

PARLIAMENT OF INDIA
RAJYA SABHA

**DEPARTMENT-RELATED PARLIAMENTARY STANDING
COMMITTEE ON HOME AFFAIRS**

NINETY-THIRD REPORT

ON

THE COMPETITION BILL, 2001

(PRESENTED TO HON'BLE CHAIRMAN, RAJYA SABHA ON 23RD AUGUST, 2002)
(FORWARDED TO HON'BLE SPEAKER ON 23RD AUGUST, 2002)

(PRESENTED TO RAJYA SABHA ON 21ST NOVEMBER, 2002)
(LAID ON THE TABLE OF LOK SABHA ON 21ST NOVEMBER, 2002)

**RAJYA SABHA SECRETARIAT
NEW DELHI
AUGUST 2002/SRAVANA, 1924(SAKA)**

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COMPOSITION OF THE COMMITTEE (2001)

-
1. Shri Pranab Mukherjee- Chairman

RAJYA SABHA

2. Shri Hansraj Bhardwaj
3. Shri Hiphei
4. Shri Surendra Kumar Singh
5. Shri Sangh Priya Gautam
6. Dr. L.M. Singhvi
7. Shri S. Ramachandran Pillai
8. Shri K.M. Saifullah
9. Shri C.M. Ibrahim
- φ 10. Shri Raj Mohinder Singh
11. Shri C.P. Thirunavukkarasu
12. Shri Drupad Borgohain
13. Shri Kuldip Nayyar
14. Dr.(Smt.) Joyasree Goswami Mahanta
15. Shri Jayanta Bhattacharya

LOK SABHA

16. Shrimati Jayashree Banerjee
17. Shri S.K. Bwiswmuthiary
- ♠ 18. Shrimati Nisha Chaudhary
19. Shri Samar Chaudhary
20. Shri M.O.H. Farook
- £ 21. Shri Vijay Goel
22. Shri Rajen Gohain
23. Shri Suresh Ramrao Jadhav
24. Shri Vinay Katiyar
25. Shri Arun Kumar
26. Shri Ram Nagina Mishra
27. Shri P.H. Pandian
28. Shri Dayabhai Vallabhai Patel
29. Shri Shrinivas Patil
- * 30. Shri Jitendra Prasada
31. Shri Subodh Ray
32. Shri N. Janardhana Reddy
33. Dr. Jayanta Rongpi
34. Shri Anadi Charan Sahu
35. Shri Iqbal Ahmed Saradgi
36. Shri Manabendra Shah

φ Ceased to be Member *w.e.f.* 1 March, 2001.

♠ Expired on 30 January,2001.

£ Ceased to be Member *w.e.f.* 1 September 2001 on being appointed as Minister of State in the Union Council of Ministers.

* Expired on 16 January, 2001.

37. Shri Raghuraj Singh Shakya
- #38. Shri Vishnu Datta Sharma
39. Dr. Raghuvansh Prasad Singh
40. Shri Lal Bihari Tiwari
41. Shri Prakash Mani Tripathi
- φ 42. Dr. S. Venugopal
43. Shri Beni Prasad Verma
44. Shri Raj Kumar Wangcha
- ◆45. Shri Harin Pathak
- ♥46. Shri E. Ponnuswamy

Expired on 27 November, 2001.

φ Ceased to be Member *w.e.f.* 19 March, 2001 on being nominated to Committee on Human Resource Development.

◆ Nominated *w.e.f.* 20 February, 2001.

♥ Nominated *w.e.f.* 8 March, 2001.

COMPOSITION OF THE COMMITTEE (2002)

1. Shri Pranab Mukherjee- *Chairman*

RAJYA SABHA

- * 2. Smt. Basanti Sarma
3. Shri Kapil Sibal
4. Shri Hansraj Bhardwaj
5. Shri Sangh Priya Gautam
6. Shri Kalraj Mishra
7. Dr. L.M. Singhvi
8. Shri S. Ramachandran Pillai
- *9. Shri K.M. Saifullah
10. Shri C.P. Thirunavukkarasu
11. Shri Janeshwar Mishra
12. Shri Drupad Borgohain
- * 13. Shri C.M. Ibrahim
14. Shri Swaraj Kaushal
15. Shri Ram Jethmalani
- ♣16. Shri Lalu Prasad
- ♣17. Shri Motilal Vora
- 9 18. Smt. Ambika Soni

LOK SABHA

19. Shri Rajen Gohain
20. Shri Lal Bihari Tiwari
21. Shri Jaisingrao Gaikwad Patil
22. Shri Anadi Sahu
23. Shri Prakash Mani Tripathi
24. Shri Ram Nagina Mishra

25. Shri Vinay Katiyar
26. Shri Manabendra Shah
27. Sardar Buta Singh
28. Shri Raj Kumar Wangcha
29. Shri Iqbal Ahmed Saradgi
30. Shri C.K. Jaffer Sharief
31. Shri K. Karunakaran
32. Begum Noor Bano
33. Shri M.O.H. Farooq
34. Shri Swadesh Chakraborty
35. Shri Subodh Ray
36. Shri B.V.N. Reddy
37. Shri Ramji Lal Suman
38. Shri Rammurti Singh Verma
- Ø 39. Shri Anandrao Vithoba Adsul

* Ceased to be member w.e.f. 9 April 2002 on expiry of term as Member of Rajya Sabha.

♣ Nominated w.e.f. 22 April 2002.

9 Nominated w.e.f. 20 July 2002.

Ø Ceased to be member w.e.f. 18 July 2002.

40. Shri Brahma Nand Mandal
41. Shri Adhi Sankar
42. Shri P.H. Pandian
43. Dr. Bikram Sarkar
44. Shri Holkhomang Haokip
45. Sardar Simranjit Singh Mann
46. Dr. Jayanta Rongpi
- α 47. Shri Kishan Singh Sangwan
- β 48. Shri E. Ponnuswamy
- ¥ 49. Shri Suresh Chandel

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Tapan Chatterjee, Director
Shri A.K. Singh, Deputy Secretary
Shri N.S. Walia, Under Secretary
Shri Narendra Kumar, Research Officer
Shri Ashok Kumar Sahoo, Committee Officer

INTRODUCTION

I, the Chairman of the Department-related Parliamentary Standing Committee on Home Affairs having been authorized by the Committee to present the Report on its behalf, do hereby present this Ninety-third Report on the Competition Bill, 2001[•]

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha in consultation with the Speaker, Lok Sabha

referred[♦] the Competition Bill, 2001, as introduced in the Lok Sabha on 6 August, 2001 and pending therein, to the Committee on 21 August 2001 for examination and report.

3.0. The Committee considered the Bill in twelve sittings held on 27 August, 14 September, 5 and 18 October, 5 and 6 November, 2001 and 24 January, 5 February, 6 June, 17 July, 1 and 12 August 2002.

3.1 The Committee in its sitting held on 27 August 2001 decided to issue a Press Communiqué inviting suggestions/comments on the Bill from individuals/institutions/organisations interested in the subject matter of the Bill within 15 days of its publication. The Press Communiqué appeared in the leading newspapers on 10 September 2001.

3.2 The Committee heard oral evidence of the Secretary, Department of Company Affairs in its sitting held on 14 September 2001.

3.3 In its sitting held on 5 October 2001, the Committee heard the views of Secretary, Department of Consumer Affairs on the Bill.

3.4 The Committee undertook a study tour on 5 and 6 November 2001, to Mumbai to seek the views of Mumbai based major Chambers of Commerce and Industry and the Captains of Industry on the Bill.

3.5 In its sitting held on 24 January 2002, the Committee heard a detailed presentation by Dr. S. Chakravarthy, Consultant in Department of Company Affairs.

3.6 The Chairman, along with some members of the Committee had informal interaction with Mr. Evan R. Cox, Partner Covington & Burling, a leading Washington based Law Firm, on the Bill on 15 February 2002.

3.7 The Committee held further deliberations in its sittings held on 5 February and 6 June 2002.

3.8 Consequent upon the transfer^{***} of Department of Company Affairs from the Ministry of Law, Justice and Company Affairs to the Ministry of Finance, the Union Finance Minister wrote a letter dated 9 July 2002 to the Chairman of the Committee, requesting *inter alia* for the expeditious disposal of the Bill and presentation of Report thereon by this Committee in view of the significant impact of the legislation on the efficiency and productivity of the country's economy. The request was considered by the Committee in its sitting held on 17 July 2002 and the same was acceded to. Besides on a request received from the Secretary, Department of Company Affairs, the Hon'ble Chairman, Rajya Sabha and Hon'ble Speaker, Lok Sabha have in consultation with each other have also agreed to defer the amendment to the Third Schedule to Rules of Procedure and Conduct of Business in the Council of States so as to enable the Committee to dispose the Bill.

3.9 In its sitting held on 1 August 2002, the Committee, accordingly, took up clause-by-clause consideration of the Bill.

3.10 In its sitting held on 12 August 2002, the Committee considered the draft Report on the Bill and adopted the same.

3.11 In the sitting held on 12 August 2002, the Committee also decided that the evidence tendered before the Committee may be laid on the Table of both the Houses of Parliament.

4.0 The Committee invited suggestions/views of the major Chambers of Commerce and Industry, such as Associated Chamber of Commerce and Industry of India (ASSOCHAM), PHD Chamber of Commerce and Industry (PHDCCI), Federation of Indian Chambers of Commerce and Industry (FICCI), Bombay Chamber of Commerce & Industry (BCCI) and Indian Merchant Chamber (IMC); Non-Governmental Organisations like, Consumer Unity and Trust Society (CUTS), Consumer Coordination Council (CCC), Voluntary Organisation in Interest of Consumer Education (VOICE), Professional bodies like; Institute of Chartered Accountants of India (ICAI); Institute of Company Secretaries of India (ICSI) and Institute of Cost and Works Accountants of India (ICWAI); Financial Institutions such as Industrial Development Bank of India (IDBI) and Industrial Credit and Investment Corporation of India (ICICI); Securities and Exchange Board of India (SEBI), National Stock Exchange (NSE) and Captains of Industry.

