1982).
4. The Delegated Legislation Provisions (Amendment) Act, 1983 (20 of 1983).
5. The Monopolies and Restrictive Trade Practices (Amendment) Act, 1984 (30 of 1984).
6. The Monopolies and Restrictive Trade Practices (Amendment) Act, 1985 (38 of 1985).
7. The Monopolies and Restrictive Trade Practices (Amendment) Act, 1986 (74 of 1986).
8. The Monopolies and Restrictive Trade Practices (Amendment) Act, 1988 (62 of 1988).
9. The Monopolies and Restrictive Trade Practices (Amendment) Act, 1991 (58 of 1991).

# THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969

(54 of 1969)

[27th December, 1969]

*An Act to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and for matters connected therewith or incidental thereto.*

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

## CHAPTER I PRELIMINARY

**1. Short title, extent and commencement.**—(1) This Act may be called the Monopolies and Restrictive Trade Practices Act, 1969.

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

(3) It shall come into force on such date<sup>1</sup> as the Central Government may, <sup>2</sup>[by notification], appoint.

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

(a) “agreement” includes any arrangement or understanding, whether or not it is intended that such agreement shall be enforceable (apart from any provision of this Act) by legal proceedings;

(b) “Commission” means the Monopolies and Restrictive Trade Practices Commission established under section 5;

<sup>3</sup>[(c) “Director General” means the Director General of Investigation and Registration appointed under section 8, and includes any Additional, Joint, Deputy or Assistant Director General of Investigation and Registration appointed under that section;]

(d) “[“dominant undertaking” means—

[\*\*\*]

---

1. Came into force on 1-6-1970, vide S.O. 1981, dated 30th May, 1970, published in the Gazette of India, Extra., 1970, P. II, Sec. 3 (ii), p. 833.  
2. Subs. by Act 30 of 1984, sec. 2, for “by notification in the Official Gazette” (w.e.f. 1-8-1984).  
3. Subs. by Act 30 of 1984, sec. 3, for clause (c).  
4. Subs. by Act 30 of 1982, sec. 2, for certain words (w.e.f. 18-8-1982).  
5. Sub-clauses (i) and (ii) omitted by Act 58 of 1991, sec. 2 (w.e.f. 27-9-1991).

- <sup>1</sup>[(iii) an undertaking which, by itself or along with inter-connected undertakings produces, supplies, distributes or otherwise controls not less than one-fourth of the total goods that are produced, supplied or distributed in India or any substantial part thereof; or]
- (iv) an undertaking which provides or otherwise controls not less than one-fourth of any services that are rendered in India or any substantial part thereof;

<sup>2</sup>[\*\*\*]

*Explanation II.*—Where any goods <sup>3</sup>[\*\*\*] are the subject of different forms of production, supply, distribution or control, every reference in this Act to such goods shall be construed as reference to any of those forms of production, supply, distribution or control, whether taken separately or together or in such groups as may be prescribed.

<sup>4</sup>[*Explanation III.*—The question as to whether any undertaking, either by itself or along with inter-connected undertakings, produces, supplies, distributes or controls one-fourth of any goods or provides or controls one-fourth of any services may be determined according to any of the following criteria, namely, value, cost, price, quantity or capacity of the goods or services.]

<sup>5</sup>[*Explanation IV.*—In determining, with reference to the features specified <sup>6</sup>[in sub-clause (iii) or sub-clause (iv)], as the case may be, the question as to whether an undertaking is or is not a dominant undertaking, regard shall be had to—

- (i) the average annual production of the goods, or the average annual value of the services provided, by the undertaking during the relevant period; and
- (ii) the figures published by such authority as the Central Government may, by notification, specify, with regard to the total production of such goods made, or the total value of such services provided, in India or any substantial part thereof during the relevant period.]

<sup>7</sup>[*Explanation V.*—In determining the question as to whether an undertaking is or is not a dominant undertaking in relation to any goods supplied, distributed or controlled in India, regard shall be had to the average annual quantity of such goods supplied, distributed or controlled in India by the undertaking during the relevant period.

*Explanation VI.*—For the purposes of this clause, “relevant period” means the period of three calendar years immediately preceding that calendar year

1. Subs. by Act 58 of 1991, sec. 2, for sub-clause (iii) (w.r.e.f. 27-9-1991).  
 2. Proviso and *Explanation I* omitted by Act 58 of 1991 sec. 2 (w.r.e.f. 27-9-1991).  
 3. The words “of any description” omitted by Act 58 of 1991, sec. 2 (w.r.e.f. 27-9-1991).  
 4. Subs. by Act 30 of 1982, sec. 2, for *Explanation III* (w.e.f. 18-8-1982).  
 5. Subs. by Act 30 of 1984, sec. 3, for *Explanation IV* (w.e.f. 1-8-1984).  
 6. Subs. by Act 58 of 1991, sec. 2, for “in sub-clauses (ii), (iii) or (iv)” (w.r.e.f. 27-9-1991).  
 7. Subs. by Act 30 of 1984, sec. 3, for *Explanations V and VI* (w.e.f. 1-8-1984).

which immediately precedes the calendar year in which the question arises as to whether an undertaking is or is not a dominant undertaking.]

<sup>1</sup>[*Explanation VII.*—Where goods <sup>2</sup>[\*\*\*] produced in India by an undertaking have been exported to a country outside India, then the goods so exported shall not be taken into account in computing for the purposes of this clause—

- (i) the total goods <sup>2</sup>[\*\*\*] that are produced in India by that undertaking; or
- (ii) the total goods <sup>2</sup>[\*\*\*] that are produced, supplied or distributed in India or any substantial part thereof;]

<sup>3</sup>[(da) “Financial institution” means,—

- (i) a public financial institution specified in or under section 4A of the Companies Act, 1956 (1 of 1956);
- (ii) a State Financial, Industrial or Investment Corporation;
- (iii) the State Bank of India or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);
- (iv) a nationalised bank, that is to say, a corresponding new bank as defined in section 2 of—
  - (i) the Banking Companies (Acquisition and Transfer Undertakings) Act, 1970 (5 of 1970); or
  - (ii) the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);
- (v) the General Insurance Corporation of India established in pursuance of the provisions of section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);
- (vi) the Industrial Reconstruction Corporation of India; or
- (vii) any other institution which the Central Government may, by notification, specify in this behalf;]

<sup>4</sup>[(e) “goods” means goods as defined in the Sale of Goods Act, 1930 (3 of 1930), and includes,—

- (i) products manufactured, processed or mined in India;
- <sup>5</sup>[(ii) shares and stocks including issue of shares before allotment;]
- (iii) in relation to goods supplied, distributed or controlled in India, goods imported into India;]

<sup>6</sup>[\*\*\*]

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1. Ins. by Act 60 of 1980, sec. 2 (w.e.f. 13-10-1980).  
 2. The words “of any description” omitted by Act 58 of 1991, sec. 2 (w.r.e.f. 27-9-1991).  
 3. Ins. by Act 30 of 1984, sec. 3 (w.e.f. 1-8-1984).  
 4. Subs. by Act 30 of 1984, sec. 3, for clause (e) (w.e.f. 1-8-1984).  
 5. Subs. by Act 58 of 1991, sec. 2, for sub-clause (ii) (w.r.e.f. 27-9-1991).  
 6. Clause (ee) ins. by Act 30 of 1982, sec. 2 (w.e.f. 18-8-82) and omitted by Act 58 of 1991, sec. 2 (w.r.e.f. 27-9-1991).

<sup>1</sup>[(ef) "group" means a group of—

- (i) two or more individuals, associations of individuals, firms, trusts, trustees or bodies corporate (excluding financial institutions), or any combination thereof, which exercises, or is established to be in a position to exercise, control, directly or indirectly, over any body corporate, firm or trust; or
- (ii) associated persons;

*Explanation.*—For the purposes of this clause—

- (I) a group of persons who are able, directly or indirectly, to control the policy of a body corporate, firm or trust, without having a controlling interest in that body corporate, firm or trust, shall also be deemed to be in a position to exercise control over it;

(II) "associated persons"—

(a) in relation to a director of a body corporate, means—

- (i) a relative of such director, and includes a firm in which such director or his relative is a partner;
- (ii) any trust of which any such director or his relative is a trustee;
- (iii) any company of which such director, whether independently or together with his relatives, constitutes one-fourth of its Board of directors;
- (vi) any other body corporate, at any general meeting of which not less than one-fourth of the total number of directors of such other body corporate are appointed or controlled by the director of the first mentioned body corporate or his relative, whether acting singly or jointly;

(b) in relation to the partner of a firm, means a relative of such partner and includes any other partner of such firm; and

(c) in relation to the trustee of a trust, means any other trustee of such trust;

(III) where any person is an associated person in relation to another, the latter shall also be deemed to be an associated person in relation to the former;]

(f) "Indian" means, for the purposes of this Act, the territories to which this Act extends;

<sup>2</sup>[\*\*\*]

(g) "inter-connected undertakings" means two or more undertakings which are inter-connected with each other in any of the following manner, namely:—

- (i) if one owns or controls the other.
- (ii) where the undertakings are owned by firms, if such firms have one or more common partners.

<sup>3</sup>[(iii) where the undertakings are owned by bodies corporate.—

1. Ins. by Act 30 of 1984, sec. 3 (w.e.f. 1-8-1984).

2. Clauses (ff) and (fff) ins. by Act 30 of 1982, sec. 2 (w.e.f. 18-8-1982) and omitted by Act 58 of 1991, sec. 2 (w.r.e.f. 27-9-1991).

3. Subs. by Act 30 of 1984, sec. 3, for sub-clause (iii) (w.e.f. 1-8-1984).

- (a) if one body corporate manages the other body corporate, or
  - (b) if one body corporate is subsidiary of the other body corporate, or
  - (c) if the bodies corporate are under the same management, or
  - (d) if one body corporate exercises control over the other body corporate in any other manner;]
- (iv) where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm,—
- (a) hold, directly or indirectly, not less than fifty per cent of the shares, whether preference or equity, of the body corporate, or
  - (b) exercise control, directly or indirectly, whether as director or otherwise, over the body corporate,
- (v) if one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management <sup>1</sup>[\*\*\*],
- (vi) if the undertakings are owned or controlled by the same person or <sup>2</sup>[by the same group],
- (vii) if one is connected with the other either directly or through any number of undertakings which are inter-connected undertakings within the meaning of one or more of the foregoing sub-clauses;

<sup>3</sup>[*Explanation I.*—For the purpose of this Act, <sup>4</sup>[two bodies corporate,] shall be deemed to be under the same management,—

- (i) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or
- (ii) if the managing director or manager of one such body corporate is the managing director or manager of the other; or
- (iii) if one such body corporate holds not less than <sup>5</sup>[one-fourth] of the equity shares in the other or controls the composition of not less than <sup>5</sup>[one-fourth] of the total membership of the Board of directors of the other; or
- (iv) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted <sup>6</sup>[whether independently or together with relatives of such directors or the employees of the first mentioned body corporate) one-fourth of the directors of the other; or]

1. The words "within the meaning of the said section 370" omitted by Act 41 of 1974, sec. 43 (w.e.f. 1-2-1975).

2. Subs. by Act 30 of 1984, sec. 3, for "group of persons" (w.e.f. 1-8-1984).

3. Ins. by Act 41 of 1974, sec. 43 (w.e.f. 1-2-1975).

4. Subs. by Act 30 of 1984, sec. 3, for "two undertakings, owned by bodies corporate" (w.e.f. 1-8-1984).

5. Subs. by Act 30 of 1984, sec. 3, for "one-third" (w.e.f. 1-8-1984).

6. Subs. by Act 30 of 1984, sec. 3, for certain words (w.e.f. 1-8-1984).



- (v) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than <sup>1</sup>[one-fourth] of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than <sup>1</sup>[one-fourth] of the equity shares in the other; or
- (vi) if the <sup>2</sup>[same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares] in one body corporate, also hold into less than <sup>1</sup>[one-fourth] of the equity shares in the other; or
- (vii) if not less than <sup>1</sup>[one-fourth] of the total voting power <sup>3</sup>[in relation to] each of the two bodies corporate is exercised or controlled by the same individual (whether independently or together with his relatives) or the same body corporate (whether independently or together with its subsidiaries); or
- (viii) if not less than <sup>1</sup>[one-fourth] of the total voting power <sup>3</sup>[in relation to] each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or
- (ix) if the directors of the one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

*Explanation II.*—If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of or controlled by, the group shall be deemed to be under the same management.

*Explanation III.*—If two or more bodies corporate under the same management hold, in the aggregate, not less than <sup>1</sup>[one-fourth] equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first mentioned bodies corporate.

*Explanation IV.*—In determining whether or not two or more bodies corporate are under the same management, the shares held by <sup>4</sup>[financial institutions] in such bodies corporate shall not be taken into account.]

#### *Illustration*

Undertaking *B* is inter-connected with undertaking *A* and undertaking *C* is inter-connected with undertaking *B*. Undertaking *C* is inter-connected with

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1. Subs. by Act 30 of 1984., sec. 3, for "one-third" (w.e.f. 1-8-1984).