4.1. The Committee heard the views of the following seventeen organisations/associations as per the schedule indicated below:

| Organisation/Association | Date |
|---------------------------------|-----------------|
| - | |
| FICCI | 5 October 2001 |
| PHD CCI | 5 October 2001 |
| ASSOCHAM | 5 October 2001 |
| ICAI | 18 October 2001 |
| ICWAI | 18 October 2001 |
| ICSI | 18 October 2001 |
| CCC | 18 October 2001 |
| CUTS | 18 October 2001 |
| VOICE | 18 October 2001 |
| Bajaj Auto Ltd. | 5 November 2001 |
| Mahindra & Mahindra Ltd. | 5 November 2001 |
| ICICI | 5 November 2001 |
| IDBI | 5 November 2001 |
| BCCI | 6 November 2001 |
| IMC | 6 November 2001 |
| SEBI | 6 November 2001 |
| NSE | 6 November 2001 |

(vi)

5.0 In the course of its deliberations, the Committee has made use of the background note on the Bill received from the Department of Company Affairs (Ministry of Law, Justice and Company Affairs), replies of the Department of Company Affairs to the queries raised by the

Members in the sittings of the Committee and comments of Department of Company Affairs on memoranda received from individuals/organisations. The list of individuals/organisations is placed at **Annexure II**.

5.1 The Committee also relied on the following documents/papers while preparing the report:

- (i) The Monopolies and Restrictive Trade Practices Act, 1969.
- (ii) The Consumer Protection Act, 1986.
- (iii) Report of the High Level Committee on Competition Policy and Law (2002) (Volume I).
- (iv) New Indian Competition Law on the Anvil by Dr S. Chakravarthy, Consultant in DCA.
- (v) Extract from Organisation for Economic Cooperation & Development (OECD) Journal of Competition Law and Policy on Leniency Programme to Fight Hardcore Cartels.

6. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

NEW DELHI;
12 August, 2002

PRANAB MUKHERJEE
Chairman
Committee on Home
Affairs

REPORT

*The Competition Bill, 2001 (See **Annexure-I**) seeks to ensure fair competition in India by prohibiting trade practices which cause appreciable adverse effect on competition in markets within India.*

*1.1.0 For that purpose, the Bill seeks to put in place a body corporate called **Competition Commission of India** (hereinafter referred to as **CCI**) to undertake competition advocacy for creating awareness on competition issues, in addition to its primary job of ensuring fair competition in the country by enforcing competition law.*

*1.1.1 The Bill also creates a fund known as **Competition Fund** (hereinafter referred to as **CF**) for meeting the costs realised by CCI.*

*1.1.2 The Bill, accordingly, proposes to repeal **Monopolies and Restrictive Trade Practices Act, 1969** (hereinafter referred to as **MRTP Act**) as well as dissolve the **Monopolies and Restrictive Trade Practices Commission (MRTPC)**.*

2.0 The intent of enacting a new law on competition policy was announced by the Union Finance Minister in his Budget Speech¹ (1999-2000) on 27 February, 1999, following which a High Level Committee² consisting of experts under the Chairmanship of Shri S.V.S. Raghavan was set up to examine the provisions of MRTP Act, 1969, and propose modern competition law in view of liberalisation of Indian economy.

2.1 Before the High Level Committee, the Union Ministry of Commerce had set up an Expert Group³ headed by Dr. S. Chakravarthy, former Member, MRTPC, to study the

interaction between trade and competition, which had also suggested enactment of competition law on the basis of its recommendations.

2.2 A concept Bill was drafted by the Department of Company Affairs and was put on the web-site of Department of Company Affairs (www.nic.in/dca) on 13 November 2000 to elicit public opinion thereon. After inter-ministerial consultations and consultations with Planning Commission and major chambers (ASSOCHAM, CII, FICCI, PHDCII) and a few regulators, the Bill was introduced in the Lok Sabha on 6 August 2001

3.0 'Competition' is an evasive term and is understood differently in different context. Further, the Bill does not contain definition of the term 'competition'. However, in the corporate world, the term is generally understood as a process whereby the economic enterprises compete with each other to secure customers for their product. In the process the enterprises compete to outsmart their competitors, sometimes to eliminate the rivals.

3.1 Competition is basically an economic rivalry amongst economic enterprises to control greater market power. The competition is a situation where the market remains open to potential new enterprises and that enterprises operate under the pressure of competition. Competition in the sense of economic rivalry is unstable and has a natural tendency to give way to a monopoly. Thus competition kills competition.

3.2 Competition amongst enterprises is divided into following two categories: -

- Price competition⁴
- Non-price competition⁵

3.3 The economic enterprises adopt two ways to outcompete other competitors i.e. (i) fair & (ii) unfair. The competition is fair where two enterprises adopt fair means such as production of fair goods/services, investment in research and development, etc. The competition is unfair where an enterprise adopt Restrictive Trade Practices (RTPs)⁶ such as predatory pricing, exclusive dealing, resale-price maintenance and forming a cartel because RTPs have an appreciable adverse effect on competition.

4.0 The objective of economic policy is to sustain competition culture in the country for economic efficiency and maximization of public/consumer interest. Sustenance of competition culture could be ensured by free and fair competition amongst economic enterprises. The bill has provision for ensuring fair competition by regulating/monitoring of behaviour of economic enterprises.

Salient features of the Bill

4.1 Broadly the Bill has following main features:

- Prohibition of anti-competitive agreements;
- Prohibition of abuse of dominance;
- Regulation of Combinations (acquisitions, mergers and amalgamations of certain size);
- Establishment and composition of Competition Commission of India (CCI);
- Duties, Functions and Powers of CCI; and
- Formation of Competition Fund.

4.2 The Bill has a total of sixty-four clauses divided into seven chapters. Chapter-II of the Bill (clauses 3-6) exclusively deals with the prohibition/regulation of RTPs.

4.3.0 The Bill prohibits the following broad RTPs which cause/likely to cause an appreciable adverse effect on competition within India:-

- Anti-competitive agreements (*clause 3*);
- Abuse of Dominance (*clause 4*); and
- Combinations (*clause 5*).

Anti-competitive Agreement

4.3.1 Anti-competitive agreements amongst enterprises are of two types

- Horizontal⁷; and
- Vertical⁸.

4.3.2 The Bill enumerates the following kinds of horizontal agreements which are presumed to be anti-competitive:-

- Agreements regarding prices: agreement that directly/indirectly fix purchase/sale price (*Sub-clause (3)(a) of clause 3*);
- Agreements regarding quantities: agreement aimed at limiting/controlling production, supply, markets, technical development and investment (*Sub-clause (3)(b) of clause 3*);
- Agreements regarding market sharing: agreements for sharing of markets by geographical area, types of goods/services and number of customers (*Sub-clause (3)(c) of clause 3*); and
- Agreements regarding bids (collusive tendering and bid rigging): tenders submitted as a result of joint activity or agreement (*Sub-clause (3)(d) of clause 3*).

4.3.3 Such agreements may lead to cartel⁹ which is pernicious. Further the aforesaid agreements are considered to be illegal *per se* and do not require any test of “rule of reason”¹⁰. Barring these agreements all other would be subject to the ‘rule of reason’ test. The MRTP Act enlists 14 types of agreements *per-se* illegal under section 33 as compared to four in the Bill.

4.3.4 RTPs in the form of vertical agreements can also have appreciable anti-competitive effect on competition. Following are the varieties of vertical agreements enumerated in sub-clause (4) of clause 3:-

- Tie in arrangement¹¹
- Exclusive supply agreement¹²;
- Exclusive distribution agreement¹³;
- Refusal to deal¹⁴; and
- Resale price maintenance¹⁵

4.3.5 These agreements generally are not treated as anti- competitive *per se* as in the case of horizontal agreements. These agreements have to be judged under the rule of reason test deciding the matter on the basis of law, facts, etc. on the basis of any of six factors enlisted under clause 19(3) of the Bill. Such agreements often have to perform pro-competitive-function and considered anti-competitive when one or more firm which are party to agreement have market power.

4.3.6 The High Level Committee had recommended that the provisions relating to anti-competitive agreements would not apply to Intellectual Property.

Abuse of Dominance

4.3.7 The Abuse of Dominance has been detailed in clause 4 of the Bill. It is interesting to note that the definition clause does not have the word ‘dominance’¹⁶. But explanation to clause 4

has defined the ‘dominant position’¹⁷ in the subjective term. It has been done in accordance with the recommendations of High Level Committee. The Committee was of the view¹⁸ that

specifying a threshold or arithmetical figure (i.e. market share) for defining dominance may either allow the offenders to escape or result in unnecessary litigation.

4.3.8 Dominance can be determined in the context of relevant market¹⁹ and on the basis of any of the thirteen factors enlisted under clause 19 (4) of the Bill. A manual on ‘Abuse of Dominance’ will be prepared which would act as guidelines to the CCI.

4.3.9 The Bill does not consider dominance as RTP but its abuse. But there lies a thin difference between the dominance and its abuse because dominance has the tendency to be abused. Abuse of dominance occurs when an enterprise:

- Directly or indirectly imposes unfair purchase or selling prices including predatory prices;
- Limits production, markets or technical development to the prejudice of the consumers;
- Indulges in action resulting in denial of market access;
- Makes contracts with obligations which have no connection with the subject of such contracts; and
- Uses dominance in one market to move into or protect other markets.

Combinations

4.3.10 The Bill narrates two type of combinations:

- Acquisitions
- Mergers/Amalgamations

Further, the acquisition can be effected by enterprise or individual.

4.3.11 Mergers/Amalgamations²⁰ are of three types

- Horizontal

- Vertical
- Conglomerate

Horizontal and vertical mergers are based on the principles of horizontal and vertical agreements. But conglomerate merger between enterprises is on/in diversified and unrelated business/market.

4.3.11 The Bill has provisions of threshold requirement in terms of assets²¹/turnover rather than on market share of enterprises.

4.3.12 The proposed law is not against every acquisition, merger or amalgamation, but it refers only to those acquisitions, mergers and amalgamations, which are of a certain prescribed size i.e, size in terms of (a) assets or (b) turnover. Acquisition, merger or amalgamation would become ‘combination’ when it crosses a certain threshold limit which is presented in the accompanying table.

TABLE-I

| Nature of Combination | Group Status | Criterion | Value | |
|--------------------------------|---------------------|------------------|-----------------|---------------------|
| (a) Acquisition by enterprises | No Group | Assets | In India | Rs.1,000 cr |
| | | | World over | US\$ 500 million |
| (b) Acquisition by individuals | Group | Turnover | In India | Rs.3,000 cr. |
| | | | | World over |
| (c) Mergers/ amalgamation | Group | Assets | In India | Rs.4,000 cr. |
| | | | | World over |
| | | Turnover | In India | Rs.12,000 cr. |
| | | | World over | \$6 billion |

The threshold limit of asset would be revised every two years on the basis of Wholesale Price Index (WPI).

4.3.13 The proposed law narrates the requirement of prior notification²² to the CCI by the enterprises crossing the laid down threshold limit for the combination although it is not mandatory. The Bill has also prescribed time frame of ninety working days for approval of such combinations by CCI in the case of prior notification. If the Commission does not take any action thereon it is deemed to be approved by the CCI.

4.3.14 The CCI on the basis of any of the thirteen factors enlisted under clause 20(4) will determine whether any combination has appreciable adverse effect on competition, through its Merger Benches.

4.3.15 The Bill also lays down a time frame for the CCI to investigate into combinations having adverse effect on competition *suo moto* or on any complaint. The time frame of ninety working days is counted from the date of publication of such combination under the direction of CCI by the party.

Competition Commission of India (CCI)

4.4.0 The Bill provides for setting up of a competition law authority christened as Competition Commission of India (CCI) for the administration and enforcement of competition law in India.

4.4.1 Out of a total of sixty four clauses, fifty-six clauses (clauses 7 to 52) deal with the matters relating to composition, duties, powers and functions of the CCI.

4.4.2 The CCI will have perpetual succession. It would comprise of a whole time Chairperson and not less than two and not more than ten whole time members²³. The qualifications²⁴ for both Chairperson and Members are same [clause 8 (2)] whereas their age, salary and status are different [clauses 10(1) & 14] in the Bill. The age of Chairperson is seventy years and the salary of that of a Judge of the Supreme Court whereas the age of the Members of CCI is sixty-five years and salary of that of a Judge of a High Court.

4.4.3 The Chairman & Members of the CCI would be selected through a collegium [clause 9 (1)] consisting of -

- (a) the Chief Justice of India or his nominee;
- (b) the Union Minister in-charge of the Ministry of Finance;
- (c) the Union Minister in-charge of the Ministry or Department dealing with this Act;
- (d) the Governor of the Reserve Bank of India; and
- (e) The Cabinet Secretary.

4.4.4 As enumerated in chapter IV (clauses 18-40) of the Bill, the CCI will have the following powers:

- to issue “Cease and Desist” Orders.
- to grant such interim relief as would be necessary in each case.
- to award compensation
- to impose fines on the guilty
- to order division of dominant undertaking
- to order de-merger.
- to order costs for frivolous complaints

In addition to the adjudicatory function, the CCI will have the roles of advocacy, investigation, prosecution and merger control.

4.4.5 Unlike the MRTPC, which is a unitary Tribunal, the CCI would have Benches for distribution of its powers amongst those (clause 23). The Chairperson of the CCI is empowered to constitute Benches (Additional/Merger) consisting of two members of CCI (one of them being judicial member). Principal Bench & each Additional Bench will deal with the competition matters whereas the Merger Benches will exclusively handle merger/amalgamation cases discussed under clauses 5 and 6 of the Bill. The Principal Bench will be presided over by the Chairperson of the CCI. The Additional Benches will have independent character vis-à-vis Principal Bench. Any person aggrieved by the decision of the Principal Bench as well as Additional Benches can appeal to the Supreme Court.

4.4.6 The CCI would be assisted by a Director-General (DG) and host of Additional, Joint, Deputy and Assistant Directors-General in conducting inquiry into any contravention of provisions of the Act, who would be appointed by the Union Government.

4.4.7 The DG would not have *suo moto* power of investigation as in the case of DGIR of MRTPC. The DG in the present scheme would conduct investigation into the cases referred to it by the CCI and would report its findings to the CCI.

4.4.8 The CCI would also be assisted by a Registrar and other officers and staff who would be appointed by the CCI itself.

4.4.9 The CCI would conduct inquiry into alleged contravention of Competition Law on its own or on receipt of complaint from any person/consumer/association or on a reference made by Central/State Governments or a statutory Authority and adjudicate upon the same through its Benches. In addition to investigation and adjudicatory functions, the CCI will also have the function of prosecution and competition advocacy.

4.4.10 The CCI is required to take suitable measures for the promotion of Competition Advocacy through training and creating awareness under clause 47. Further, the Union Government while formulating policy may make a reference to the CCI for its opinion on possible effects of the policy on the competition. The CCI is required to give its opinion thereon within sixty days.

4.4.11 The orders of the CCI is appealable to the Supreme Court within 60 days from the date of communication of the decision/order of the CCI. (clause 40)

4.4.12 Accounts of the CCI would be audited by the Comptroller and Auditor General and its reports would be laid every year on the Tables of both Houses of Parliament.

4.5.0 A Competition Fund would be constituted under clause 49 of the Bill to meet various expenses of CCI including payments of salaries to Chairperson, Members, Director-General, Additional, Joint, Deputy and Assistant Directors-General, Registrar and other staff of the CCI. The Competition Fund would have two sources i.e. grant of money²⁵ from Consolidated Fund of India duly voted by Parliament and costs/fees received from parties. The idea behind the composition of the Competition Fund is to ensure certain measure of autonomy to the CCI in its functioning. The flexibility available for receiving costs and fees is another reason for constituting a separate Fund instead of making the expenses directly chargeable on the Consolidated Fund of India.

5.0 The history of Competition Law dates back to the 1860's and 1870's when American States (USA) enacted "anti-trust"²⁶ laws. These culminated in the Sherman Act of 1890. This was followed by the enactment of the Clayton Act and the Federal Trade Commission Act in 1915. Subsequent to this, the Robinson Patman Act, 1936 and the Celler Kefauver Act, 1950 were enacted.

5.1 In 1980, less than forty countries had Competition Law, currently one hundred countries have Competition Law. One of the most recent enactments is the UK law – the Competition Act, 1998 – which came into force on 1 March 2000. The new Act is more closely in tune with the Competition Law of the European Commission. Nearly all laws deal

with horizontal/vertical agreement, monopoly, abuse of dominance and regulated by Competition Authority²⁷.

6.0 The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) is regarded as the extant Competition Law of India. It derived its mandate from the Directive Principles of State Policy (Arts.38 and 39) of the Indian Constitution.

6.1 The High Level Committee has observed that the MRTP is limited in its sweep and in the present competitive milieu it fails to fulfil the need of competition law.

6.2 The major differences between the MRTP Act, 1969, and proposed competition law are given in the accompanying Table.

TABLE – II

| MRTP ACT, 1969 | NEW DRAFT COMPETITION LAW |
|--|---|
| 1 <i>Based on the pre-reforms scenario</i> | <i>Based on the post-reforms scenario</i> |
| 2 <i>Based on size as a factor</i> | <i>Based on structure as a factor</i> |
| 3 <i>Competition offences implicit or not defined</i> | <i>Competition offences explicit and defined</i> |
| 4 <i>Complex in arrangement and language</i> | <i>Simple in arrangement and language and easily comprehensible</i> |
| 5 <i>14 per se offences negating the principles of natural justice</i> | <i>4 per se offences. All the rest subjected to rule of reason.</i> |
| 6 <i>Frowns upon dominance</i> | <i>Frowns upon abuse of dominance</i> |
| 7 <i>Registration of agreements compulsory</i> | <i>No requirement of registration of agreements</i> |
| 8 <i>No regulation on combinations</i> | <i>Combinations regulated beyond a high threshold limit.</i> |
| 9 <i>MRTPC appointed by the Government</i> | <i>CCI selected by a Collegium</i> |
| MRTP ACT, 1969 | NEW DRAFT COMPETITION LAW |
| 10 <i>Very little administrative and financial</i> | <i>Relatively more autonomy for the CCI</i> |

autonomy for the MRTPC

11 *No competition advocacy role for the MRTPC* *CCI has competition advocacy role*

12 *No penalties for offences* *Penalties for offences*

13 *Reactive and rigid* *Proactive and flexible*

14 *Unfair trade practices covered* *Unfair trade practices omitted (consumer fora will deal with them)*

6.3 The Ministry has submitted that in view of the policy shift from curbing monopolies to promoting competition, there was a need to repeal the Monopolies and Restrictive Trade Practices Act. Hence, the present competition law proposed to be brought in, aims at doing away with the rigidly structured MRTP Act and given following reasons for the repeal of MRTP Act. All pending cases²⁸ relating to Unfair Trade Practices (UTP) would be transferred to National Consumer Forum and cases relating to Restrictive Trade Practices (RTPs) and Monopolistic Trade Practices (MTPs) would be transferred to the CCI.

6.4 Pending cases pertaining to Unfair Trade Practices other than those relating to tie-in sales, purchases or cases falling under clause (x) of sub-section (1) of Section 36A, of the Monopolies and Restrictive Trade Practices Act 1969 shall stand transferred to the National Commission constituted under the Consumer Protection Act, 1986.

7.0 The Bill describes the CCI as a body corporate {(clause 7(2))}, and a quasi-judicial body (Statement of Objects and Reasons) whereas it has pre-requisites of a full fledged judicial body {clause 36(2)}. The Committee wanted to know the exact status of the CCI.

7.1 The Ministry in their written submission has clarified that the Bill describes the CCI as a body corporate for certain specific purposes like having perpetual succession, a common seal and power to acquire, hold and dispose of movable and immovable properties, although normally body corporate connotes a company.

7.2 As to the status of the CCI being a quasi-judicial or judicial body, the four prerequisites of a judicial body as enumerated in a decision laid down by King's Bench in *Copper vs. Wilson* {(1937) 2KB, 309}, were brought to the notice of the Department for their comments. The Ministry has admitted in their written submission that the Bill (clauses 36²⁹ read with clause 40³⁰) makes it closer to a full-fledged judicial body. The CCI has specific adjudicatory function in relation to abuse of dominance and anti-competitive agreement and on combinations under clause 27 and 31, respectively. The decision of CCI has extra-territorial reach under clause 32. Clause 36(3) says that the proceedings before the CCI would be judicial proceedings. The CCI can detain a person in civil prison for specific purposes. Thus the Ministry is of the opinion that it is a judicial body.

7.3 In contradistinction to the Statement of Objects and Reasons which describes CCI as a quasi-judicial body, the Department has now submitted that it is a judicial body. Besides, the

Department, having admitted the apparent contradiction, has also submitted that CCI can sue or be sued. Here, the Committee wishes to point out that a judicial body never needs to sue anybody but it can issue orders for compliance. Suing means filing litigation against an opposite party before another judicial body to ventilate grievances. CCI admittedly a judicial body shall not require to sue anyone because that is not permissible in law. Hence, it can also not be sued.

7.4 The Committee notes that there is a difference between the Chairperson and Members of the CCI insofar as their status and remuneration are concerned whereas there is no difference between them in relation to their qualifications. In this context, the Committee wanted to know why the age cap of 70 years and status of a Supreme Court Judge is stipulated for Chairperson in the Bill in the light of the fact that the age of retirement of Supreme Court Judge including the Chief Justice of India is 65 years.