2. Subs. by Act 30 of 1984, sec. 3, for certain words (w.e.f. 1-8-1984).

3. Subs. by Act 30 of 1984., for "with respect to any matter relating to" (w.e.f. 1-8-1984).

4. Subs. by Act 30 of 1984, sec. 3 for, "public financial institutions" (w.e.f. 1-8-1984).

undertaking *A*; if undertaking *D* is inter-connected with undertaking *C*, undertaking *D* will be inter-connected with undertaking *B* and consequently with undertaking *A* and so on.

<sup>1</sup>[\*\*\*]

<sup>2</sup>[\*\*\*]

- (h) “member means a member of the Commission;
- (i) “monopolistic trade practice” means a trade practice which has, or is likely to have, the effect of,—
- (i) <sup>3</sup>[maintaining the prices of goods or charges for the services] at an unreasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of goods <sup>4</sup>[\*\*\*] or the supply of any services or in any other manner;
- (ii) unreasonably preventing or lessening competition in the production, supply or distribution of any goods or in the supply of any service;
- (iii) limiting technical development or capital investment to the common detriment or allowing the quality of any goods produced, supplied or distributed, or any service rendered, in India to deteriorate;
- <sup>5</sup>[(iv) increasing unreasonably,—
- (a) the cost of production of any goods; or
- (b) charges for the provision, or maintenance, of any services;
- (v) increasing unreasonably,—
- (a) the prices at which goods are, or may be, sold or re-sold, or the charges at which the services are, or may be, provided; or
- (b) the profits which are, or may be, derived by the production, supply or distribution (including the sale or purchase) of any goods or by the provisions of any services;
- (vi) preventing or lessening competition in the production, supply or distribution of any goods or in the provision or maintenance of any services by the adoption of unfair methods or unfair or deceptive practices;]
- <sup>6</sup>[(j) “notification” means a notification published in the Official Gazette;
- (ja) “Owner”, in relation to an undertaking, means an individual, Hindu undivided family, body corporate or other association of individuals, whether incorporated or not, or trust (whether public or private or whether religious or charitable) who or which owns or controls, the whole or substantially the whole of such undertaking, and includes any associated person who is a

1. *Explanation* omitted by Act 30 of 1984, sec. 3 (w.e.f. 1-8-1984).

2. Clause (gg) ins. by Act 30 of 1982, sec. 2 (w.e.f. 18-8-1982) and omitted by Act 58 of 1991, sec. 2 (w.r.e.f. 27-9-1991).

3. Subs. by Act 30 of 1984, sec. 3, for “maintaining prices” (w.e.f. 1-8-1984).

4. The words “of any the description” omitted by Act 58 of 1991, sec. 2 (w.r.e.f. 27-9-1991).

5. Ins. by Act 30 of 1984, sec. 3 (w.e.f. 1-8-1984).

6. Subs. by Act 30 of 1984, sec. 3, for clause (j) and *Explanations* thereto (w.e.f. 1-8-1984).

constituent of a group and who has the ultimate control over the affairs of such undertaking;]

- (k) “prescribed” means prescribed by rules made under this Act;
- (l) “price”, in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, and includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing;
- <sup>1</sup>[(ll) “produce” includes manufacture and all its grammatical variations and cognate repressions shall be construed accordingly;]
- (m) “register” means the register kept by the <sup>2</sup>[Director General] under section 36;
- <sup>3</sup>[(n) “registered consumers’ association” means a voluntary association of persons registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force which is formed for the purpose of protecting the interests of consumers generally and is recognised by the Central Government as such association on an application made in this behalf in such form and such manner as may be prescribed;]
- (o) “restrictive trade practice” means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular,—
- (i) which tends to obstruct the flow of capital or resources into the stream of production, or
- (ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions;
- (p) “retailer”, in relation to the sale of any goods, includes every person, other than a wholesaler, who sells the goods to any other person; and in respect of the sale of goods by a wholesaler, to any person for any purpose other than re-sale, includes that wholesaler;
- <sup>4</sup>[\*\*\*]
- (r) “service” means service <sup>5</sup>[\*\*\*] which is made available to potential users and includes the provision of facilities in connection with <sup>6</sup>[banking, financing, insurance <sup>7</sup>[chit fund, real estate], transport, processing], supply

1. Ins. by Act 30 of 1982, sec. 2 (w.e.f. 18-8-1982).

2. Subs. by Act 30 of 1984, sec. 2 for “Registrar” (w.e.f. 1-8-1984).

3. Clause (n) omitted by Act 30 of 1984, sec. 3 (w.e.f. 1-8-1984) and ins. by Act 74 of 1986, sec. 2 (w.e.f. 1-6-1987).

4. Clause (q) omitted by Act 58 of 1991, sec. 2 (w.r.e.f. 27-9-1991).

5. The words “of any description” omitted by Act 58 of 1991 sec. 2 (w.r.e.f. 27-9-1991).

6. Subs. by Act 30 of 1984, sec. 3, for “banking, insurance, transport” (w.e.f. 1-8-1984).

7. Ins. by Act 58 of 1991, sec. 2 (w.r.e.f. 27-9-1991).

of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract or personal service;

<sup>1</sup>[*Explanation.*—For the removal of doubts, it is hereby declared that any dealings in real estate shall be included and shall be deemed always to have been included within the definition of “service”];

- (s) “trade” means any trade, business, industry, profession or occupation relating to the production, supply, distribution or control of goods and includes the provision of any services;
- (t) “trade association” means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members;
- (u) “trade practice” means any practice relating to the carrying on of any trade, and includes—
  - (i) anything done by any person which controls or affects the price charged by, or the method of trading of, any trader or any class of traders,
  - (ii) a single or isolated action of any person in relation to any trade;
- <sup>2</sup>(v) “undertaking” means an enterprise which is, or has been, or is a proposed to be, engaged in the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, either directly or through one or more of its units or divisions, whether such unit or division is located at the same place where the undertaking is located or at a different place or at different places.

*Explanation I.*—In this clause,—

- (a) “article” includes a new article and “service” includes a new service;
- (b) “unit” or “division”, in relation to an undertaking includes,—
  - (i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;
  - (ii) any branch or office established for the provision of any service.

*Explanation II.*—For the purposes of this clause, a body corporate, which is, or has been, engaged only in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate shall be deemed to be an undertaking.

*Explanation III.*—For the removal of doubts, it is hereby declared that an investment company shall be deemed, for the purposes of this Act, to be an undertaking;]

<sup>3</sup>[\*\*\*]

<sup>4</sup>[\*\*\*]

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1. Ins. by Act 58 of 1991, sec. 2 (w.r.e.f. 27-9-1991).
  2. Subs. by Act 30 of 1984, sec. 3, for clause (v) (w.e.f. 1-8-1984).
  3. Clause (vv) ins. by Act 30 of 1982, sec. 2 (w.e.f. 18-8-1982) and omitted by Act 58 of 1991, sec. 2 (w.r.e.f. 27-9-1991).
  4. Clause (w) omitted by Act 58 of 1991, sec. 2 (w.r.e.f. 27-9-1991).

- (x) "wholesaler", in relation to the sale of any goods, means a person who <sup>1</sup>[sells the goods, either in bulk or in large quantities, to any person for the purposes of re-sale, whether in bulk or in the same or smaller quantities];
- (y) words and expressions used but not defined in this Act and defined in the Companies Act, 1956 (1 of 1956), have the meanings respectively assigned to them in that Act.

### COMMENTS

(i) In terms of the definition of an "owner" in section 2 (ja) of the Act, an association of individuals, whether incorporated or not, will constitute an owner. The two individuals in the case had complete control over the affairs of the firm, the firm as well as the two individuals will constitute an owner for the purpose of this Act; *Director-General (Investigation and Registration) v. Trust Well Inc.*, (1998) 91 Comp Cas 83 (MRTPC).

(ii) Manipulation of prices is not a pure question of law. It is at best a mixed question of law and fact. Whether a combination of facts tantamounts to manipulation of prices or conditions of delivery within the meaning of section 2(o) (ii) of the Act shall, in the final analysis, depend on the entire range of facts to be reviewed cumulatively in each case; *In re: Delhi Public School*, (1994) 80 Comp Cas 734 (MRTPC).

(iii) Education falls within the ambit of section 2(r) of the Act, which defines "service": *In re: Delhi Public School*, (1994) 80 Comp Cas 734 (MRTPC).

(iv) Prospective students come within its scope; *In re: Delhi Public School*, (1994) 80 Comp Cas 734 (MRTPC).

(v) The term "Trade practice" is a comprehensive one; *Sushil Kumar Dalmia v. MRTPC*, (1994) 79 Comp Cas 568 (Cal).

(vi) Anything done by any person which affects the price charged by or the method of trade of any trade or any class of traders and any practice relating to the co-ordination of any trade would come within the meaning of trade practice; *Sushil Kumar Dalmia v. MRTPC*, (1994) 79 Comp Cas 568 (Cal).

(vii) The definition of the expression "agreement" includes any arrangement or understanding whether or not it is intended that such agreement shall be enforceable by legal proceedings. In other words, an understanding between two parties will be subsumed in the broad definition of an agreement; *Director-General (Investigation and Registration) v. Rajashree Cement*, (1995) 83 Comp Cas 712 (MRTPC).

(viii) There is no conflict between sections 2(o) and 33 (1) of the Act. Clauses (a) to (l) of sub-section (1) of section 33. Specify such trade practices which have been statutorily recognised as restrictive trade practices. But, there may be other trade practices, not covered by clauses (a) to (l) of sub-section (1) of section 33, which can be examined by the Commission in the light of section 2(o); *M/s. Voltas Ltd., Bombay v. Union of India*, AIR 1995 SC 1381.

(ix) The definition of "service" in section 2 (r) is very wide as it *inheres* all services made available potential users. It would and should include provision of irrigation facilities. The only catch is that such service should not be "free of charge"; *Gir Prasad v. Government of Uttar Pradesh*, (1995) 87 Comp Cas 623 (MRTPC).

**[2A. Power of Central Government to decide certain matters.—** If any question arises as to whether,—

1. Subs. by Act 30 of 1984, sec. 3, for "sells the goods to any person for the purpose of re-sale (w.e.f. 1-8-1984).

2. Ins. by Act 30 of 1984, sec. 4 (w.e.f. 1-8-1984).

- (a) two or more individuals, trustees, associations of individuals firms or bodies corporate or any combination thereof, constitute, or fall within, a group, or
- (b) two or more undertakings are inter-connected undertakings within the meaning of this Act, or
- (c) two or more bodies corporate are under the same management,

the Central Government or where the Board of Company Law Administration, constituted under section 10E of the Companies Act, 1956 (1 of 1956), is, by notification, authorised so to do by the Central Government, that Board, shall decide such question, after giving to the persons concerned a reasonable opportunity of being heard.]

**3. Act not to apply in certain cases.**—Unless the Central Government, <sup>1</sup>[by notification], otherwise directs, this Act shall not apply to—

- (a) any undertaking owned or controlled by a Government company,
- (b) any undertaking owned or controlled by the Government,
- (c) any undertaking owned or controlled by a corporation (not being a company) established by or under any Central Provincial or State Act,
- (d) any trade union or other association of workmen or employees formed for their own reasonable protection as such workmen or employees,
- (e) any undertaking engaged in an industry, the management of which has been taken over by any person or body of persons in pursuance of any authorisation made by the Central Government under any law for the time being in force,
- <sup>1</sup>[(f) any undertaking owned by a co-operative society formed and registered under any Central, Provincial or State Act relating to co-operative societies,
- (g) any financial institution.]

<sup>2</sup>[*Explanation.*—In determining, for the purposes of clause (c), whether or not any undertaking is owned or controlled by a corporation, the shares held by financial institutions shall not be taken into account.]

#### COMMENTS

(i) Under the *Explanation* to section 3 of the Act, the share holding of public financial institutions is to be excluded: *Director-General of Investigation and Registration v. Cement Corporation of Gujarat Ltd.* (1994) 80 Comp Cas 15 (MRTPC).

(ii) "Ownership" and "control" are two different concepts: *Director-General of Investigation and Registration v. Cement Corporation of Gujarat Ltd.* (1994) 80 Comp Cas 15 (MRTPC).

**4. Application of other laws not barred.**—(1) Save as otherwise provided in sub-section (2) or elsewhere in this Act, the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force.

(2) Notwithstanding anything contained in section 3 or elsewhere in this Act, so much of the provisions of this Act, as relate to matters in respect of which specific provisions exist in the—

1. Subs. by Act 30 of 1984 sec. 2, for "by notification in the Official Gazette" (w.e.f. 1-8-1984).

2. Ins. by Act 30 of 1984, sec. 5 (w.e.f. 1-8-1984).

- (i) Reserve Bank of India Act, 1934 (2 of 1934), or the Banking Regulation Act, 1949 (10 of 1949), or
- (ii) State Bank of India Act, 1955 (23 of 1955), or the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), or
- (iii) Insurance Act, 1938 (4 of 1938),

shall not apply to a banking company, the State Bank of India or a subsidiary bank, as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), or an insurer, as the case may be.