7.5 The Ministry has submitted in their written submission that conferment of status of a Supreme Court Judge on the Chairperson is designed to attract eminent persons including from sitting/retired Judges from Supreme Court/High Court. Further the age cap of 70 years for Chairperson and 65 years for Members is in line with some other extant Tribunals like the National Human Rights Commission (NHRC) and National Consumer Disputes Redressal Commission (NCDRC) although MRTP Act has the age cap of 65 years for the Chairman and Members. The higher age cap is meant for inviting eminent persons with experience to the CCI. The Competition Law is a socio-economic legislation and it may not be necessary to have the Chairperson, only from the judiciary. In U.K. for instance, an industrialist is the Chairperson of the Competition Law Authority. The higher judiciary, namely, the Supreme Court and the High Courts may be expected to countenance a Chairperson, not from the judiciary, as the Selection Committee for selecting the Chairperson consists of the Chief Justice of the Supreme Court or his/her nominee.

7.6 Having noted the logic submitted for the higher age cap for the Chairperson, the Committee points out that the MRTP Act lays down different qualifications for both the Chairperson as well as Members. The Chairperson of the MRTPC can be exclusively from the Judiciary whereas its Members can be from any other prescribed fields. However, in sharp contrast to this, same set of qualifications is proposed to be laid down both for the Chairperson as well as Members of the Competition Commission of India (CCI). Here, the Committee would like to emphasize that the Chairperson of CCI should be exclusive from its Members not just in respect of age, status and salary but also in that of qualifications. CCI being a judicial body, should be headed by a Judicial Member. Insofar as Members are concerned, they may be appointed from amongst persons having special knowledge in the prescribed fields as proposed in the Bill. Therefore, the Committee is of the considered view that the Chairperson of the CCI should be from amongst the serving or retired Judges of the High Courts.

7.7 The Committee wanted to know about the fate of the Chairman and Members, Officers and Staff of the MRTPC.

7.8 The Department has stated that Clause 64 extensively deals with the fate of the employees of the MRTPC after the coming into force of the CCI. The Chairman and Members of the MRTPC shall stand terminated with compensation not exceeding three months' pay and allowances. The Director General of Investigation and Registration; Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the

MRTPC, employed on regular basis by the MRTPC, shall become, on and from such dissolution, the officer and employees, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such MRTPC had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government. The officer on deputation basis should be reverted to his parent cadre. Deputationists include both the incumbents recruited on the basis of All India level selection by UPSC or otherwise.

7.8.1 While taking note of the reply of the Department of Company Affairs regarding the fate of the officers and staff of the MRTPC after its dissolution and the assurance given by the Secretary, Department of Company Affairs vis-a-vis safeguarding the services of these employees, the Committee is strongly of the view that interests of the employees of MRTPC should be fully protected. Similarly, the Committee is also of the view that deputationists with MRTPC recruited by the UPSC should be retained in the CCI keeping in view their qualifications, experience and the expertise gained by them over a period of time through their association with MRTPC. It is of the opinion that services of these personnel selected by the apex recruitment body of the country may be of immense help to the CCI especially during its infancy.

7.9 A view was expressed in the Committee that Competition Law may wait till the pre-requisite in the form of reforms in other areas come in place.

7.10 The Department has stated that in the Budget Speech of the Finance Minister in the year 2001, a slew of policy measures relating to some of the areas mentioned above was announced. Many of them are under process and will take a little more time before they are finalised and implemented. But the enactment of Competition Law cannot wait till all the reforms are in place. A regulator is required to deal with anti-competitive practices that often prevail in the market place. It is, therefore, felt that the wide ranging economic reforms and the enactment of the Competition Law must be in tandem and proceed hand-in-hand.

7.11 The Committee wanted to know whether the price preference and purchase preference given to Public Enterprises would be in harmony with the Competition Bill.

7.12 The Department has submitted that price preference as practised earlier has been largely given up by the Government. In so far as purchase preference is concerned, Government gives an opportunity to the public enterprises to match their prices with the lowest private party's offer. Strictly speaking, it is an anti-competitive practice to give purchase or price preferences. But the purchase preference system, presently in vogue is only for a limited period (two years or so ending in 2003).

7.13 The Committee pointed out that clauses 53 & 54 of the Bill gave enormous powers to the Government, in terms of giving directions on policies to the CCI and of superseding the CCI in special circumstances. The Committee felt that such sweeping powers of the Government would undermine the independence of the CCI.

7.14 The Department has replied that the independence of the Commission is not likely to be undermined as the Central Government under section 53 can give directions on the

question of policy only, that too, as far as practicable, after giving an opportunity to the Commission to express its views. The provisions of section 54 are to ensure that the Commission performs the duties imposed on it by or under the provisions of the Act. The Government may have security concerns or reason of public interest, on account of which intervention/direction becomes necessary. Similar provisions exists in the following acts:-

- (i) National Highway Authority of India Act, 1988, (Section 33).*
- (ii) Telecom Regulatory Authority of India Act, 1997, (Section 25).*
- (iii) National Trust for Welfare of Persons with Autism, Cerebral, Palsy, Mental Retardation and Multiple Disabilities Act, 1999, (Section 28).*
- (iv) Airports Authority of India Act, 1994 (Section 40).*

It may be mentioned that Government rarely resorts to such extraordinary powers, and if it does, its decisions are subject to examination in the media, Parliamentary scrutiny and judicial review.

7.15 Clause 52 of the Bill provides for the Central Government to exempt a class of enterprises from the application of the Competition Law in public interest. The Committee regards it to be too wider.

7.16 The Department has stated that public interest and consumer interest are not synonymous. The Competition Bill, in most of its provisions, gives consumer interest primacy and place of pride. But there could be occasions and circumstances, when public interest may have a larger relevance than consumer interest. For instance, global competition may extinguish the domestic industries in a particular sector, for various reasons. In such a circumstance, in terms of cost benefit analysis, if the damage to public interest, namely, the larger society, is very significant, Government should have the power to exempt that sector (a class of enterprises) from the operation of Competition Law. Such protection will normally be for a limited period, to enable the particular sector to accept the challenge of competition, become competitive and compete domestically and globally. Hence, the expression “public interest” in Clause 52 of the Bill. Clause 52 provides for the Government to exempt any class of enterprises, in public interest, for such period as it may specify. Small-scale industries can be given protection under this Clause. The Government will be free to determine the period of exemption as the circumstances warrant.

7.17 A view was expressed that extra-territorial jurisdiction of the Competition Law may hinder foreign investment.

7.18 The Department has replied that extra-territorial jurisdiction is provided in many competition jurisdictions. Extra-territorial reach of the Competition Law is essentially to curb foreign companies from indulging in anti-competitive practices, if such practices have an appreciable adverse effect on competition in the relevant market in India. This provision is not likely to hinder foreign investment.

7.19 A view was also expressed that 10 Members for the CCI were too less. Clause 8 may be amended to provide for a maximum of 30 members. Regional Benches should also be specified in the Bill.

7.20 The Department has stated that for the present, as the law is new and some of its features are to be enforced for the first time, it is a learning process. The cap of 10 members

provided in Clause 8 is adequate for the time being. Depending upon the experience of the CCI, the cap can be increased later.

7.21 A Member has pointed out that the present Bill under Clause 64 (4) proposes to transfer cases relating to Unfair Trade Practices pending before the MRTPC to National Commission constituted under the Consumer Protection Act, 1986. All cases relating to Restrictive Trade Practices and Monopolistic Trade Practices pending before MRTPC will be transferred to the CCI after the commencement of the Competition Act. The Consumer Protection Act, 1986 as well as Consumer Protection (Amendment) Bill, 2002, presently pending before the Rajya Sabha for approval of the amendment made by the Lok Sabha therein, have the definition of RTP implying thereby that the Consumer Fora will also adjudicate cases relating to RTPs along with UTPs. After the enactment of the Consumer Protection (Amendment) Bill, 2002 and the Competition Bill, 2001, the RTPs will be decided by two forums i.e. CCI and Consumer Fora which will be an overlapping of jurisdiction.

7.22 The Committee desires that the Department of Company Affairs may in consultation with Department of Consumer Affairs bring harmony between Consumer Protection Act, 1986 and the Competition Bill to avoid overlapping of jurisdiction between the CCI & Consumer fora.

7.23 Broadly two different views emerged in the Committee on the basic philosophy of the Bill. A shade of opinion in the Committee contends that by enacting the Bill at this stage, India would lose its bargaining power at the WTO negotiations. In that context it is suggested that the Bill should not be enacted till 1 January 2005 by which time decisions on issues like competition policy, trade and investment and related matters would be decided. Another point of view against the Bill was that Indian Industry, both private and public sectors, need certain safeguards and protection for a certain period. The present Bill takes away all such safeguards and protection. This Bill would allow MNCs to capture Indian industry and services sector. Therefore, it is suggested that there is no hurry in passing the Bill and that MRTP Act may be suitably amended to meet the requirements of the present time.

7.24 The other shade of opinion favours the passage of the Bill. It is of the view that MRTP Act is based on old economic theory which is no longer efficacious enough to check the onslaught of foreign companies against Indian companies. Besides, being a signatory to WTO agreements, India has to keep pace with the changing global economic environment. This apart, public sector and Government Departments engaged in the activities enumerated in Clause 2(g) should be exposed to competition as it will be in the larger interest of the consumers. Similarly, small-scale sector is also not proving beneficial to the consumers because of high cost of its products which is largely due to poor economy of scale as well as technological obsolescence. Therefore, small-scale sector, too, should be exposed to competition. This exposure of Indian industry to competition will herald the transition of an old economy to a new economy based on the new economic doctrine being pursued in the country for over last one decade. This transition will not only help Indian economy to adapt itself to changing environment but will also produce wealth and employment.

8.0 Substantive points from the suggestions[•] made by the witnesses and organisations/individuals in response to Press Communiqué and while deposing before the Committee, are enlisted as under: -

- (i) Major Chambers such as ASSOCHAM, BCCI stressed the need for the cooling period of at least 15 to 18 months after the enactment of new law;
- (ii) FICCI, Bajaj Auto Ltd. and Mahindra & Mahindra Ltd. opposed the enactment of new law and suggested amendments to MRTP Act, 1969;
- (iii) Reliance Industries Limited was of the view that a simple Competition Law should be introduced at this stage. A stricter competition and merger control laws, as proposed, may be adopted much later after the economy and companies have reached a position where it could sustain such restrictions imposed by the Competition Law. It would be advisable to appropriately time the implementation of provisions relating to regulation of combinations so as to provide adequate time to Indian Companies to grow/develop and to compete with the foreign multinational companies in Indian market as well as in global market.
- (iv) BCCI, Tata Sons Ltd., IMC, CCC and CUTS welcomed the introduction of new law;
- (v) Tata Sons Ltd. opined that the Government should initiate signing MoUs with WTO member countries to regulate cross border mergers and acquisition and which the Government has agreed to enact in due course;
- (vi) *Government activities except the sovereign functions of the State would fall under the ambit of the CCI. Sovereign functions of the State in relation to CCI may be properly defined;*
- (vii) *Reference to predatory pricing may be deleted as it could be the source of confusion when applied by the regulator;*
- (viii) *Desired modification in the definition of dominant position, abuse of dominance and predatory price;*
- (ix) *Fixing of assets & turnover thresholds for determining combination need relook in view of global competitiveness;*

- (x) *Since Banks & FIs are regulated, governed and supervised by regulators such as RBI, SEBI & Insurance Regulatory Authority (IRDA), mergers of Banks FIs and mutual funds may not be provided in the Bill so as to keep the issue of combinations of Banks & FIs with the respective regulators;*
- (xi) *Medical & Legal profession to be covered under the scope of definition of service;*
- (xii) *Acquisitions, mergers, takeovers should be out of the Bill;*
- (xiii) *Unfair pricing concept as discussed in clause 4(2) (a) of the Bill is non-workable and may be deleted as practised by European Commission and the United States of America;*
- (xiv) *The dominant position outside India may deter MNCs to tie with Indian firms and thus the explanation (a) to Clause 4 may be amended;*
- (xv) *Standard of assessing combination is flawed. Therefore, opposed the concept of combination. Asset tests to determine combination, has no significance for market analysis;*
- (xvi) *In the consideration of group exercising voting right, not less than 50% of the voting should be considered instead of 26% or more;*
- (xvii) *Value of Intellectual Property needs to be excluded from assets as the valuation of these assets is complex;*

- (xviii) *Suggested certificate of valuation of assets by a Chartered Accountant;*
- (xix) *Size of enterprise cannot be sole criterion for determining a combination, other factors such as market share in the relevant product & geographic market are equally relevant;*
- (xx) Mandatory pre-notification of merger;
- (xxi) Exemption of mergers and amalgamations carried out under sections 391-396 of the Companies Act;
- (xxii) Nomination of President of one of the Chambers (FICCI/ICAI/ICSI/ICWAI/ Bar Council of India) as the member of Selection Committee;
- (xxiii) Permanent Advisory Council to the Commission;
- (xxiv) Establishment of Research Institution to study various aspects of Competition Law;
- (xxv) Professionals such as Chartered Accountant, Company Secretary, Advocate to be appointed to the posts of Director General and Additional, Joint, Deputy, Assistant Directors General instead of relying on deputationist from Government Departments
- (xxvi) It is practically impossible to unscramble the merger once approved by the High Court as huge stamp duty required to be paid on court orders approving mergers and amalgamation;
- (xxvii) The Director-General's *suo moto* powers to investigate cases as in MRTPC may be brought back;
- (xxviii) Publication of Director-General's report only when the CCI agrees with the conclusions;
- (xxix) Exemption to the nominee director from punitive provisions of the Bill; and
- (xxx) Effective check on dumping by the Competition law to protect consumer interest.

8.1.0 The Department has responded to all the suggestions listed above.

8.1.1 In response to suggestion listed at (i) the Ministry in their written submission has outlined the phases for the implementation of the said law after enactment which as follows:

- First year - Competition advocacy and training for officers and staff of CCI
- Second year - Provisions relating to anti competitive practice and abuse of dominance to be brought into force
- Third year - provisions relating to combination to be brought into force.

8.1.2 In response to suggestion listed at (v), the Department has stated that the sovereign function occurring in clauses 2 (g) & 52 generally relate to atomic energy, defence, army etc. Moreover the test for determining sovereign function of Government laid down by the Supreme Court³¹ is binding on the CCI.

8.1.3 As to the suggestions at (xxii) & (xxiii), the Department has replied that they would examine them in due course. In response to the suggestions at (xxiv), the Department has agreed to appoint professionals to the post of Director General from the Government Departments on deputation

9.0 The Committee took up clause-by-clause consideration of the Bill in the presence of Secretary, Department of Company Affairs and officers of Legislative Department and Department of Legal Affairs. The Committee considered amendments proposed by the Department in the clauses in the light of suggestions received from witnesses and others and accepted those without any modifications. Further, the Committee also recommended amendments of its own in two clauses. **Those clauses where amendments have been accepted/proposed by the Committee are discussed in the succeeding paragraphs.**

Clause 2

9.1.0 The clause defines various expressions used in the Bill.

9.1.1 A suggestion has been received that the words “is proposed to be, engaged in any activity” in the definition of ‘enterprise’ in sub clause (g) of the clause appears to be confusing and thus may be deleted. The Department has agreed to delete those words appearing in second line of the sub-clause.

9.1.2 Another suggestion received from a witness and agreed to by the Government pertains to sub-clause (t). In the sub-clause defining service, only one professional service i.e. accounting has been included whereas medical and legal services are excluded. As per the amendment proposed by the Department of Company Affairs, the expression “accounting” would be deleted.

9.1.3 The Committee agrees to the proposed amendments.

9.1.4 The clause is adopted as amended.

Clause 3

9.2.0 The clause, *inter alia*, provides for prohibition of entering into anti-competitive agreements. Any enterprise or association of enterprises or person or association of persons to enter into an agreement in respect of production, supply, storage, distribution, acquisition or control of goods or provision of services which causes or is likely to cause an appreciable adverse effect on competition within India, shall be void. The clause also specifies certain activities which shall be presumed to have an appreciable adverse effect on competition and also specifies certain agreements which shall be in contravention of sub-clause (1) of the said clause if such agreement causes appreciable adverse effect on competition. The provisions of this clause shall not apply to certain rights specified in sub-clause (5) of this clause.

9.2.1 A suggestion has been received that any of the four *per se* offences may have negative effect on desirable joint venture. Thus a proviso may be added to exempt such joint ventures from *per se* offences.

9.2.2 The Department of Company Affairs has agreed to add proviso to sub-clause (3) of the clause to the effect that the genuine joint venture would be exempted from *per se* offence but would be examined on the basis of rule of reason.

9.2.3 Another suggestion has been received to add the words “in India” after the words “adverse effect on competition” in sub clause (4) of the clause.

9.2.4 The Department of Company Affairs has agreed to the suggestion and proposed to bring an amendment to that effect.

9.2.5 Another suggestion has been received to give blanket exemption to Intellectual Property Rights (IPRs).

9.2.6 The Department of Company Affairs after examining the suggestion has felt that clause 4(6) of the Concept Bill which permits the application of competition law to examine any unreasonable conditions that may be imposed by the right holder while exploiting his/her rights, may be incorporated in the present Bill.

9.2.7 The Committee agrees to the proposed amendments in the clause.

9.2.8 Subject to the amendments proposed, the clause is adopted.

Clause 4

9.3.0 The clause prohibits abuse of dominant position by any enterprise. Such abuse of dominant position, *inter alia*, includes imposition, either directly or indirectly, of unfair or discriminatory purchase or selling prices or conditions, including predatory prices of goods or service, limiting production or restricting of goods or provision of services, indulging in practices resulting in denial of market access, making the conclusion of contracts subject to acceptance by other parties of supplementary obligations and using dominant position in one market to enter into or protect other market.

9.3.1 Clause 4(2) states that discriminatory pricing shall be an abuse of a dominant position. The clause introduces the term ‘discrimination’ without any additional guidance. A suggestion was made to add a proviso to make the expression clear.

9.3.2 The Department has agreed to add a proviso to clarify that it shall not be violation of this sub-section if an enterprise applies dissimilar prices or conditions for objectively justifiable reasons unrelated to maintaining or extending a dominant position, but related to meeting competition.

9.3.3 Another suggestion has been received for deleting the words “or outside India” in Explanation (a) to clause 4(2) (e) not to discourage an Indian company having a position/strength outside India by the competition law of India.

9.3.4 The Department has agreed for the deletion of such words in Explanation (a) to clause 4(2) (e).

9.3.5 The Committee agrees to the proposed amendment.

9.3.6 Subject to the amendments proposed, the clause is adopted.

Clause 8

9.4.0 The clause states that the Commission shall consist of the Chairperson and not less than two and not more than ten other Members as may be specified by the Central Government. The clause also delineates qualifications of Chairperson/Members of the CCI under which a person who is or has been or is qualified to be a Judge of a High Court or is having special knowledge of, and professional experience in, not less than fifteen years in international trade, economics, business, commerce, law finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, be useful to the Commission, shall be eligible for appointment as the Chairperson or as a Member.

9.4.1 The Committee desires that the Chairperson of the CCI should be a person from Judiciary i.e. a serving/retired Judge of a High Court. Thus qualifications for the office of Chairperson should be different from Members of the CCI.

9.4.2 Subject to the above, the clause is adopted.

Clause 9

9.5.0 The clause, *inter alia*, provides that the appointment of the Chairperson and Members of the Commission, shall be made by the Central Government on the recommendation of the Selection Committee consisting of the Chief Justice of India or his nominee, the Union Minister in-charge of the Ministry of Finance, the Union Minister in-charge of the Ministry or Department of the Central Government dealing with the proposed legislation, the Governor of the Reserve Bank of India and the Cabinet Secretary.

9.5.1 The Committee is of the view that keeping the Minister-in-charge of Ministries in the Selection Committee may lead to executive interference.

9.5.2 The Department has, accordingly, proposed change in the composition of the Selection Committee as below:

| | <u>Provision in the Bill</u> | <u>Proposed Changes</u> |
|---|--|--|
| - | Chairperson - Chief Justice of India or his nominee | CJI or his nominee |
| | Member - Union Minister-in-charge of the Ministry of Finance | Secretary, Ministry of Finance |
| | Member - Union Minister-in-charge of the Ministry/Department dealing with the Act. | Secretary, Department of Company Affairs |
| | Member - The Governor, Reserve Bank of India | Secretary, Ministry of Labour |
| | Member - The Cabinet Secretary | Secretary, of |
| | Department - Legal Affairs/ | Legislative Department. |

9.5.3 The Committee approves the suggested changes in the Selection Committee for proposing the names of Chairperson and members of the CCI to Union Government.