## CHAPTER II

### MONOPOLIES AND RESTRICTIVE TRADE PRACTICES COMMISSION

**5. Establishment and constitution of the Commission.**—(1) For the purposes of this Act, the Central Government shall establish, <sup>1</sup>[by notification], a Commission to be known as the Monopolies and Restrictive Trade Practices Commission which shall consist of a Chairman and not less than two and not more than eight other members, to be appointed by the Central Government.

(2) The Chairman of the Commission shall be a person who is, or has been or is qualified to be, a Judge of the Supreme Court or of a High Court and the members thereof shall be persons of ability, integrity and standing who have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to Economics, Law, Commerce, Accountancy, Industry, Public Affairs or Administration.

(3) Before appointing any person as a member of the Commission, the Central Government shall satisfy itself that the person does not, and will not, have, any such financial or other interest as is likely to affect prejudicially his functions as such member.

**(6). Terms of office, conditions of service, etc., of members.**—(1) Every member shall hold office for such period, not exceeding five years, as may be specified by the Central Government in the notification made under sub-section (1) of section 5, but shall be eligible for re-appointment:

Provided that no member shall hold office as such for a total period exceeding ten years, or after he has attained the age of sixty-five years, whichever is earlier.

(2) Notwithstanding anything contained in sub-section (1), a member may—

- (a) by writing under his hand and addressed to the Central Government resign his office at any time;
- (b) be removed from his office in accordance with the provisions of section 7.

(3) A casual vacancy caused by the resignation or removal of the Chairman or any other member of the Commission under sub-section (2) or otherwise shall be filled by fresh appointment.

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1. Subs. by Act 30 of 1984, sec. 2, for "by notification in the Official Gazette" (w.e.f. 1-8-1984).

<sup>1</sup>[(3A) Where any such causal vacancy occurs in the office of the Chairman of the Commission, the senior-most member of the Commission, holding office for the time being, shall discharge the functions of the Chairman until a person appointed to fill such vacancy assumes the office of the Chairman of the Commission.

(3B) When the Chairman of the Commission is unable to discharge the functions owing to absence, illness or any other cause, the senior-most member of the Commission, if authorised so to do by the Chairman in writing, shall discharge the functions of the Chairman until the day on which the Chairman resumes the charge of his functions.]

(4) No act or proceeding of the Commission shall be invalid by reason only of the existence of any vacancy among its members or any defect in the constitution thereof.

(5) The Chairman of the Commission and other members shall receive such remuneration and other allowances and shall be governed by such conditions of service as may be prescribed:

Provided that the remuneration of the Chairman or any other member shall not be varied to his disadvantage after his appointment.

(6) In the case of a difference of opinion among the members of the Commission, the opinion of the majority shall prevail and the opinion or orders of the Commission shall be expressed in terms of the views of the majority.

(7) The Chairman of the Commission and <sup>2</sup>[every other member] shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form, in such manner and before such authority as may be prescribed.

(8) <sup>3</sup>[The Chairman or any member] ceasing to hold office as such shall not hold any appointment in, or be connected with the management or the administration of any industry or undertaking to which this Act applies for a period of five years from the date on which he ceases to hold such office.

**7. Removal of members from office in certain circumstances.**—(1) The Central Government may remove from office any member, who—

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

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1. Ins. by Act 30 of 1984, sec. 6 (w.e.f. 1-8-1984).

2. Subs. by Act 30 of 1984, sec. 6, for "every member" (w.e.f. 1-8-1984).

3. Subs. by Act 30 of 1984, sec. 6, for "Any member" (w.e.f. 1-8-1984).



(2) Notwithstanding anything contained in sub-section (1), no member shall be removed from his office on the ground specified in clause (d) or clause (e) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry held by it in accordance with such procedure as it may specify in this behalf, reported that the member ought, on such grounds, to be removed.

**<sup>1</sup>[8. Appointment of Director General, etc., and staff of the Commission.—**(1) The Central Government may, by notification, appoint a Director General of Investigation and Registration, and as many Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration, as it may think fit, for making investigation for the purposes of this Act and for maintaining a Register of agreements subject to registration under this Act and for performing such other functions as are, or may be provided by, or under, this Act.

(2) The Director General may, by written order, authorise one of the Additional, Joint, Deputy or Assistant Directors General to function as the Registrar of Agreements subject to registration under this Act.

(3) Every person authorised to function as the Registrar of Agreements and every Additional, Joint, Deputy or Assistant Director General shall exercise his powers, and discharge his functions, subject to the general control supervision and direction of the Director General.

(4) The Central Government may provide the staff of the Commission and may, in addition, make provisions of the conditions of service of the Director General, Additional, Joint, Deputy or Assistant Director General and of the members of the staff of the Commission.

(5) The conditions of service of the Director General or any Additional, Joint, Deputy or Assistant Director General or of any member of the staff of the Commission shall not be varied to his disadvantage after his appointment.]

**9. Salaries, allowances etc., to be defrayed out of the Consolidated Fund of India.—**The salaries and allowances payable to the members and the administrative expenses, including salaries, allowances and pensions, payable to or in respect of officers and other employees of the Commission, shall be defrayed out of the Consolidated Fund of India.

## **JURISDICTION, POWERS AND PROCEDURE OF THE COMMISSION**

**10. Inquiry into monopolistic or restrictive trade practices by Commission.—**The Commission may inquire into—

(a) any restrictive trade practice—

(i) upon receiving a complaint of facts which constitute such practice<sup>2</sup> [from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not], or

1. Subs. by Act 30 of 1984, sec. 7, for section 8 (w.e.f. 1-8-1984).

2. Subs. by Act 74 of 1986, sec. 3, for certain words (w.e.f. 1-6-1987).

- (ii) upon a reference made to it by the Central Government or a State Government, or
  - (iii) upon an application made to it by the <sup>1</sup>[Director General], or
  - (iv) upon its own knowledge or information,
- (b) any monopolistic trade practice, upon a reference made to it by the Central Government <sup>2</sup>[or upon an application made to it by the Director General] or upon its own knowledge or information.

#### COMMENTS

When a *prima facie* case is made out that the respondent has indulged in the alleged restrictive trade practice and unfair trade practice, it is all the more reason for initiating enquiry and issue of injunction; *Jyotirmoy Investment Pvt. v. New Delhi Municipal Committee*, (1994) 80 Comp Cas 878 (MRTPC).

#### <sup>3</sup>[11. Investigation by Director General before issue of process in certain cases.—

<sup>4</sup>[(1) The Commission may, before issuing any process requiring the attendance of the person against whom an inquiry (other than an inquiry upon an application by the Director General) may be made under section 10, by an order, require the Director General to make, or cause to be made, a preliminary investigation in such manner as it may direct and submit a report to the Commission to enable it to satisfy itself as to whether or not the matter requires to be inquired into.]

(2) The Director General may, upon his own knowledge or information or on a complaint made to him, make, or cause to be made, a preliminary investigation in such manner as he may think fit to enable him to satisfy himself as to whether or not an application should be made by him to the Commission under <sup>5</sup>[\*\*\*] section 10.

(3) For the purpose of conducting the preliminary investigation under sub-section (1), or sub-section (2), as the case may be, the Director General or any other person making the investigation shall have the same powers as may be exercised by an Inspector under sub-section (2) of section 44.

(4) Any order or requisition made by a person making an investigation under sub-section (1), or sub-section (2), shall be enforced in the same manner as if it were an order or requisition made by an Inspector appointed under section 240 or section 240A of the Companies Act, 1956 (1 of 1956), and any contravention of such order or requisition shall be punishable in the same manner as if it were an order or requisition made by an Inspector appointed under the said section 240 or section 240.]

**12. Powers of the Commission.**—(1) The Commission shall for the purposes of any inquiry under this Act have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—

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

1. Subs. by Act 30 of 1984, sec. 2, for "Registrar" (w.e.f. 1-8-1984).

2. Ins. by Act 58 of 1991, sec. 3 (w.r.e.f. 27-9-1991).

3. Subs. by Act 30 of 1984, sec. 8, for section 11 (w.e.f. 1-8-1984).

4. Subs by Act 58 of 1991, sec. 4, for sub-section (1) (w.r.e.f. 27-9-1991).

5. The words "sub-clause (iii) of clause (a) of" omitted by Act 58 of 1991, sec. 4 (w.r.e.f. 27-9-1991).

- (b) the discovery and production of any document or other material object producible as evidence;
- (c) the reception of evidence on affidavits;
- (d) the requisitioning of any public record from any court or office;
- (e) the issuing of any commission for the examination of witnesses;
- <sup>1</sup>[(f) the appearance of parties and consequence of non-appearance.]

(2) Any proceedings before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the Commission shall be deemed to be a Civil Court for the purposes of section 195 <sup>2</sup>[and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)].

(3) The Commission shall have power to require any person—

- (a) to produce before, and allow to be examined and kept by, an officer of the Commission specified in this behalf, such books, accounts or other documents in the custody or under the control of the person so required as may be specified or described in the requisition, being documents relating to any trade practice, the examination of which may be required for the purposes of this Act; and
- (b) to furnish to an officer so specified such information as respects the trade practice as may be required for the purposes of this Act or such other information as may be in his possession in relation to the trade carried on by any other person.

(4) For the purpose of enforcing the attendance of witnesses the local limits of the Commission's jurisdiction shall be the limits of the territory of India.

<sup>3</sup>[(5) Where, during any inquiry under this Act, the Commission has any grounds to believe that any books or papers of, or relating to any undertaking in relation to which such inquiry is being made or which the owner of such undertaking may be required to produce in such inquiry, are being, or may be, destroyed, mutilated, altered, falsified or secreted, it may, by a written order, authorise any officer of the Commission to exercise the same powers of entry, search and seizure in relation to the undertaking, or the books or papers, aforesaid as may be exercised by the Director General while holding a preliminary investigation under section 11 ]

<sup>4</sup>[**12A. Power of the Commission to grant temporary injunctions.**—(1) Where, during an inquiry before the Commission, it is proved, whether by the complainant, Director General, any trader or class of traders or any other person, by affidavit or otherwise, that any undertaking or any person is carrying on, or is about to carry on, any monopolistic or any restrictive, or unfair, trade practice and such monopolistic or restrictive, or unfair trade practice is likely to affect prejudicially the public interest or

1. Ins. by Act 58 of 1991, sec. 5 (w.e.f. 27-9-1991).

2. Subs. by Act 58 of 1991, sec. 5, for "and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898)" (w.e.f. 27-9-1991).

3. Ins. by Act 30 of 1984, sec. 9 (w.e.f. 1-8-1984).

4. Ins. by Act 30 of 1984, sec. 10 (w.e.f. 1-8-1984).

the interest of any trader, class of traders or traders generally or of any consumer or consumers generally, the Commission may, for the purposes of staying or preventing the undertaking or, as the case may be, such person from causing such prejudicial effect, by order, grant a temporary injunction restraining such undertaking or person from carrying on any monopolistic or restrictive, or unfair, trade practice until the conclusion of such inquiry or until further orders.

(2) The provisions of rules 2A to 5 (both inclusive) of order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall, as far as may be, apply to a temporary injunction issued by the Commission under this section, as they apply to a temporary injunction issued by a Civil Court, and any reference in any such rule to a suit shall be construed as a reference to an inquiry before the Commission.]

<sup>1</sup>[*Explanation I.*—For the purposes of this section an inquiry shall be deemed to have commenced upon the receipt by the Commission of any complaint, reference or as the case may be, application or upon its own knowledge or information reduced to writing by the Commission.

*Explanation II.*—For the removal of doubts, it is hereby declared that the power of the Commission with respect to temporary injunction includes power to grant a temporary injunction without giving notice to the opposite party.]

#### COMMENTS

*Ex-parte* temporary injunction cannot be passed before issuance of notice of inquiry or commencement of inquiry: *Milton Plastics v. Union of India*. (1994) 79 Comp Cas 366 (Bom).

<sup>2</sup>[**12B. Power of the Commission to award compensation.**—(1) Where, as a result of the monopolistic or restrictive, or unfair trade practice, carried on by any undertaking or any person, any loss or damage is caused to the Central Government, or any State Government or any trader or class of traders or any consumer, such Government or, as the case may be, trader or class of traders or consumer may, without prejudice to the right of such Government, trader or class of traders or consumer to institute a suit for the recovery of any compensation for the loss or damage so caused, make an application to the Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person, of such amount as the Commission may determine, as compensation for the loss or damage so caused.

(2) 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 I of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to the application before the Commission and the order of the Commission thereon.

(3) The Commission may, after an inquiry made into the allegations made in the application filed under sub-section (1), make an order directing the owner of the

1. Ins. by Act 58 of 1991, sec. 6 (w.r.e.f. 27-9-1991).

2. Ins. by Act 30 of 1984, sec. 10 (w.e.f. 1-8-1984).

undertaking or other person to make payment, to the applicant, of the amount determined by it as realisable from the undertaking or the owner thereof, or, as the case may be, from the other person, as compensation for the loss or damage caused to the applicant by reason of any monopolistic or restrictive, or unfair trade practice carried on by such undertaking or other person.

(4) Where a decree for the recovery of any amount as compensation for any loss or damage referred to in sub-section (1) has been passed by any court in favour of any person or persons referred to in sub-section (1) or, as the case may be, sub-section (2), the amount, if any, paid or recovered in pursuance of the order made by the Commission under sub-section (3) shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance, if any, left after such set-off.]