9.5.4 Subject to the amendments proposed, the clause is adopted.

Clause 10

9.6.0 This clause, *inter alia*, provides for the term of office of the Chairperson and other Members. No Chairperson shall hold office after he attains the age of seventy years and no other Member shall hold office after he attains the age of sixty-five years.

9.6.1 The Department has proposed to lower the age cap of the Chairperson of the CCI from 70 to 67 years as has been done in the case of the proposed National Company Law Tribunal (NCLT) under the Companies (Amendment) Bill, 2001.

9.6.2 The Committee notes the proposal of the Department.

9.6.3 Subject to the amendment proposed, the clause is adopted.

Clause 11

9.7.0 The clause, *inter alia*, contains provisions relating to resignation, removal and suspension of the Chairperson and other Members. Sub-clause (2) provides that the Chairperson or a Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour after an inquiry made by the Supreme Court in accordance with the procedure prescribed in this behalf by it. Sub-clause (3) confers power upon the Central Government to suspend the Chairperson or a Member in respect of whom a reference has been made to the Supreme Court. Sub-clause (4) provides

for other circumstances under which the Chairperson or any Member can be removed from office by the Central Government.

9.7.1 A witness before the Committee has opposed the reference to the Supreme Court as a pre-requisite for removal of Chairperson/Members of the CCI.

9.7.2 The Department has responded to the aforesaid suggestion as follows:
Clauses 11(2) & 11 (4) empower the Government to remove a Member on the grounds of proven misbehaviour, insolvency, conviction of an offence involving moral turpitude, physical/mental incapacity, abuse of position, engaging in any paid employment during tenure in the CCI, and acquisition of financial or other interest affecting prejudicially in functioning as Member. But this power is subject to the Supreme Court holding, after, enquiry, that the Member ought to be removed in respect of grounds of proven misbehaviour, abuse of position or acquisition of financial or other interest likely to affect prejudicially functioning as a Member. Thus, in respect of serious misconduct or misbehaviour there is a check/balance of the Supreme Court's concurrence before Government can order removal of a member. However, a particular aspect merits mention here. Clause 11(2) of the Bill provides for the removal of a Member by the Government on the ground of proven misbehaviour after enquiry by the Supreme Court and its concurrence. This appears to be unnecessary, as proven misbehaviour, is a very wide expression and is capable of being abused. Clause 11(4) in any case provides for removal of the Chairperson or the Member on different grounds. What is provided therein appears adequate. Clause 11(2) may be deleted along with Clause 11(3) {being an adjunct of Clause 11(2)}.

9.7.3 The Committee approves the amendment proposed by the Department.

9.7.4 Subject to above, the clause is adopted.

Clause 12

9.8.0 The clause provides that the Chairperson or a Member shall not, for a period of six months from the date on which they cease to hold office, accept any employment in or connected with the management or administration of any enterprise which has been a party to a proceeding before the Commission. However, such a restriction of employment shall not apply in case of any employment under the Central Government or State Government or a local authority or a statutory authority or corporation established by a Central, State or Provincial Act, or in a Government company.

9.8.1 One witness suggested that Chairperson/Members of CCI should be debarred for a period of 12 months after retirement from accepting any employment instead of 6 months.

9.8.2 The Department has accepted the suggestion and agreed to bring an amendment in the clause to that effect.

9.8.3 The Committee notes the proposal of the Department.

9.8.4 Subject to the amendment proposed, the clause is adopted.

Clause 16

9.9.0 The clause provides for the appointment of Director General, Additional, Joint, Deputy and Assistant Directors General for the purpose of assisting the Commission in conducting inquiry into the contravention of the provisions of the proposed legislation, for conduct of cases before the Commission and performing such other functions as are or may be provided by or under the proposed legislation. It also empowers the Central Government to specify, by rules, their qualifications, the salary and allowances payable to them and the other conditions of their service.

9.9.1 With regard to investigation under clause 16(4), a witness has suggested that the experience for the post of Director-General and Additional/Joint/Deputy and Assistant Directors General in the CCI should be in economics, trade or industry, not in CBI or police investigation.

9.9.2 The Department, in its reply to the suggestion, has stated that the suggestion may be accepted and will be provided for in the Rules. Further, investigation will be defined in the Rules to exclude police investigation.

9.9.3 A member was, however, of the view that officers from CBI should not be excluded for the above mentioned posts.

9.9.4 The Committee notes the reply of the Government.

9.9.5 The clause is adopted without any change.

Clause 19

9.10.0 The clause empowers the Commission to inquire into violation of provisions of anti-competitive agreement and abuse of dominance either on its own motion or on receipt of a complaint from any person, consumer or their association or trade association or on a reference made to it by the Central Government or a State Government or a statutory authority alleging violation of any of those provisions. The clause further lays down the factors, which shall be considered by the Commission for the purpose of determining whether an agreement has an appreciable adverse effect on competition, whether an enterprise enjoys the dominant position, or whether a market constitutes a relevant market for the purposes of the proposed legislation.

9.10.1 A suggestion has been made that since Clause 19(4)(d) already allows for consideration of “commercial advantages” in determining dominance and since IP rights should be found relevant to dominance only where they give commercial advantage deleting Clause 19(4)(f) would seem prudent to avoid giving undue weight to the mere ownership of IP rights. Where IP rights do in fact confer commercial advantage in a given relevant market, then they are cognizable under Clause 19(4)(d).

9.10.2 The Department has agreed to delete sub-clause 4(f) in consultation with the Ministry of Law as IPRs would not be given blanket power to exert their dominance in relevant markets.

9.10.3 Another suggestion has been placed before the Committee by one of the witnesses is that while considering the relevant market, the CCI should consider both relevant geographic market and relevant product market.

9.10.4 The Department accordingly, has proposed amendment in sub-clause (5) to substitute the word 'or' between the words "relevant geographic market" and "relevant product market" by 'and'.

9.10.5 The Committee approves both the proposed amendments.

9.10.6 Subject to the amendments proposed, the clause is adopted.

Clause 21

9.11.0 The clause contains provisions relating to the circumstances under which a reference can be made to the Commission by statutory authorities. It provides that if in the course of a proceeding before any statutory authority, entrusted with the responsibility of regulating any goods or service or market therefore, a party has raised an issue that the decision taken by the statutory authority would be contrary to the provisions of the Bill, then, the statutory authority shall be bound to make a reference to the Commission. The Commission, after hearing the parties to the proceedings, shall, give to the statutory authority its opinion and the statutory authority shall thereafter pass its orders.

9.11.1 The clause makes it mandatory for the statutory body to make a reference to the CCI when any party to the proceeding raise that the issue is contrary to the competition law. A witness objected to such mandatory provision in the clause.

9.11.2 The Department has proposed to substitute the word 'shall' in the last line of sub-clause (1) of the clause with 'may'.

9.11.3 One of the witnesses has suggested that a time frame may be provided in the clause within which the CCI should dispose the reference made to it by statutory body.

9.11.4 The Department has proposed a time limit of sixty days for the purpose under sub-clause (2).

9.11.5 The Committee approves the proposed amendments.

9.11.6 Subject to the amendments proposed, the clause is adopted.

Clause 23

9.12.0 The clause deals with the distribution of business of the Commission amongst its Benches. It also empowers the Chairperson to transfer a Member from one Bench to another and also to authorise a Member of one Bench to discharge the functions as a Member of any other Bench with the prior approval of the Central Government.

9.12.1 A suggestion was received from a witness to dispense with the requirement of prior approval of Union Government in case of a transfer of a member by the Chairperson of the CCI.

9.12.2 The Department has not agreed to the suggestion in toto. The amendment proposed by the Department is to the effect that prior approval of the Central Government is required when there is transfer of a member from one city to another.

9.12.3 The Committee notes the proposed amendment.

9.12.4 Subject to above, the clause is adopted.

Clause 27

9.13.0 The clause deals with various orders which the Commission is competent to pass after an inquiry. If, on inquiry, the Commission finds that the agreements or the actions of an enterprise in a dominant position are in contravention of the provisions of clauses 3 and 4, it may pass any order which may, *inter alia*, include an order directing any enterprise or association of enterprises or person or association of persons involved in the agreement or abuse of dominant position to discontinue and not to re-enter into any such agreement or abuse, as the case may be, imposing such penalty as the Commission deems fit which shall not be more than ten per cent of the average of the turnover for the last three years upon each such person or enterprise which is a party to the agreement or abuse of dominant position, awarding compensation to the parties, directing modification of the agreement, recommending to the Central Government the division of any such enterprise enjoying dominant position or complying with its directions including a direction to pay costs.

9.13.1 One of the witnesses has pointed out typographical error in first line of the clause.

9.13.2 The Department has agreed to rectify the expression 'of an enterprise' occurring in the first line of the clause by 'or an enterprise'.

9.13.3 The same witness has suggested that it is extremely important to include in the Bill explicit authority for the Commission to provide protection to the whistleblower and to set up a leniency programme.

9.13.4 The Department has agreed to incorporate appropriate leniency/ amnesty provision.

9.13.5 The same witness has also suggested that in order to be an effective deterrent for hardcore cartels, fines should be much higher than the gains. Consideration should be given to increasing the possible fines/damage by a multiple of three times the proved loss or damage.

9.13.6 The Department has agreed to amend sub-clause (b) to the effect that a penalty of three times of the proven gain to the cartel may be levied subject to at least 10% of the average turnover for the last three preceding financial years.

9.13.7 The Committee approves the proposed amendments.

9.13.8 Subject to the amendments proposed, the clause is adopted.

Clause 31

9.14.0 The clause empowers the Commission to issue orders on certain combinations. Sub-clause (1) of the said clause provides that if the Commission is of the opinion that a combination does not or is not likely to have an appreciable adverse effect on competition, it shall, by order, approve the combination including a combination in respect of which a notice has been given under sub-clause (2) of clause 6. Sub-clause (2) of the said clause empowers the Commission to direct that a combination shall not take effect, if it is of the opinion that the combination has or is likely to have an appreciable adverse effect on competition. Sub-clause (3) empowers the Commission to propose suitable modifications in the combinations in case the adverse effect could be eliminated. Sub-clauses (4) to (12) contain provisions relating to acceptance of the modifications suggested by the Commission, amendments to such modifications proposed by the parties to the combination, within the time specified in those clauses and effect of acceptance or non-acceptance of such modifications and amendments by the Commission and the parties to the combinations.

9.14.1 The said witness has suggested that the CCI should be conferred with powers to cooperate with competition authorities in other countries.

9.14.2 The Department has clarified that such power should be with the Government rather than with the CCI. The Department has agreed to incorporate a provision in the Bill to provide power to Government in this regard.

9.14.3 The Committee notes the clarifications and the proposed new provisions in the Bill.

9.14.4 Subject to amendment proposed, the clause is adopted.

Clause 32

9.15.0 The clause empowers the Commission to inquire into an agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in India even if such agreement or abuse of dominant position or combination as specified in sub clauses (a) to (g) of the said clause take place outside India.

9.15.1 Deletion of sub-clause (c) has been suggested by the same witness who has suggested deletion of some words 'or outside India' in Explanation (a) to clause 4(2)(e). This is a consequential to amendments to clause 4(2)(e).

9.15.2 The Department has accepted the suggestion

9.15.3 The Committee approves the proposed deletion.

9.15.4 Subject to amendment proposed, the clause is adopted.

Clause 38

9.16.0 The clause provides for amendment of its orders by the CCI to rectify mistakes apparent from the record.

9.16.1 The Committee has pointed out that under sub-clause 2(a) of the Clause, the CCI can amend any order passed by it *suo moto*.

9.16.2 The Committee recommends that the Government should make the clause specific to the extent that the amendment of its own order for rectification of mistakes, by the Commission should not touch the substantive part of its order.

9.16.3 Subject to the above, the clause is adopted.

Clause 47

9.17.0 The clause contains provisions for competition advocacy by the Commission. In formulating policy, the Central Government may make a reference to the Commission for its opinion on possible effects of such policy on competition. The Commission is required to give its opinion to the Central Government within sixty days from the date of such reference. Such opinion shall not be binding upon the Central Government. The Commission is also required to take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about the competition issues, as may be prescribed.

9.17.1 A witness has suggested that the Commission should be bestowed with the power to recommend to the Central or State Governments after examining from competition angle (competition audit) any existing or proposed law or policy on its own.

9.17.2 The Department has communicated to the Committee that this suggestion may be accepted in the context that if there are restraints on competition in any existing law or policy, it could be removed after securing CCI's views. As CCI's views are not binding on the Government in terms of Clause 47(2), the suggestion may be accepted, subject to the requirement that it is the Government, which will make the reference in its discretion.

9.17.3 The Committee notes the views of the Department.

9.17.4 Subject to the above, the clause is adopted.

Clause 52

9.18.0 The clause empowers the Central Government, by notification, to exempt any class of enterprises from all or any of the provisions of the proposed legislation for such period as may be specified in that notification if such exemption is necessary in the interest of security of the State or public interest or any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty or international agreement or convention. This exemption may also be given to any enterprise which performs a sovereign function on behalf of the Central or a State Government.

9.18.1 A witness has pointed out that an enterprise may be performing sovereign and non-sovereign functions. Any exemption of the enterprise from the application of competition law would mean exemption relating to non-sovereign function also. Therefore, the provision under sub-clause (c) of the clause should lay emphasis on function rather than enterprise. He suggested re wording of the sub-clause.

9.18.2 The Department welcomed the suggestion and proposed rewording of the sub-clause as: “any sovereign function including functions incidental thereto performed by an enterprise on behalf of the Central Government or a State Government”.

9.18.3 The Committee approved the proposed amendment.

9.18.4 Subject to amendment proposed, the clause is adopted.

Clause 1, Enacting Formula and the Title

9.19 Clause 1, the Enacting Formula and the title are adopted with some changes which are of consequential nature, namely, ‘2001’ and ‘Fifty-second’ to be substituted by ‘2002’ and ‘Fifty-third’, respectively.

9.20.0 Out of sixty-four clauses, the Committee recommends amendments in nineteen clauses and adopts the remaining forty-five clauses without any change.

10.1 The Committee recommends that the Bill may be passed after incorporating amendments approved by it and giving due consideration to the other observations of the Committee.

OBSERVATIONS/CONCLUSIONS/RECOMMENDATIONS OF THE COMMITTEE

- In contradistinction to the Statement of Objects and Reasons which describes CCI as a quasi-judicial body, the Department has now submitted that it is a judicial body. Besides, the Department, having admitted the apparent contradiction, has also submitted that CCI can sue or be sued. Here, the Committee wishes to point out that a judicial body never needs to sue anybody but it can issue orders for compliance. Suing means filing litigation against an opposite party before another judicial body to ventilate grievances. CCI admittedly a judicial body shall not require to sue anyone because that is not permissible in law. Hence, it can also not be sued.

(Para 7.3)

- Having noted the logic submitted for the higher age cap for the Chairperson, the Committee points out that the MRTP Act lays down different qualifications for both the Chairperson as well as Members. The Chairperson of the MRTPC can be exclusively from the Judiciary whereas its Members can be from any other prescribed fields. However, in sharp contrast to this, same set of qualifications is proposed to be laid down both for the Chairperson as well as Members of the Competition Commission of India (CCI). Here, the Committee would like to emphasize that the Chairperson of CCI should be exclusive from its Members not just in respect of age, status and salary but also in that of qualifications. CCI being a judicial body, should be headed by a Judicial Member. Insofar as Members are concerned, they may be appointed from amongst persons having special knowledge in the prescribed fields as proposed in the Bill. Therefore, the Committee is of the considered view that the Chairperson of the CCI should be from amongst the serving or retired Judges of the High Courts.

(Para 7.6)

- While taking note of the reply of the Department of Company Affairs regarding the fate of the officers and staff of the MRTPC after its dissolution and the assurance given by the Secretary, Department of Company Affairs vis-a-vis safeguarding the services of these employees, the Committee is strongly of the view that interests of the employees of MRTPC should be fully protected. Similarly, the Committee is also of the view that deputationists with MRTPC recruited by the UPSC should be retained in the CCI keeping in view their qualifications, experience and the expertise gained by them over a period of time through their association with MRTPC. It is of the opinion that services of these personnel selected by the apex recruitment body of the country may be of immense help to the CCI especially during its infancy.

(Para 7.8.1)

- The Committee desires that the Department of Company Affairs may in consultation with Department of Consumer Affairs bring harmony between Consumer Protection Act, 1986 and the Competition Bill to avoid overlapping of jurisdiction between the CCI & Consumer fora.
- Broadly two different views emerged in the Committee on the basic philosophy of the Bill. A shade of opinion in the Committee contends that by enacting the Bill at this stage, India would lose its bargaining power at the WTO negotiations. In that context it is suggested that the Bill should not be enacted till 1 January 2005 by which time decisions on issues like competition policy, trade and investment and related matters would be decided. Another point of view against the Bill was that Indian Industry, both private and public sectors, need certain safeguards and protection for a certain period. The present Bill takes away all such safeguards and protection. This Bill would allow MNCs to capture Indian industry and services sector. Therefore, it is suggested that there is no hurry in passing the Bill and that MRTP Act may be suitably amended to meet the requirements of the present time.
- The other shade of opinion favours the passage of the Bill. It is of the view that MRTP Act is based on old economic theory which is no longer efficacious enough to check the onslaught of foreign companies against Indian companies. Besides, being a signatory to WTO agreements, India has to keep pace with the changing global economic environment. This apart, public sector and Government Departments engaged in the activities enumerated in Clause 2(g) should be exposed to competition as it will be in the larger interest of the consumers. Similarly, small-scale sector is also not proving beneficial to the consumers because of high cost of its products which is largely due to poor economy of scale as well as technological obsolescence. Therefore, small-scale sector, too, should be exposed to competition. This exposure of Indian industry to competition will herald the transition of an old economy to a new economy based on the new economic doctrine being pursued in the country for over last one decade. This transition will not only help Indian economy to adapt itself to changing environment but will also produce wealth and employment.

(Paras 7.22, 7.23 and 7.24)

- The Committee considered amendments proposed by the Department in the clauses in the light of suggestions received from witnesses and others and accepted those without any modifications. Further, the Committee also recommended amendments of its own in two clauses.

(Para 9.0)

- The Committee desires that the Chairperson of the CCI should be a person from Judiciary i.e. a serving/retired Judge of a High Court. Thus qualifications for the office of Chairperson should be different from Members of the CCI.

(Para 9.4.1)

- The Committee is of the view that keeping the Minister-in-charge of Ministries in the Selection Committee may lead to executive interference.

(Para 9.5.1)

- The Committee approves the suggested changes in the Selection Committee for proposing the names of Chairperson and members of the CCI to Union Government.

(Para 9.5.3)

- The Committee has pointed out that under sub-clause 2(a) of the Clause, the CCI can amend any order passed by it *suo moto*.

- The Committee recommends that the Government should make the clause specific to the extent that the amendment of its own order for rectification of mistakes, by the Commission should not touch the substantive part of its order.

(Paras 9.16.1 & 9.16.2)

Clause 1, Enacting Formula and the Title

- Clause 1, the Enacting Formula and the title are adopted with some changes which are of consequential nature, namely, '2001' and 'Fifty-second' to be substituted by '2002' and 'Fifty-third', respectively.
- Out of sixty-four clauses, the Committee recommends amendments in nineteen clauses and adopts the remaining forty-five clauses without any change.
- The Committee recommends that the Bill may be passed after incorporating amendments approved by it and giving due consideration to the other observations of the Committee.

(Paras 9.19, 9.20.0 & 10.1)

XXIX

TWENTY-NINETH MEETING

The Committee met at 3.00 P.M. on Monday, 27 August 2001 in Room No. 63, First Floor, Parliament House, New Delhi.

- MEMBERS PRESENT

1. Shri Pranab Mukherjee — *Chairman*

RAJYA SABHA

2. Shri Surendra Kumar Singh
3. Shri Sangh Priya Gautam
4. Dr. L.M. Singhvi
5. Shri Drupad Borgohain
6. Shri Kuldip Nayyar

LOK SABHA

7. Shrimati Jayashree Banerjee
8. Shri Vijay Goel
9. Shri Vinay Katiyar
10. Shri Arun Kumar
11. Dr. Jayanta Rongpi
12. Shri Anadi Sahu
13. Shri Iqbal Ahmed Saradgi
14. Shri Manabendra Shah

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Tapan Chatterjee, Director
Shri A.K. Singh, Under Secretary
Shri Narendra Kumar, Research Officer
Shri Ashok Kumar Sahoo, Committee Officer

2.0 * *

2.1 The Chairman announced the reference of two Bills namely, North-Eastern Council (Amendment) Bill, 1999 and Competition Bill, 2001 to the Committee by Hon'ble Chairman.