<sup>1</sup>[**12C. Enforcement of the order made by the Commission under section 12A or 12B.**—Every order made by the Commission under section 12A granting a temporary injunction or under section 12B directing the owner of an undertaking or other person to make payment of any amount, may be enforced by the Commission in the same manner as if it were a decree or order made by a 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 court within the local limits of whose jurisdiction,—

- (a) in the case of an order against a company, the registered office of the company is situated, or
- (b) in the case of an order against any other person, 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.]

**13. Orders of Commission may be subject to conditions, etc.**—(1) In making any order under this Act, the Commission may make such provisions not inconsistent with this Act, as it may think necessary or desirable for the proper execution of the order and any person who commits a breach of or fails to comply with any obligation imposed on him by any such provision shall be deemed to be guilty of an offence under this Act.

(2) Any order made by the Commission may be amended or revoked at any time in the manner in which it was made.

(3) An order made by the Commission may be general in its application or may be limited to any particular class of traders or a particular class of trade practice or a particular trade practice or a particular locality.

<sup>2</sup>[**13A. Power of the Commission to cause investigation to find out whether or not orders made by it have been complied with.**—(1) The Commission may, if it has any reasonable cause to believe that any person has omitted or failed to comply with any order made by it under this Act or any obligation imposed on him by or under

1. Ins. by Act 30 of 1984, sec. 10 (w.e.f. 1-8-1984).

2. Ins. by Act 30 of 1984, sec. 11 (w.e.f. 1-8-1984).

any order made by the Commission under this Act, authorise the Director General or any officer of the Commission to make an investigation into the matter and the Director General, or the officer so authorised, may, for the purpose of making such investigation, exercise all or any of the powers conferred on the Director General by section 11.

(2) On the conclusion of the investigation, the Director General, or, as the case may be, the officer so authorised, shall submit to the Commission a report of the investigation to enable the Commission to take such action in the matter as it may think fit.]

<sup>1</sup>[**13B. Power to punish for contempt.**—The Commission shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971), shall have effect subject to the modifications that—

- (a) the reference therein to a High Court shall be construed as including a reference to the Commission;
- (b) the reference 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 in the Official Gazette, specify in the behalf.]

**14. Orders where party concerned does not carry on business in India.**—Where any practice substantially falls within <sup>2</sup>[monopolistic, restrictive or unfair, trade practice, relating to the production, storage, supply,] distribution or control of goods of any description or the provision of any services and any party to such practice does not carry on business in India, an order may be made under this Act with respect to that part of the practices which is carried on in India.

#### COMMENTS

In view of section 14 of the Act notwithstanding that the business concern, which entered into agreement with the respondent in India, is carrying on business in a foreign country, the Commission can take cognizance of the restrictive trade practice because the said trade practice is being carried on in India; *Director-General (Investigation and Registration) v. Voltas Ltd.*, (1994) 79 Comp Cas 274 (MRTPC).

**15. Restriction of application of orders in certain cases.**—No order made under this Act with respect to any monopolistic or restrictive trade practice shall operate so as to restrict—

- (a) the right of any person to restrain any infringement of a patent granted in India, or
- (b) any person as to the condition which he attaches to a licence to do anything, the doing of which but for the licence would be an infringement of a patent granted in India, or
- (c) the right of any person to export goods from India, to the extent to which the monopolistic or restrictive trade practice relates exclusively to the production, supply, distribution or control of goods for such export.

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1. Ins. by Act 58 of 1991, sec. 7 (w.e.f. 28-12-1991).

2. Subs. by Act 30 of 1984, sec. 12, for certain words (w.e.f. 1-8-1984).

**16. Sittings of the Commission.**—(1) The central office of the Commission shall be in Delhi but the Commission may sit at such places in India and at such times as may be most convenient for the exercise of its powers or functions under this Act.

(2) The powers or functions of the Commission may be exercised or discharged by Benches formed by the Chairman of the Commission from among the members.

**17. Hearing to be in public except in special circumstances.**—(1) Subject to the provisions of sub-section (2), the hearing of proceedings before the Commission shall be in public.

(2) Where the Commission is satisfied that it is desirable to do so by reason of the confidential nature of any offence or matter or for any other reason, the Commission may—

- (a) hear the proceeding or any part thereof in private;
- (b) give directions as to the persons who may be present thereat;
- (c) prohibit or restrict the publication of evidence given before the Commission (whether in public or in private) or of matters contained in documents filed before the Commission.

**18. Procedure of the Commission.**—(1) Subject to the provisions of this Act, the Commission shall have power to regulate—

- (a) the procedure and conduct of its business;
- (b) the procedure of Benches of the Commission;
- (c) the delegation to one or more members of such powers or functions as the Commission may specify <sup>1</sup>[and subject to any general or special direction given, or condition imposed, by the Commission, a member, to whom any powers or functions are so delegated, shall exercise such powers or discharge those functions in the same manner and with the same effect as if they had been conferred on such member directly by this Act and not by way of delegation and any order or other act or thing made or done by such member in pursuance of the power or function so delegated shall be deemed to be an order or other act or thing made or done by the Commission.]

(2) In particular, and without prejudice to the generality of the foregoing provisions, the powers of the Commission shall include the power to determine the extent to which persons interested or claiming to be interested in the subject-matter of any proceeding before it are allowed to be present or to be heard, either by themselves or by their representatives or to cross-examine witnesses or otherwise to take part in the proceeding.

**19. Orders of the Commission to be noted in the register.**—The Commission shall cause an authenticated copy of every order made by it in respect of a restrictive trade practice <sup>2</sup>[or an unfair trade practice, as the case may be,] to be forwarded to the <sup>3</sup>[Director General] who shall have it recorded in such manner as may be prescribed.

1. Ins. by Act 30 of 1984, sec. 13 (w.e.f. 1-8-1984).

2. Ins. by Act 30 of 1984, sec. 14 (w.e.f. 1-8-1984).

3. Subs. by Act 30 of 1984, sec. 2, for "Registrar" (w.e.f. 1-8-1984).

**CHAPTER III**  
**CONCENTRATION OF ECONOMIC POWER**

<sup>1</sup>[\*\*\*]

<sup>2</sup>[\*\*\*]

**27. Division of undertakings.**—(1) <sup>3</sup>[Notwithstanding anything contained in this Act or in any other law for the time being in force, the Commission may,—

- (i) upon receiving a complaint of facts from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not, or
- (ii) upon a reference made to it by the Central Government or a State Government, or
- (iii) upon its own knowledge or information,

if it is of opinion that the working of an undertaking is prejudicial to the public interest, or has led, or is leading, or is likely to lead, to the adoption of any monopolistic or restrictive trade practices, inquire], as to whether it is expedient in the public interest to make an order,—

- (a) for the division of any trade of the undertaking by the sale of any part of the undertaking or assets thereof, or
- (b) for the division of any undertaking or inter-connected undertakings into such number of undertakings as the circumstances of the case may justify,

and the Commission may, after such hearing as it thinks fit, report to the Central Government its opinion thereon and shall, where it is of opinion that a division ought to be made, specify the manner of the division and compensation, if any, payable for such division.

*Explanation.*—For the purposes of this section all activities carried on by way of trade by an undertaking or two or more inter-connected undertakings may be treated as a single trade.

(2) If the Commission so recommends, the Central Government may, notwithstanding anything contained in any other law for the time being in force, by an order in writing, direct the division of any trade of the undertaking or of the undertaking or inter-connected undertakings.

(3) Notwithstanding anything contained in any other law for the time being in force, the order referred to in sub-section (2) may provide for all such matters as may be necessary to give effect to the division of any trade of the undertaking or of the undertaking or inter-connected undertakings, including,—

- (a) the transfer or vesting of property, rights, liabilities or obligations;
- (b) the adjustment of contracts either by the discharge or reduction of any liability or obligation or otherwise;

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1. "Part A" (consisting of sections 20 to 26) omitted by Act 58 of 1991, sec. 8 (w.r.e.f. 27-9-1991).  
2. The word and letter "Part B" omitted by Act 58 of 1991, sec. 8 (w.r.e.f. 27-9-1991).  
3. Subs. by Act 58 of 1991, sec. 9, for certain words (w.r.e.f. 27-9-1991).



- (c) the creation, allotment, surrender or cancellation of any shares, stock or securities;
- (d) the Payment of compensation;
- (e) the formation, or winding up of an undertaking or the amendment of the memorandum and articles of association or any other instruments regulating the business of any undertaking;
- (f) the extent to which and the circumstances in which provisions of the order affecting an undertaking may be altered by the undertaking and the registration thereof;
- (g) the continuation, with such changes as may be necessary, of parties to any legal proceeding.

(4) Where the Central Government makes, or intends to make, an order for any purpose mentioned in sub-section (3), it may, with a view to achieving that purposes, prohibit or restrict the doing of anything that might impede the operation or making of the order and may impose on any person such obligations as to the carrying on of any activities or the safeguarding of any assets, as it may think fit, or it may, by order, provide for the carrying on of any activities or safeguarding of any assets either by the appointment of a person to conduct, or supervise the conduct of, any such activities or in any other manner.

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

**<sup>1</sup>[27A. Power of the Central Government to direct severance of inter-connection between undertakings.—(1) <sup>2</sup>[Notwithstanding anything contained in this Act or in any other law for the time being in force, the Commission may,—**

- (i) upon receiving a complaint of facts from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not, or
- (ii) upon a reference made to it by the Central Government or a State Government, or
- (iii) upon its own knowledge or information,

if it is of opinion that the continuance of inter-connection of an undertaking (hereafter in this section referred to as the principal undertaking) with any other undertaking is detrimental to—

- (a) the interests of the principal undertaking; or
- (b) the future development of the principal undertaking; or

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1. Ins. by Act 30 of 1984, sec. 22 (w.e.f. 1-8-1984).

2. Subs. by Act 58 of 1991, sec. 10, for certain words (w.r.e.f. 27-9-1991).

**[27B. Manner in which order made under section 27 or section 27A shall be carried out.—**(1) Where in any report made by it, whether under section 27 or section 27A, the Commission recommends that the division of any trade of any undertaking or division of any undertaking or undertakings or of inter-connected undertakings, or, as the case may be, the severance of inter-connection between two or more undertakings, is to be effected by—

- (a) the disinvestment by any person holding any share in the body corporate owning such undertaking or undertakings; or
- (b) the sale of the whole or any part of such undertaking or undertakings, or, of any part of the assets thereof,

the Central Government may, in its order under the said section 27 or section 27A, specify that such disinvestment of shares or the sale of the whole or part of the undertaking or undertakings or of such assets, as the case may be, shall be effected within in such period and in such one or more of the following methods as may be specified such order, namely:—

- (i) by directing the person holding such shares to make a public offer for the sale of such number of shares held by him in the body corporate owning the undertaking or undertakings, as may be specified in the order; or
- (ii) by directing the body corporate owning the undertaking to make further issue of equity capital to the members of the public except to the person who is directed to disinvest the shares held by him in such body corporate; or
- (iii) by directing that the sale of the undertaking or any part thereof, or, as the case may be, of such assets, be made by public auction; or
- (iv) by such other prescribed method as the Central Government may specify:

Provided that the Central Government may extend on its own motion or on the application of the person concerned and for sufficient cause, the period specified as aforesaid in any order made by it under section 27 or section 27A by another order.

(2) Every order of the Central Government referred to in sub-section (1), shall have effect notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in the memorandum or articles of association of the body corporate owning the undertaking.

(3) Where any person who has been directed to do so by an order referred to in sub-section (1), omits or fails to disinvest any share or block of shares specified in the said order, the body corporate in which such shares are held shall not permit such person or his nominee or proxy to exercise any voting or other rights attaching to such share or block of shares.]

<sup>2</sup>[\*\*\*]

<sup>3</sup>[\*\*\*]

1. Ins. by Act 3 of 1984, sec. 22 (w.e.f. 1-8-1984).

2. Part C (consisting of sections 28 to 30) omitted by Act 58 of 1991, sec. 11 (w.r.e.f. 27-9-1991).

3. Chapter IIIA (consisting of sections 30A to 30G) ins. by Act 30 of 1984, sec. 23 (w.e.f. 1-8-1984), and omitted by Act 58 of 1991, sec. 12 (w.r.e.f. 27-9-1991).

CHAPTER IV  
MONOPOLISTIC TRADE PRACTICES

**31. Investigation by Commission of monopolistic trade practices.**—(1) Where it appears to the Central Government that <sup>1</sup>[the owners of one or more undertakings are indulging in any practice, which is, or, may be, a monopolistic trade practice], or that, monopolistic trade practices prevail in respect of any goods or services, that Government may refer the matter to the Commission for an inquiry and the Commission shall, after such hearing as it thinks fit, report to the Central Government its finding thereon:

<sup>2</sup>[Provided that where the Commission receives <sup>3</sup>[any application from the Director General or] any information, or comes to know, that the owner of any undertaking is, or, the owners of two or more undertakings are, indulging in any trade practice, which is, or may be, a monopolistic trade practice, or that monopolistic trade practices prevail in respect of any goods or services, it may <sup>3</sup>[on such application or] on its own motion, and notwithstanding that no reference has been made to it by the Central Government under this sub-section, make an inquiry into the matter.]

(2) If as a result of such inquiry, the Commission makes a finding to the effect that, having regard to the economic conditions prevailing in the country and to all other matters which appear in particular circumstances to be relevant, the trade practice operates or is likely to operate against the public interest, <sup>4</sup>[it shall make a report to the Central Government as to its findings thereon and on receipt of such report,] the Central Government may, notwithstanding anything contained in any other law for the time being in force, pass such orders as it may think fit to remedy or prevent any mischiefs which result or may result from such trade practice.

<sup>4</sup>[(2A) If any such report contains a finding of the Commission to the effect that the owner of any undertaking is, or the owners of two or more undertakings are indulging in any monopolistic trade practice, or that monopolistic trade practice prevails in respect of any goods or services, and the Central Government is satisfied that it is necessary to take steps to remedy or prevent any mischiefs which result or may result from such monopolistic trade practice, and that such monopolistic trade practice does not fall within any of the exceptions specified in section 32, it may, notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, make such orders as it may think fit,—

- (a) prohibiting the owner of the concerned undertaking or the owners of the concerned undertakings, as the case may be, from continuing to indulge in such monopolistic trade practice; or
- (b) prohibiting the owners of any class of undertakings or undertakings generally, from continuing to indulge in any monopolistic trade practices in relation to such goods or services, and

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1. Subs. by Act 30 of 1984, sec. 24, for certain words (w.e.f. 1-8-1984).

2. Added by Act 30 of 1984, sec. 24 (w.e.f. 1-8-1984).

3. Ins. by Act 58 of 1991, sec. 13 (w.r.e.f. 27-9-1991).

4. Ins. by Act 30 of 1984, sec. 24 (w.e.f. 1-8-1984).

may also make such other orders as it may think fit to remedy or prevent any mischief which results, or may result, from the continuation of monopolistic trade practices in relation to the goods and services aforesaid.]

(3) <sup>1</sup>[Without prejudice to the generality of the powers conferred by sub-section (2A), any order made by the Central Government under this section may also include an order]—

- (a) regulating the <sup>2</sup>[production, storage, supply], distribution or control of any goods by the undertaking or the control or supply of any service by it and fixing the terms of sale (including prices) or supply thereof;
- (b) prohibiting the undertaking from resorting to any act or practice or from pursuing any commercial policy which prevents or lessens, or is likely to prevent or lessen, competition in the <sup>2</sup>[production, storage, supply] or distribution of any goods or provision of any services;
- (c) fixing standards for the goods used or produced by the undertaking;
- (d) declaring unlawful, except to such extent and in such circumstances as may be provided by or under the order, the making or carrying out of any such agreement as may be specified or described in the order;
- (e) requiring any party to any such agreement as may be so specified or described to determine the agreement within such time as may be so specified, either wholly or to such extent as may be so specified;
- <sup>3</sup>[(f) regulating the profits which may be derived from the production, storage, supply, distribution or control of goods or from the provision of any service;
- (g) regulating the quality of any goods or the provision of any service so that the standards thereof may not deteriorate.]

<sup>3</sup>[(4) Whenever any order is made by the Central Government under sub-section (2A) prohibiting the owner of any undertaking or class of undertaking or undertakings generally from continuing to indulge in any monopolistic trade practice,—

- (a) the owner of any undertaking or the owners of undertakings of any class, as the case may be, shall, within thirty days from the date of receipt of such order (or within such further time as the Central Government may, on sufficient cause being shown, allow) communicate to the Central Government his or their compliance with the order; and
- (b) the Director General shall within ninety days from the date of such order (or from the expiry of the further time allowed by the Central Government) inform the Central Government, whether the order made by it has been complied with, and where the Director General has any reason to believe that any such order has been, or is being, contravened by the owner of any undertaking, he shall inform the Central Government about the particulars of the owner of such undertaking, to enable that Government to take such action, under this Act, as it may think fit.]

1. Subs. by Act 30 of 1984, sec. 24, for certain words (w.e.f. 1-8-1984).

2. Subs. by Act 30 of 1984, sec. 24, for "production, supply" (w.e.f. 1-8-1984).

3. Ins. by Act 30 of 1984 sec. 24 (w.e.f. 1-8-1984).

<sup>1</sup>[32. **Monopolistic trade practice to be deemed to be prejudicial to the public interest except in certain cases.**—For the purposes of this Act every monopolistic trade practice shall be deemed to be prejudicial to the public interest, except where—

- (a) such trade practice is expressly authorised by any enactment for the time being in force, or
- (b) the Central Government, being satisfied that any such trade practice is necessary—
  - (i) to meet the requirements of the defence of India or any part thereof, or for the security of the State; or
  - (ii) to ensure the maintenance of supply of goods and services essential to the community; or
  - (iii) to give effect to the terms of any agreement to which the Central Government is a party,

by a written order, permits the owner of any undertaking to carry on any such trade practice.]

#### CHAPTER V

### <sup>2</sup>[RESTRICTIVE TRADE PRACTICES AND UNFAIR TRADE PRACTICES]

#### <sup>3</sup>[PART A

##### *Registration of agreements relating to restrictive trade practices]*

**33. Registrable agreements relating to restrictive trade practices.**—(1) <sup>4</sup>[Every agreement falling within one or more of the following categories shall be deemed, for the purposes of this Act, to be an agreement relating to restrictive trade practices and shall be subject to registration] in accordance with the provisions of this Chapter, namely:—

- (a) any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;
- (b) any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
- (c) any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;
- (d) any agreement to purchase or sell goods or to tender for the sale or purchase of goods only at prices or on terms or conditions agreed upon between the sellers or purchasers;

1. Subs. by Act 30 of 1984, sec. 25, for section 32 (w.e.f. 1-8-1984).

2. Subs. by Act 30 of 1984, sec. 26, for "REGISTRATION OF AGREEMENT RELATING TO RESTRICTIVE TRADE PRACTICES" (w.e.f. 1-8-1984).

3. Ins. by Act 30 of 1984, sec. 26 (w.e.f. 1-8-1984).

4. Subs. by Act 30 of 1984, sec. 27, for certain words (w.e.f. 1-8-1984).

- (e) any agreement to grant or allow concessions or benefits, including allowances, discount, rebates or credit in connection with, or by reason of, dealings;
- (f) any agreement to sell goods on condition that the prices to be charged on re-sale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged;
- (g) any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal of the goods;
- (h) any agreement not to employ or restrict the employment of any method, machinery or process in the manufacture of goods;
- (i) any agreement for the exclusion from any trade association of any person carrying on or intending to carry on, in good faith the trade in relation to which the trade association is formed;
- (j) any agreement to sell goods at such prices as would have the effect of eliminating competition or a competitor;
- <sup>1</sup>[(ja) any agreement restricting in any manner, the class or number of wholesalers, producers or suppliers from whom any goods may be bought;
- (jb) any agreement as to the bids which any of the parties thereto may offer at an auction for the sale of goods or any agreement whereby any party thereto agrees to abstain from bidding at any auction for the sale of goods;]
- (k) any agreement not herein before referred to in this section which the Central Government may, <sup>2</sup>[by notification], specify for the time being as being one relating to a restrictive trade practice within the meaning of this sub-section pursuant to any recommendation made by the Commission in this behalf;
- (l) any agreement to enforce the carrying out of any such agreement as is referred to in this sub-section.

(2) The provisions of this section shall apply, so far as may be, in relation to agreements making provision for services as they apply in relation to agreements connected with the <sup>3</sup>[production, storage, supply], distribution or control of goods.

(3) No agreement falling within this section shall be subject to registration in accordance with the provisions of this Chapter if it is expressly authorised by or under any law for the time being in force or has the approval of the Central Government or if the Government is a party to such agreement.

#### COMMENTS

(i) The mere fact that an agreement has been approved by the Central Government does not mean that the trade practice flowing from such an agreement is expressly authorised by any law for the time being in force; *Director-General (Investigation and Registration) v. Negi & Co. Pvt. Ltd.*, (1998) 80 Comp Cas 449 (MRTPC).

1. Ins. by Act 30 of 1984, sec. 27 (w.e.f. 1-8-1984).

2. Subs. by Act 30 of 1984, sec. 2, for certain words (w.e.f. 1-8-1984).

3. Subs. by Act 30 of 1984, sec. 27, for "production, supply" (w.e.f. 1-8-1984).

(ii) Agreements falling under one or more of the clauses under section 33(1) as amended are *per se* restricted trade practices: *Director-General (Investigation and Registration) v. Voltas Ltd.*, (1994) 79 Comp Cas 274 (MRTPC).

(iii) The settled legal position is that where the price list simply mentions the price without indicating or specifying that the dealer is at liberty to settle at a lower price to the consumer. This will immediately attract clause (c) of section 33(1) of the MRTP Act, 1969; *In re: Duncan Tea Ltd.*, (1993) 78 Comp Cas 840 (MRTPC).

(iv) Target-related rebate or incentive or commission would fall within the meaning of section 33(1)(e) of the MRTP Act: *In re: Maegaware Computers Ltd.*, (1994) 79 Comp Cas 84 (MRTPC).

(v) There is no conflict between section 2(b) and section 31(1) of the Act. Clause (a) to (l) of sub-section (1) of section 33, specify such trade practices which have been statutorily recognised as restrictive trade practices. But there may be other trade practices, not covered by clauses (a) to (l) of sub-section (1) of section 33, which can be examined by the Commission in the light of section 2(o): *M/s. Voltas Ltd., Bombay v. Union of India*, AIR 1995 SC 1881.

(vi) A discount/rebate related to the quantum of off-take clearly attracts the provisions of clause (c) of sub-section (1) of section 33 of the Act inasmuch as it would plainly be a case of a discount or rebate granted in connection with and by reason of dealings, quite apart from an obvious fall out on the competition between the bigger dealer and the smaller dealer: *Director-General (Investigation and Registration) v. Haryana Distillery*, (1995) 82 Comp Cas 403 (MRTPC).

[\*\*\*]

**35. Registration of agreements.**—(1) The Central Government shall, <sup>2</sup>[by notification], specify a day (hereinafter referred to as the appointed day) on and from which every agreement falling within section 33 shall become registrable under this Act:

Provided that different days may be appointed for different categories of agreements.

(2) Within sixty days from the appointed day, in the case of an agreement existing on that day, and in the case of an agreement made, after the appointed day, within sixty days from the making thereof, there shall be furnished to the <sup>3</sup>[Director General] in respect of every agreement falling within section 33, the following particulars, namely:—

- (a) the name of the persons who are parties to the agreement; and
- (b) the whole of the terms of the agreement.

(3) If at any time after the agreement has been registered under this section, the agreement is varied (whether in respect of the parties or in respect of the terms thereof) or determined otherwise than by efflux of time, particulars of the variation or determination shall be furnished to the <sup>3</sup>[Director General] within one month after the date of the variation or determination.

(4) The particulars to be furnished under this section in respect of an agreement shall be furnished—

1. Section 34 omitted by Act 30 of 1984, sec. 28 (w.e.f. 1-8-1984).

2. Subs. by Act 30 of 1984, sec. 2, for "by notification in the Official Gazette" (w.e.f. 1-8-1984).

3. Subs. by Act 30 of 1984, sec. 2, for "Registrar" (w.e.f. 1-8-1984).

- (a) in so far as the agreement or any variation or determination of the agreement is made by an instrument in writing, by the production of the original or a true copy of that agreement; and
- (b) in so far as the agreement or any variation or determination of the agreement is not so made, by the production of a memorandum in writing signed by the person by whom the particulars are furnished.

(5) The particulars to be furnished under this section shall be furnished by or on behalf of any person who is a party to the agreement or, as the case may be, was a party thereto immediately before its determination, and where the particulars are duly furnished by or on behalf of any such person, the provisions of this section shall be deemed to be complied with on the part of all such persons.

*Explanation I.*—Where any agreement subject to registration under this section relates to the '[production, storage, supply], distribution or control of goods or the performance of any services in India and any party to the agreement carries on business in India, the agreement shall be deemed to be an agreement within the meaning of this section, notwithstanding that any other party to the agreement does not carry on business in India.

*Explanation II.*—Where an agreement is made by a trade association, the agreement for the purposes of this section shall be deemed to be made by all persons who are members of the association or represented thereon as if each such person were a party to the agreement.

*Explanation III.*—Where specific recommendations, whether express or implied, are made by or on behalf of a trade association to its members, or to any class of its members, as to the action to be taken or not to be taken by them in relation to any matter affecting the trade conditions of those members, this section shall apply in relation to the agreement for the constitution of the association notwithstanding any provision to the contrary therein as if it contained a term by which each such member and any person represented on the association by any such member agreed with the association to comply with those recommendations and any subsequent recommendations affecting those recommendations.

**36. Keeping the register.**—(1) For the purposes of this Act, the <sup>2</sup>[Director General] shall keep a register in the prescribed form and shall enter therein the prescribed particulars as regards agreements subject to registration.

(2) The <sup>2</sup>[Director General] shall provide for the maintenance of a special section of the register for the entry or filling in that section of such particulars as the Commission may direct, being—

- (a) particulars containing information, the publication of which would, in the opinion of the Commission, be contrary to the public interest;

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1. Subs. by Act 30 of 1984, sec. 29, for "production, supply" (w.e.f. 1-8-1984).

2. Subs. by Act 30 of 1984, sec. 2, for "Registrar" (w.e.f. 1-8-1984).



- (b) particulars containing information as to any matter being information the publication of which, in the opinion of the Commission, would substantially damage the legitimate business interests of any person.
- (3) Any party to an agreement required to be registered under section 35 may apply to the <sup>1</sup>[Director General]—
- (i) for the agreement or any part of the agreement to be excluded from the provisions of this Chapter relating to the registration on the ground that the agreement or part thereof has no substantial economic significance, or
  - (ii) for the inclusion of any provision of the agreement in the special section, and the <sup>1</sup>[Director General] shall dispose of the matter in conformity with any general or special directions issued by the Commission in this behalf.

<sup>2</sup>[PART B

*Unfair Trade practices*

**36A. Definition of unfair trade practice.**—In this Part, unless the context otherwise requires, “unfair trade practice” means a trade practice which, for the purpose of promoting the sale, use or supply of any good or for the provision of any services, <sup>3</sup>[adopts any unfair method or unfair or deceptive practice including any of the following practices], namely:—

- (1) the practice of making any statement, whether orally or in writing or by visible representation which,—
  - (i) falsely represents that the goods are of a particular standard, quality, <sup>4</sup>[quantity,] grade, composition, style or mode;
  - (ii) falsely represents that the services are of a particular standard, quality or grade;
  - (iii) falsely represents any re-built, second-hand, renovated, re-conditioned or old goods as new goods;
  - (iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;
  - (v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
  - (vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
  - (vii) gives to the public any warranty or guarantee of the performance, efficacy

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1. Subs. by Act 30 of 1984, sec. 2, for “Registrar” (w.e.f. 1-8-1984).

2. Part B (consisting of sections 36A to 36E) ins. by Act 30 of 1984, sec. 30 (w.e.f. 1-8-1984).

3. Subs. by Act 58 of 1991, sec. 14, for certain words (w.r.e.f. 27-9-1991).

4. Ins. by Act 58 of 1991, sec. 14 (w.r.e.f. 27-9-1991).

or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

- (viii) makes to the public a representation in a form that purports to be—
- (i) a warranty or guarantee of a product or of any goods or services; or
  - (ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,
- if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- (ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been, or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;
- (x) gives false or misleading facts disparaging the goods, services or trade of another person.

*Explanation.*—For the purposes of clause (1), a statement that is—

- (a) expressed on an article offered or displayed for sale, or on its wrapper or container, or
- (b) expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale, or
- (c) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public,

shall be deemed to be a statement made to the public by, and only by the person who had caused the statement to be so expressed, made or contained;

- (2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business and the nature of the advertisement.

*Explanation.*—For the purpose of clause (2), “bargain price” means—

- (a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or
  - (b) a price that a person who reads, hears, or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;
- (3) permits—
- (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole,
  - (b) the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.
- (4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods.
- (5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale, or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

#### COMMENTS

(i) The proof of any loss or damage to the consumer is not an essential ingredient of an unfair trade practice in terms of section 36A of the Act; *Director-General of Investigation and Registration v. Cement Corporation of Gujarat Ltd.*, (1994) 80 Comp Cas 15 (MRTPC).

(ii) If the advertisement issued is false and misleading or the services offered are much below the standard, quality or grade the respondent can be said to have indulged in unfair trade practices; *In re: Shree Raj Travels & Tours Pvt. Ltd.*, (1994) 79 Comp Cas 408 (MRTPC).

(iii) On the complaint of Director-General, Investigation and Registration alleging that company while floating a scheme of prizes raised the prices of products and covered expenses over the prizes in the transaction, Commission concluded of indulgence in restrictive trade practice. It was held by the Supreme Court that the company needs to be given an opportunity to prove its case that they have not committed any unfair trade practice under section 36A (3) (a) of the Act; *Nirma Industries Ltd. v. Director-General of Investigation and Registration*, AIR 1997 SC 2382.

**36B. Inquiry into unfair trade practices by Commission.**—The Commission may inquire into any unfair trade practice,—

- (a) upon receiving a complaint of facts which constitutes such practice <sup>1</sup>[from any trade association or from any consumer or a registered consumers' association, whether such consumer is a member of that consumers' association or not]; or
- (b) upon a reference made to it by the Central Government or a State Government;
- (c) upon an application to it by the Director General; or
- (d) upon its own knowledge or information.

#### COMMENTS

When a *prima facie* case is made out that the respondent has indulged in the alleged restrictive trade practice and unfair trade practice, it is all the more reason for initiating enquiry and issue of injunction; *Jyotirmoy Investments Pvt. Ltd. v. New Delhi Municipal Committee* (1994) 80 Comp Cas 878 (MRTPC).

<sup>2</sup>**[36C. Investigation by Director General before an issue of process in certain cases.**—The Commission may, before issuing any process requiring the attendance of the person against whom an inquiry (other than an inquiry upon an application by the Director General) may be made under section 36B, by an order, require the Director General to make, or cause to be made, a preliminary investigation in such manner as it may direct and submit a report to the Commission, for the purpose of satisfying itself that the matter requires to be inquired into.]

**36D. Powers which may be exercised by the Commission inquiring into an unfair trade practice.**—(1) The Commission may inquire into any unfair trade practice which may come before it for inquiry and, if, after such inquiry, it is of opinion that the practice is prejudicial to the public interest, or to the interest of any consumer or consumers generally, it may, by order direct that—

- (a) the practice shall be discontinued or shall not be repeated; <sup>3</sup>[\*\*\*]
- (b) any agreement relating to such unfair trade practice shall be void or shall stand modified in respect thereof in such manner as may be specified in the order;
- <sup>4</sup>(c) any information, statement or advertisement relating to such unfair trade practice shall be disclosed, issued or published, as the case may be, in such manner as may be specified in the order.]

(2) The Commission may, instead of making any order under this section, permit any party to carry on any trade practice, if it so applies and takes such steps within the time specified by the Commission as may be necessary to ensure that the trade practice is no longer prejudicial to the public interest or to the interest of any consumer or consumers generally, and, in any such case, if the Commission is satisfied that necessary

1. Subs. by Act 74 of 1986, sec. 5, for certain words (w.e.f. 1-6-1987).

2. Subs. by Act 58 of 1991, sec. 15, for section 36C (w.r.e.f. 27-9-1991).

3. The word "and" omitted by Act 58 of 1991, sec. 16 (w.r.e.f. 27-9-1991).

4. Ins. by Act 58 of 1991, sec. 16 (w.r.e.f. 27-9-1991).

steps have been taken within the time so specified, it may decide not to make any order under this section in respect of that trade practice.

(3) No order shall be made under sub-section (1) in respect of any trade practice which is expressly authorised by any law for the time being in force.

**36E. Power relating to restrictive trade practices may be exercised or performed in relation to unfair trade practices.**— Without prejudice to the provisions of section 12A, section 12B and section 36D, the Commission, Director General or any other person authorised in this behalf by the Commission or Director General, may exercise, or perform, in relation to any unfair trade practice, the same power or duty which it or he is empowered, or required, by or under this Act to exercise, or perform, in relation to a restricted trade practice.]

#### CHAPTER VI

### CONTROL OF CERTAIN RESTRICTIVE TRADE PRACTICES

**37. Investigation into restrictive trade practices by Commission.**—(1) The Commission may inquire into any restrictive trade practice, whether the agreement, if any, relating thereto has been registered under section 35 or not, which may come before it for inquiry and, if, after such inquiry it is of opinion that the practice is prejudicial to the public interest, the Commission may, by order, direct that—

- (a) the practice shall be discontinued or shall not be repeated;
- (b) the agreement relating thereto shall be void in respect of such restrictive trade practice or shall stand modified in respect thereof in such manner as may be specified in the order.

(2) The Commission may, instead of making any order under this section, permit the party to any restrictive trade practice, if he so applies to take such steps within the time specified in this behalf by the Commission as may be necessary to ensure that the trade practice is no longer prejudicial to the public interest, and, in any such case, if the Commission is satisfied that the necessary steps have been taken within the time specified, it may decide not to make any order under this section in respect of that trade practice.

(3) No order shall be made under sub-section (1) in respect of—

- (a) any agreement between buyers relating to goods which are bought by the buyers for consumption and not for ultimate re-sale whether in the same or different form, type, or specie or as constituent of some other goods;
- (b) a trade practice which is expressly authorised by any law for the time being in force.

(4) Notwithstanding anything contained in this Act if the Commission, during the course of an inquiry under sub-section (1), finds that [the owner of any undertaking is indulging in monopolistic trade practices], it may, after passing such orders under sub-section (1) or sub-section (2) with respect to the restrictive trade practices as it may

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1. Subs. by Act 30 of 1984, sec. 31, for "a monopolistic undertaking is indulging in restrictive trade practices" (w.e.f. 1-8-1984).

consider necessary, submit the case along with its findings thereon to the Central Government <sup>1</sup>[\*\*\*] for such action as that Government may take under section 31.

**38. Presumption as to the public interest.**—(1) For the purposes of any proceedings before the Commission under section 37, a restrictive trade practice shall be deemed to be prejudicial to the public interest unless the Commission is satisfied of any one or more of the following circumstances, that is to say—

- (a) that the restriction is reasonably necessary having regard to the character of the goods to which it applies, to protect the public against injury (whether to persons or to premises) in connection with the consumption, installation or use of those goods;
- (b) that the removal of the restriction would deny to the public as purchasers, consumers or users of any goods, other specific and substantial benefits or advantages enjoyed or likely to be enjoyed by them as such, whether by virtue of the restriction itself or of any arrangements or operations resulting therefrom;
- (c) that the restriction is reasonably necessary to counteract measures taken by any one person not party to the agreement with a view to preventing or restricting competition in or in relation to the trade or business in which the persons party thereto are engaged;
- (d) that the restriction is reasonably necessary to enable the persons party to the agreement to negotiate fair terms for the supply of goods to, or the acquisition of goods from any one person not party thereto who controls a preponderant part of the trade or business of acquiring or supplying such goods, or for the supply of goods to any person not party to the agreement and not carrying on such a trade or business who, either alone or in combination with any other such persons, controls a preponderant part of the market for such goods;
- (e) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction would be likely to have a serious and persistent adverse effect on the general level of unemployment in an area, or in areas taken together, in which a substantial proportion of the trade, or industry to which the agreement relates is situated;
- (f) that, having regard to the conditions actually obtaining or reasonably foreseen at the time of the application, the removal of the restriction would be likely to cause a reduction in the volume or earnings of the export business which is substantial either in relation to the whole export business of India or in relation to the whole business (including export business) of the said trade or industry;
- (g) that the restriction is reasonably required for purposes in connection with the maintenance of any other restriction accepted by the parties, whether under the same agreement or under any other agreement between them, being a

1. The words "with regard to any monopolistic trade practice" omitted by Act 30 of 1984, sec. 31 (w.e.f. 1-8-1984).

restriction which is found by the Commission not to be contrary to the public interest upon grounds other than those specified in this paragraph, or has been so found in previous proceedings before the Commission; <sup>1</sup>[\*\*\*]

- (h) that the restriction does not directly or indirectly restrict or discourage competition to any material degree in any relevant trade or industry and is not likely to do so;
- <sup>2</sup>(i) that such restriction has been expressly authorised and approved by the Central Government;
- (j) that such restriction is necessary to meet the requirements of the defence of India or any part thereof, or for the security of the State; or
- (k) that the restriction is necessary to ensure the maintenance of supply of goods and services essential to the community,]

and is further satisfied (in any such case) that the restriction is not unreasonable having regard to the balance between those circumstances and any detriment to the public or to persons not parties to the agreement (being purchasers, consumers or users of goods produced or sold by such parties, or persons engaged or seeking to become engaged in the trade or business of selling such goods or of producing or selling similar goods) resulting or likely to result from the operation of the restriction.

(2) In this section “purchasers”, “consumers” and “users” include persons purchasing, consuming or using for the purpose or in course of trade or business or for public purposes; and references in this section to any one person include references to any two or more persons being inter-connected undertakings or individuals carrying on business in partnership with each other.

#### COMMENTS

(i) There is presumption that a restrictive trade practice shall be deemed to be prejudicial to public interest unless the Commission is satisfied of any one or more of the circumstances given in section 38(1)(a) to (k) of the Act; *Director-General (Investigation and Registration) v. Voltas Ltd.*, (1994) 79 Comp Cas 274 (MRTPC).

(ii) The burden of proving that the impugned restrictive trade practices are not prejudicial to public interest lays on the respondent. It is, therefore, for him to plead and prove the ingredients or any of them as enumerated in section 38 of the MRTP Act; *In re: Maegaware Computers Ltd.*, (1994) 79 Comp Cas 84 (MRTPC).

#### **39. Special conditions for avoidance of conditions for maintaining re-sale prices.—**

(1) Without prejudice to the provisions of this Act with respect to registration and to any of the powers of the Commission or of the Central Government under this Act, any term or condition of a contract for the sale of goods by a person to a wholesaler or retailer or any agreement between a person and a wholesaler or retailer relating to such sale shall be void in so far as it purports to establish or provide for the establishment of minimum prices to be charged on the re-sale of goods in India.

(2) After the commencement of this Act, no supplier of goods whether directly or through any person or association of persons acting on his behalf shall notify to dealers

1. The word “or” omitted by Act 30 of 1984, sec. 32 (w.e.f. 1-8-1984).

2. Ins. by Act 30 of 1984, sec. 32 (w.e.f. 1-8-1984).

or otherwise publish on or in relation to any goods, a price stated or calculated to be understood as the minimum price which may be charged on the re-sale of the goods in India.

(3) This section shall apply to patented articles (including articles made by a patented process and articles made under any trade mark) as it applies to other goods and notice of any term or condition which is void by virtue of this section or which would be so void if included in a contract of sale or agreement relating to the sale of such article shall be of no effect for the purpose of limiting the right of a dealer to dispose of that article without infringement of the patent or trade mark, as the case may be:

Provided that nothing in this section shall affect the validity as between the parties and their successors, of any term or condition of a licence granted by the proprietor of a patent or [trade mark or by a licensee of patent or trade mark] or of any assignment of a patent or trade mark, so far as it regulates the price at which articles produced or processed by the licensee or the assignee may be sold by him.

*Explanation.*—In this section and in section 40, the term “supplier”, in relation to supply of any goods, means a person who supplies goods to any person for the ultimate purpose of re-sale and includes a wholesaler, and the term “dealer” includes a supplier and a retailer.

**40. Prohibition of other measures for maintaining re-sale prices.**—(1) Without prejudice to the provisions of this Act with respect to registration and to any of the powers of the Commission or of the Central Government under this Act, no supplier shall withhold supplies of any goods from any wholesaler or retailer seeking to obtain them for re-sale in India on the ground that the wholesaler or retailer—

- (a) has sold in India at a price below re-sale price, goods obtained, either directly or indirectly, from that supplier, or has supplied such goods, either directly or indirectly, to a third party who had done so; or
- (b) is likely if the goods are supplied to him to sell them in India at a price below that price or supply them, either directly or indirectly, to a third party who would be likely to do so.

(2) Nothing contained in sub-section (1) shall render it unlawful for a supplier to withhold supplies of goods from any wholesaler or retailer or to cause or procure another supplier to do so if he has reasonable cause to believe that the wholesaler or the retailer, as the case may be, has been using as loss leaders any goods of the same or a similar description whether obtained from that supplier or not.

(3) A supplier of goods shall be deemed to be withholding supplies of goods from a dealer if he—

- (a) refuses or fails to supply those goods to the order of the dealer;
- (b) refuses to supply those goods to the dealer except at prices, or on terms or conditions as to credit, discount or other matters which are less favourable

1. Subs. by Act 30 of 1984, sec. 33, for “trade mark by a licensee under any such licence” (w.e.f. 1-8-1984).



than those at or on which he normally supplies those goods to other dealers carrying on business in similar circumstances; or

- (c) treats a dealer, in spite of a contract with such dealer for the supply of goods, in a manner less favourable than that in which he normally treats other dealers in respect of time or methods of delivery or other matters arising in the performance of the contract.

(4) A supplier shall not be deemed to be withholding supplies of goods on any of the grounds mentioned in sub-section (1), if, in addition to that grounds, he has any other ground which alone would entitle him to withhold such supplies.

*Explanation I.*—“Re-sale price”, in relation to sale of goods of any description, means any price notified to the dealer or otherwise published by or on behalf of the supplier of the goods in question (whether lawfully or not) as the price or minimum price which is to be charged on, or is recommended as appropriate for, a sale of that description or any price prescribed or purporting to be prescribed for that purpose by any contract or agreement between the wholesaler or retailer and any such supplier.

*Explanation II.*—A wholesaler or retailer is said to use goods as loss leaders when he re-sells them otherwise than in a genuine seasonal or clearance sale not for the purpose of making a profit on the re-sale but for the purpose of attracting to the establishment at which the goods are sold, customers likely to purchase other goods or otherwise for the purpose of advertising his business.

**41. Power of Commission to exempt particular classes of goods from sections 39 and 40.**—(1) The Commission may, on a reference made to it by the <sup>1</sup>[Director General] or any other person interested, by order, direct that goods of any class specified in the order shall be exempt from the operation of sections 39 and 40 if the Commission is satisfied that in default of a system of maintained minimum re-sale prices applicable to those goods—

- (a) the quality of goods available for sale or the varieties of goods so available would be substantially reduced to the detriment of the public as consumers or users of those goods, or
- (b) the prices at which the goods are sold by retail would, in general and in the long run, be increased to the detriment of the public as such consumers or users, or
- (c) any necessary services actually provided in connection with or after the sale of goods by retail would cease to be so provided or would be substantially reduced to the detriment of the public as such consumers or users.

(2) On a reference under this section in respect of goods of any class which have been the subject of proceedings before the Commission under section 31, the Commission may treat as conclusive any evidence of fact made in those proceedings.

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1. Subs. by Act 30 of 1984, sec. 2, for “Registrar” (w.e.f. 1-8-1984).

## CHAPTER VII

## POWER TO OBTAIN INFORMATION AND APPOINT INSPECTORS

**42. Power of '[Director General]' to obtain information.**—(1) If the '[Director General]' has reasonable cause to believe that any person is a party to an agreement subject to registration under section 35, he may give notice to that person requiring him within such time, not less than thirty days, as may be specified in the notice, to notify to the '[Director General]' whether he is a party to any such agreement and, if so; to furnish to the '[Director General]' such particulars of the agreement as may be specified in the requisition.

(2) The '[Director General]' may give notice to any person by whom particulars are furnished under section 35 in respect of an agreement or to any other person being a party to the agreement requiring him to furnish to the '[Director General]' such further documents or information in his possession or control as the '[Director General]' may consider expedient for the purpose of, or in connection with, the registration of the agreement.

(3) Where a notice under this section is given to a trade association, the notice may be given to the secretary, manager or other similar officer of the association and for the purposes of this section any such association shall be treated as a party to an agreement to which members of the association, or persons represented on the association by those members, are parties as such.

(4) If the particulars called for under sub-section (1) or sub-section (2) are not furnished, the Commission may, on the application of the '[Director General]',—

- (a) order the person or, as the case may be, the association to furnish those particulars to the '[Director General]' within such time as may be specified in the order, or
- (b) authorise the '[Director General]' to treat the particulars contained in any document or information in his possession as the particulars relating to the agreement, or
- (c) in case the Commission is satisfied that the failure to furnish the particulars is wilful, make an order restraining wholly or partly the parties to the agreement from acting on such agreement and from making any other agreement to the like effect.

**43. Power to call for information.**—Notwithstanding anything contained in any other law for the time being in force, the Central Government may, by a general or special order, <sup>2</sup>[call upon the owner of any undertaking] to furnish to that Government periodically or as and when required any information concerning the activities carried on by the undertaking, the connection between it and any other undertaking, including such other information relating to its organisation, business, cost of production, conduct, trade practice or management, as may be prescribed to enable that Government to carry out the purpose of this Act.

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1. Subs. by Act 30 of 1984, sec. 2, for "Registrar" (w.e.f. 1-8-1984).

2. Subs. by Act 30 of 1984, sec. 34, for "call upon any undertaking" (w.e.f. 1-8-1984).

**44. Power to appoint Inspector.**—(1) The Central Government may, if it is of opinion that there are circumstances suggesting that an undertaking is indulging in any monopolistic <sup>1</sup>[or restrictive, or unfair, trade practice] or is, in any way, trying to acquire any control over any dominant or inter-connected undertaking, appoint one or more inspectors for making an investigation into the affairs of the undertaking.

(2) The provisions of section 240 and section 240A of the Companies Act, 1956 (1 of 1956), so far as may be, shall apply to an investigation made by an inspector appointed under this section as they apply to an investigation made by the inspector appointed under that Act.

### CHAPTER VIII OFFENCES AND PENALTIES

<sup>2</sup>[\*\*\*]

**46. Penalty for contravention of <sup>3</sup>[\*\*\*] section 27.**—If any person contravenes the provisions of <sup>3</sup>[\*\*\*] section 27, he shall be punishable <sup>4</sup>[with imprisonment for a term which may extend to five years, or] with fine which may extend to rupees one lakh, <sup>4</sup>[or with both,] and where the offence is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first, during which such contravention continues.

<sup>5</sup>[\*\*\*]

**48. Penalty for failure to register agreements.**—(1) If any person fails, without any reasonable excuse, to register an agreement which is subject to registration under this Act, he shall be punishable <sup>6</sup>[with imprisonment for a term which may extend to three years, or] with fine which may extend to five thousand rupees, <sup>6</sup>[or with both,] and where the offence is a continuing one, with a further fine which may extend to five hundred rupees for every day, after the first, during which such failure continues.

<sup>7</sup>[\*\*\*]

**<sup>8</sup>[48A. Penalty for contravention of order made under section 27B or for possession of property sold to any person under section 27B.**—Any person or body corporate who or which,—

- (a) being required by any order of the Central Government referred to in sub-section (1) of section 27B to effect disinvestment of any shares or sale of the whole or any part of any undertaking or undertakings by any method referred to in that sub-section, omits or fails to do so; or

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1. Subs. by Act 30 of 1984., sec. 35, for "or restrictive trade practice" (w.e.f. 1-8-1984).  
2. Section 45 omitted by Act 58 of 1991, sec. 17 (w.r.e.f. 27-9-1991).  
3. The words "section 22 or section 23 or section 24 or" omitted by Act 58 of 1991, sec. 18 (w.r.e.f. 27-9-1991).  
4. Ins. by Act 30 of 1984, sec. 37 (w.e.f. 1-8-1984).  
5. Section 47 omitted by Act 58 of 1991, sec. 19 (w.r.e.f. 27-9-1991).  
6. Ins. by Act 30 of 1984, sec. 39 (w.e.f. 1-8-1984).  
7. Sub-section (2) subs. by Act 30 of 1984, sec. 39 (w.e.f. 1-8-1984) and omitted by Act 58 of 1991, sec. 20 (w.r.e.f. 27-9-1991).  
8. Ins. by Act 30 of 1984, sec. 40 (w.e.f. 1-8-1984).

- (b) having in his possession, custody or control any property or assets or any part thereof which have been sold to any person in pursuance of an order of the Central Government referred to in sub-section (1) of section 27B (hereinafter in this section referred to as the "purchaser"), wrongfully withholds such property, assets or part thereof from the purchaser; or
- (c) wrongfully obtains possession of any property, assets or any part thereof or retains any property, assets or any part thereof, which have been sold in pursuance of an order of the Central Government referred to in sub-section (1) of section 27B; or
- (d) withholds or fails to furnish to the purchaser, any document in his possession, custody or control relating to the property, or any part or assets thereof, which have been sold in pursuance of an order of the Central Government referred to in sub-section (1) of section 27B; or
- (e) fails to deliver to the purchaser the property, or any part or assets thereof which have been sold in pursuance of an order of the Central Government referred to in sub-section (1) of section 27B, or any books of account, registers and other documents in his possession, custody or control relating to such property, or any part or assets thereof; or
- (f) wrongfully removes or destroys any property or assets which have been sold in pursuance of an order of the Central Government referred to in sub-section (1) of section 27B; or
- (g) prefers any claim, in relation to the property, or any part or assets thereof which have been sold in pursuance of an order of the Central Government referred to in sub-section (1) of section 27B, which he knows, or has reason to believe, to be false or grossly inaccurate,

shall be punishable with imprisonment for a term which may extend to two years and also with fine which may extend to ten thousand rupees.]

**[48B. Penalty for contravention of section 27B.—**(1) Every person who exercises any voting right in respect of any share in contravention of any order of the Central Government referred to in sub-section (1) of section 27B shall be punishable with imprisonment for a term which may extend to five years, and shall also be liable to fine.

(2) If any company gives effect to any voting or other right exercised in relation to any share held in contravention of an order of the Central Government referred to in sub-section (1) of section 27B, the company shall be punishable with fine which may extend to five thousand rupees, and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.]

**<sup>2</sup>[48C. Penalty for contravention of order made by Commission relating to unfair trade practices.—**If any person contravenes any order made by the Commission under section 36D, he shall be punishable with imprisonment for a term <sup>3</sup>[which shall not be

1. Ins. by Act 30 of 1984, sec. 40 (w.e.f. 1-8-1984) and subs. by Act 58 of 1991, sec. 21 (w.r.e.f. 27-9-1991).

2. Ins by Act 30 of 1984, sec. 40 (w.e.f. 1-8-1984).

3. Subs. by Act 58 of 1991, sec. 22, for certain words (w.r.e.f. 27-9-1991).

less than six months but which may extend to three years and with fine which may extend to ten lakh rupees:

Provided that the court may, for reasons to be recorded in writing, impose a sentence of imprisonment for a term lesser than the minimum term specified in this section.]

**49. Penalty for offences in relation to furnishing of information.**—(1) If any person fails, without any reasonable excuse, [to produce any books or papers, or to furnish any information, required by the Director General under section 11, or to furnish any information] required under section 43 or to comply with any notice duly given to him under section 42, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to one hundred rupees for every day, after the first, during which such failure continues.

(2) If any person, who furnishes or is required to furnish any particulars, documents or any information—

- (a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular: or
- (b) omits to state any material fact knowing it to be material; or
- (c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

**50. Penalty for offences in relation to orders under the Act.**—<sup>2</sup>(1) A person, who is deemed under section 13 to be guilty of an offence under this Act, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to fifty thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to five thousand rupees for every day, after the first during which such contravention continues.

(2) If any person contravenes, without any reasonable excuse, any order made by the Central Government under section 31 or any order made by the Commission under section 37, he shall be punishable with imprisonment for a term which shall not be less than,—

- (a) in the case of the first offence, six months but not more than three years, and
- (b) in the case of any second or subsequent offence in relation to the goods or services in respect of which the first offence was committed, two years but not more than seven years,

and, in either case, where the contravention is a continuing one, also with fine which may extend to five thousand rupees for every day, after the first, during which such contravention continues:

1. Subs. by Act 30 of 1984, sec. 41, for "to furnish any information" (w.e.f. 1-8-1984).

2. Subs. by Act 30 of 1984, sec. 42 (w.e.f. 1-8-1984) and again subs. by Act 58 of 1991, sec. 23, for sub-sections (1) and (2) (w.r.e.f. 27-9-1991).

Provided that the court may, for reasons to be recorded in writing, impose a sentence of imprisonment for a term lesser than the minimum term specified in this sub-section.]

(3) If any person carries on any trade practice which is prohibited by this Act, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, and where the offence is a continuing one, with a further fine which may extend to five hundred rupees for every day, after the first, during which such contravention continues.]

**51. Penalty for offences in relation to resale price maintenance.**—If any person contravenes the provisions of section 39 or section 40, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

**52. Penalty for wrongful disclosure of information.**—If any person discloses an information in contravention of section 60, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

**[52A. Penalty for contravention of any condition or restriction, etc.**—If any person contravenes, without any reasonable excuse, 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, he shall be punishable with fine which may extend to one thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to one hundred rupees for every day, after the first, during which such contravention continues.

**52B. Penalty for making false statement in application, returns, etc.**—If in any application, return, report, certificate, balance sheet, prospectus, statement or other document made, submitted, furnished or produced for the purpose of any provision of this Act, any person makes a statement,—

- (a) which is false in any material particular, knowing it to be false, or
- (b) which omits to state any material fact, knowing it to be material,

he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.]

**53. Offences by companies.**—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been

committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section—

- (a) “company” means a body corporate and includes a firm or other association of individuals; and
- (b) “director” in relation to a firm, means a partner in the firm.

#### CHAPTER IX MISCELLANEOUS

**54. Power of Central Government to impose conditions, limitations and restrictions on approvals, etc., given under the Act.**—(1) The Central Government may, while—

- (a) according any approval, sanction, permission, confirmation or recognition, or
- (b) giving any direction or issuing any order, or
- (c) granting any exemption,

under this Act in relation to any matter, impose such conditions, limitations or restrictions as it may think fit.

<sup>1</sup>[\*\*\*]

(3) If any condition, limitation or restriction imposed by the Central Government under sub-section (1) <sup>2</sup>[\*\*\*], is contravened, the Central Government may rescind or withdraw the approval, sanction, permission, confirmation, recognition, direction, order or exemption made or granted by it.

**55. Appeals.**—Any person aggrieved by <sup>3</sup>[any decision on any question referred to in clause (a), clause (b) or clause (c) of section 2A, or any order made by the Central Government under Chapter III] or Chapter IV, or, as the case may be, or the Commission under <sup>4</sup>[section 12A or] <sup>5</sup>[section 13 or section 36D or section 37], may, within sixty days from the date of the order, prefer an appeal to the Supreme Court on one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908).

#### COMMENTS

(i) Anybody aggrieved could either approach the MRTPC itself to vary and modify the order or prefer an appeal before the Supreme Court under section 55 of the Act; *Sushil Kumar Dalmia v. MRTPC*. (1994) 79 Comp Cas 568 (Cal).

1. Sub-section (2) omitted by Act 58 of 1991, sec. 24 (w.r.e.f. 27-9-1991).
2. The words “or any term of a scheme of finance, as modified under sub-section (2).” omitted by Act 58 of 1991, sec. 24 (w.r.e.f. 27-9-1991).
3. Subs. by Act 30 of 1984, sec. 44, for “any order made by the Central Government under Chapter III” (w.e.f. 1-8-1984).
4. Ins. by Act 58 of 1991, sec. 25 (w.r.e.f. 27-9-1991).
5. Subs. by Act 30 of 1984, sec. 44 for “section 13 or section 37” (w.r.e.f. 1-8-1984).

(ii) The writ courts do not sit in appeal over the decision of statutory authorities; *Sushil Kumar Dalmia v. MRTPC*, (1994) 79 Comp Cas 568 (Cal).

**56. Jurisdiction of courts to try offences.**—No court inferior to that of a <sup>1</sup>[Court of Session] shall try any offence under this Act.

**57. Cognizance of offences.**—No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (45 of 1860).

<sup>2</sup>[\*\*\*]

**59. Protection regarding statements made to the Commission.**—No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statements:

Provided that the statement—

- (a) is made in respect to a question which he is required by the Commission to answer; and
- (b) is relevant to the subject-matter of the inquiry.

**60. Restriction on disclosure of information.**—(1) No information relating to any undertaking, 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 owner for the time being of the undertaking, be disclosed otherwise than in compliance with or for the purposes of this Act.

(2) Nothing contained in sub-section (1) shall apply to a disclosure of an information made for the purpose of any legal proceeding pursuant to this Act or of any criminal proceeding which may be taken, whether pursuant to this Act or otherwise, or for the purposes of any report relating to any such proceeding.

<sup>3</sup>[(3) The provisions of sub-section (2) relating to the disclosure of information shall not extend to the disclosure of the source of such information, except where the disclosure of such source is required by any court, tribunal or other authority.]

**61. Power of the Central Government to require the Commission to submit a report.**—The Central Government may at any time require the Commission to submit to it a report on the general effect on the public interest of such trade practices as, in the opinion of that Government, either constitute or contribute to monopolistic or <sup>4</sup>[restrictive or unfair trade practices] or concentration of economic power to the common detriment.

**62. Reports of the Commission to be placed before Parliament.**—The Central Government shall cause to be laid before both Houses of Parliament an annual report,

1. Subs. by Act 30 of 1984, sec. 45, for "Presidency Magistrate or a Magistrate of the first class" (w.e.f. 1-8-1984).

2. Section 58 omitted by Act 30 of 1984, sec. 46 (w.e.f. 1-8-1984).

3. Ins. by Act 30 of 1984, sec. 47 (w.e.f. 1-8-1984).

4. Subs. by Act 30 of 1984, sec. 48, for "restrictive trade practices" (w.e.f. 1-8-1984).



and every report which may be submitted to it by the Commission from time to time, pertaining to the execution of the provisions of this Act.

**63. Members, etc., to be public servants.**—Every member of the Commission, the <sup>1</sup>[Director General], and every member of the staff of the Commission, and of the <sup>1</sup>[Director General], 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).

**64. Protection of action taken in good faith.**—(1) No suit, prosecution or other legal proceedings shall lie against the Commission or any member, officer or servants of the Commission, the <sup>1</sup>[Director General] or any member of the staff of the <sup>2</sup>[Director General] in respect of anything which is in good faith done or intended to be done under this Act.

(2) No suit shall be maintainable in any civil court against the Central Government or any officer or employee of that Government for any damage caused by anything done under, or in pursuance of any provisions of, this Act.

**65. Inspection of, and extracts from, the register.**—(1) the register, other than the special section, shall be open to public inspection during such hours and subject to the payment of such fees, not exceeding rupees twenty-five, as may be prescribed.

(2) Any person may upon the payment of such fee, not exceeding rupee one, for every one hundred words, as may be prescribed, require the <sup>4</sup>[Director General] to supply to him a copy of, or extract from, any particulars entered or filed in the register, other than the special section, certified by the <sup>4</sup>[Director General] to be a true copy or extract.

(3) A copy of, or extract from, any document entered or filed in the register certified under the hand of the <sup>4</sup>[Director General] or any officer authorised to act in this behalf shall, in all legal proceedings, be admissible in evidence as of equal validity with the original.

**66. Power to make regulations.**—(1) The Commission <sup>5</sup>[may, <sup>6</sup>[by notification], make regulations] for the efficient performance of its functions under this Act.

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

- (a) the conditions of service, as approved by the Central Government, or persons appointed by the Commission;
- (b) the issue of the processes to Government and to other persons and the manner in which they may be served;
- (c) the manner in which the special section of the register shall be maintained and the particulars to be entered or filed therein;

<sup>7</sup>[\*\*\*]

1. Subs. by Act 30 of 1984, sec. 2, for "Director and the Registrar" (w.e.f. 1-8-1984).
2. Subs. by Act 30 of 1984, sec. 2, for "Director, the Registrar" (w.e.f. 1-8-1984).
3. Subs. by Act 30 of 1984, sec. 2, for "Director or the Registrar" (w.e.f. 1-8-1984).
4. Subs. by Act 30 of 1984, sec. 2, for "Registrar" (w.e.f. 1-8-1984).
5. Subs. by Act 20 of 1983, sec. 2 and Sch., for "may make regulations" (w.e.f. 15-3-1984).
6. Subs. by Act 30 of 1984, sec. 2, for "by notification in the Official Gazette" (w.e.f. 1-8-1984).
7. Clause (d) omitted by Act 30 of 1984, sec. 49 (w.e.f. 1-8-1984).

- (e) the payment of costs of any proceedings before the Commission by the parties concerned and the general procedure and conduct of the business of the Commission;
- (f) any other matter for which regulations are required to be, or may be, made under this Act.

<sup>1</sup>[(3) The Central Government shall cause every regulation made under this section to be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.]

**67. Power to make rules.**—(1) The Central Government may, <sup>2</sup>[by notification], make rules to carry out the purposes of this Act.

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

- (a) the form and manner in which notices may be given or applications may be made to it under this Act and the fees payable therefor;

<sup>3</sup>[\*\*\*]

- <sup>4</sup>[(ab) the form and the manner in which an application for recognition shall be made under clause (n) of section 2;]

<sup>3</sup>[\*\*\*]

- (b) the particulars to be furnished under this Act and the form and manner in which and the intervals within which they may be furnished;

<sup>5</sup>[\*\*\*]

- (c) the conditions of service of members of the Commission and the <sup>6</sup>[Director General];

<sup>7</sup>[(ca) the duties and functions of the Director General;]

- (d) the places and the manner in which the register shall be maintained <sup>8</sup>[\*\*\*] and the particulars to be entered therein;

1. Ins. by Act 20 of 1983, sec. 2 and Sch. (w.e.f. 15-3-1984).

2. Subs. by Act 30 of 1984, sec. 2, for "by notification in the Official Gazette" (w.e.f. 1-8-1984).

3. Clause (aa) ins. by Act 30 of 1984, sec. 50 (w.e.f. 1-8-1984), relettered as clause (ac) by Act 74 of 1986, sec. 7 (w.e.f. 1-5-1987) and clause (ac) omitted by Act 58 of 1991, sec. 26 (w.r.e.f. 27-7-1991).

4. Ins. by Act 74 of 1986, sec. 7 (w.e.f. 1-6-1987).

5. Clause (ba) ins. by Act 30 of 1984, sec. 50 (w.e.f. 1-8-1984) and omitted by Act 58 of 1991, sec. 26 (w.r.e.f. 27-7-1991).

6. Subs. by Act 30 of 1984, sec. 2, for "Registrar" (w.e.f. 1-8-1984).

7. Ins. by Act 30 of 1984, sec. 50 (w.e.f. 1-8-1984).

8. The words "by the Registrar" omitted by Act 30 of 1984, sec. 50.

<sup>1</sup>[(da) the manner in which every authenticated copy of any order made by the Commission in respect of any restrictive or unfair, trade practice shall be recorded;]

(e) the fees payable for inspection of the register and for obtaining certified copies of particulars from the register;

(f) the travelling and other expenses payable to persons summoned by the Commission to appear before it;

<sup>2</sup>[\*\*\*]

(h) any other matter which is required to be, or may be, prescribed.

<sup>3</sup>[(2A) Any rule made under clause (c) of sub-section (2) in relation to the conditions of service of the members of the Commission may be made retrospectively from a date not earlier than the 1st day of January, 1986, so, however, that such rule shall not prejudicially affect the interests of any such member.].

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or <sup>4</sup>[in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid], both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

<sup>5</sup>[\*\*\*]

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1. Ins. by Act 30 of 1984, sec. 50 (w.e.f. 1-8-1984).

2. Clause (g) omitted by Act 58 of 1991, sec. 26 (w.r.e.f. 27-9-1991).

3. Ins. by Act 62 of 1988, sec. 3 (w.e.f. 1-12-1988).

4. Subs. by Act 20 of 1983, sec. 2 and Sch., for certain words (w.e.f. 15-3-1984).

5. Schedule ins. by Act 30 of 1984, sec. 51 (w.e.f. 1-8-1984) and omitted by Act 58 of 1991, sec. 27 (w.r.e.f. 27-9-1991).

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