3.0 * * *

*** Relates to other matters.

3.1 The Committee decided to issue Press Release on the Competition Bill, 2001 to invite public opinion thereon.

4. * * *

5. The Committee then briefly discussed various general issues and adjourned at 3.30 P.M.

*** Relates to other matters.

XXXII

THIRTY-SECOND MEETING

The Committee met at 11.00 A.M. on Friday, 14 September, 2001 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

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MEMBERS PRESENT

1. Shri Pranab Mukherjee — *Chairman*

RAJYA SABHA

2. Shri Hansraj Bhardwaj
3. Shri Hiphei
4. Shri Sangh Priya Gautam
5. Dr. L.M. Singhvi
6. Shri K.M. Saifullah
7. Shri C.P. Thirunavukkarasu
8. Shri Drupad Borgohain
9. Shri Kuldip Nayyar

LOK SABHA

10. Shrimati Jayashree Banerjee
11. Shri M.O.H. Farook
12. Shri Ram Nagina Mishra
13. Shri Dahyabhai Vallabhbbhai Patel
14. Shri Shriniwas Patil
15. Shri Subodh Ray
16. Dr. Jayanta Rongpi
17. Shri Raghuraj Singh Shakya
18. Dr. Raghuvansh Prasad Singh
19. Shri Lal Bihari Tiwari
20. Shri Prakash Mani Tripathi
21. Shri Beni Prasad Verma
22. Shri E. Ponnuswamy

-
SECRETARIAT

Shri Satish Kumar, Additional secretary
Shri Tapan Chatterjee, Director
Shri A.K. Singh, Under Secretary
Shri Ashok Kumar Sahoo, Committee Officer

Representatives of Department of Company Affairs (Ministry of Law, Justice & Company Affairs)

Shri V.K. Dhall, Secretary,
Shri R.D. Joshi, Director-General, Investigation & Registration
Shri R. Vasudevan, Director
Shri K.C. Ganjwal, Secretary, MRTPC
Dr. S. Chakravarthy, Consultant
Shri G.P. Prabhu, Chief Commissioner, Income Tax

2.0 The Chairman welcomed the members and informed them about the revised schedule of next series of meetings for consideration of Bills pending consideration of the Committee. The Chairman felt that the Committee would be able to complete its work on Lokpal Bill, Code of Civil Procedure (Amendment) Bill and North-Eastern Council (Amendment) Bill by November and thereafter Companies (Amendment) Bill and the Competition Bill could be taken up.

2.1 * * *

2.2 * * *

3.0 The Chairman then welcomed the representatives of the Department of Company Affairs for a presentation on the Competition Bill, 2001. The Chairman then asked the Secretary to apprise the Committee the background of the Bill; recommendations of the Expert Committee on the subject; how it was going to help competition & how it would bring the Indian Companies at par with others. Besides he also wanted to know the institutional mechanism to check the abuse of dominance. Thereafter, the Chairman requested the Secretary to make his presentation on the Competition Bill.

3.1 The Secretary, Department of Company Affairs at the outset offered his condolence for the sad demise of late Shri Vishnu Dutt Sharma, a Member of the Committee and a Member of Lok Sabha. He then began his audio-visual presentation on the Bill. He mentioned the various elements of competition and how it was influenced by measures undertaken by the Government, how it was related to investment

3.2 Thereafter he discussed the change in the economic scenario after liberalisation which affected the competitive environment within the country. He further elaborated the objective and need for a new competition law. He added that earlier the mechanisms adopted by the Government to keep controlled demand & supply had since been dismantled. Hence a new competition law was the need of the hour to provide the players a more liberal environment. He felt that a law substituting the MRTP Act and fulfilling the requirements of the time was a must.

3.3 He submitted that these developments led to the setting up of a high level Committee in October 1999 under the Chairmanship of Shri S.V.S. Raghavan. The report was submitted

in May 2001. It suggested a new Competition law in place of the MRTP Act. This report was followed by a series of meetings & consultations with the main Chambers of Commerce and Industries, State Governments, Ministries of the Central Government and representatives of the trade & business, besides Inter-Ministerial meetings on the basis of which a concept Bill was prepared.

*** **Relates to other matters.**

3.4 He dwelt upon the three important areas which the Bill sought to regulate, as provided in its clause 3. These areas were prohibition of anti-competitive agreements of horizontal and vertical types; prohibition of abuse of dominance ; and thirdly, acquisition, mergers and amalgamation. He further stated that the Bill provided for establishment of a new Competition Commission of India.

3.5 At that point, the Chairman enquired about the tie-in agreements. Replying to that the Secretary explained the types of tie-in agreements - service arrangements and exclusive supply agreements. Thereafter, he touched upon the dominant position and abuse of dominance. Then he touched upon regulation of combinations in which he said that the Act sought to regulate large combination above the threshold limit. The Bill provided for combination, mergers, acquisition without permission but for the larger combinations voluntary intimation to the Commission was required and even for such notification a time limit of 90 days existed after which it would be deemed as approved.

4.0 Thereafter, the Secretary dwelt upon of the Competition Commission. He stated that it would consist of a Chairman & members numbering between two to ten, having specialization in their respective fields. He said that it would have a number of principal benches and also other benches along with a special merger bench located at Headquarters. Besides it would also have a Director-General and a team of officials. Thereafter he explained the various functions to be performed by the Commission and the powers it would enjoy. Among others, he said, Director-General would be responsible for carrying out investigation and prosecution and advocacy of competition would be one of the key roles of the Commission. The Secretary then moved on to state that if the Commission was of the opinion that a merger was anti-competitive, then it could issue an order disallowing the merger.

4.1 The Secretary offered justifications for replacing MRTP Act by the proposed legislation. He said that the MRTP Act was designed not to promote competition but to curb monopoly. In spite of the changes brought about in this Act in 1991 & 1994 it did not fulfill the need of the hour. He then covered the concerns expressed during the proceedings of the high level Committee and subsequent consultative process and stated that the view which emerged was that the Act should be introduced gradually i.e. in the first year, advocacy process should take place so that market players began to understand what was competition, what was good competitive behaviour. Then the next year anti-competitive agreements and abuse of autonomy should be introduced. On the issue of pending cases in the MRTPC he said that as all unfair trade practices really related to consumers, those would go to the Consumer Courts and the monopolistic & as restricted trade practices fell within the mischief of anti-competition practices, those would come over to the new Commission.

4.2 The Chairman then, invited other witnesses to add to the Secretary's presentation. The other witness *inter alia* mentioned about the need of a new competition law when MRTP Act was already there. He mentioned that MRTP Act did not define certain offences like cartels, predatory-pricing, price rigging etc. at all. He said that the MRTP Commission wanted to bring the 'cartel' to book, hence there was a need for a new law, a specific one. Here he mentioned about the pre reform and post reform scenario. Earlier while for Rs.100 crores a new approval was required to be taken whereas in the competition law this requirement has been waived. Lastly he stated that we all are consumers hence a competition driven market would help a movement in favour of the consumer.

5.0 The Chairman then sought certain clarification from the witnesses. He wanted to know the rationale of making the Department of Company Affairs as the nodal Department for piloting the legislation. Secondly he wanted to know the rationale for keeping the Minister-in-charge as the member of Selection Committee for appointing the Competition Chairperson and members. Lastly pointing out the infirmities in the MRTP Act and the consequent need for a new law to meet the needs of the changing economic scenario, the Chairman wanted to know as to how many recommendations of the Expert Committee were agreed to.

5.1 One member, *inter alia*, observed that MRTPC was of late dealing with restrictive trade practices instead of monopolistic practices. He was apprehensive that the competition law may create many problems in a poor country like ours. He felt that the Indian corporate houses had no strength to compete with the multinationals. In this context, he appreciated a decision by the Department of Company Affairs on the caustic soda case where American was dumping their stuff in India. He also felt that while complying with the WTO, Indian Parliament would have to safeguard the interests of the people. He also expressed reservations about the selection process of Chairperson and members of CCI.

5.2 One member raised the point whether the dissenting notes of the three members of the high level Committee were taken care of in the Bill. He desired that all the memoranda/views of persons/organisations, on the Bill sent to the Department of Company Affairs should be made available to the Committee, along with action taken by Government on each memorandum/suggestion.

5.3 One more member touched upon the issue of difference between the existing MRTP Act and the mooted Competition Bill. In that context he felt that there a law has needed which enlivened the indigenous industries and fulfilled the employment requirements. He also wanted reservations for public and small-scale sectors rather than a clear demarcation for these. He felt a need to take together rule of law and rule of reason to check the foreign companies from acting in a non-competitive manner. Most of the members felt the need for a law to suit the country's requirement and not in consonance with the obligations of WTO or in line with the position in certain developed countries.

6.0 The Chairman directed the witnesses to send their written responses to all the questions and queries and the witness agreed to send it within two weeks. He then informed the Committee that in due course he would invite other experts and others for evidence.

7.0 A verbatim record of the proceeding was kept.

8.0 The Committee then adjourned at 1.10 P.M. to meet again at 3.00 P.M. on 3 October 2001.

XXXV

THIRTY-FIFTH MEETING

The Committee met at 11.30 A.M. on Friday, 5 October, 2001 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. **Shri Pranab Mukherjee** — *Chairman*

RAJYA SABHA

2. **Shri Hansraj Bhardwaj**
3. **Shri Surendra Kumar Singh**
4. **Shri Sangh Priya Gautam**
5. **Dr. L.M. Singhvi**
6. **Shri S. Ramachandran Pillai**
7. **Shri C.M. Ibrahim**
8. **Shri Kuldip Nayyar**

LOK SABHA

9. **Shrimati Jayashree Banerjee**
10. **Shri M.O.H. Farook**
11. **Shri Suresh Ramrao Jadhav**
12. **Shri Vinay Katiyar**
13. **Shri Arun Kumar**
14. **Shri Ram Nagina Mishra**
15. **Shri Subodh Ray**
16. **Shri N. Janardhana Reddy**
17. **Shri Anadi Sahu**
18. **Shri Iqbal Ahmed Saradgi**
19. **Shri Manabendra Shah**
20. **Shri Raghuraj Singh Shakya**
21. **Dr. Raghuvansh Prasad Singh**
22. **Shri Lal Bihari Tiwari**
23. **Shri Beni Prasad Verma**
- 24.. **Shri E. Ponnuswamy**

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Tapan Chatterjee, Director
Shri A.K. Singh, Under Secretary
Shri Narendra Kumar, Research Officer
Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

Representatives of Department of Consumer Affairs:

1. Shri S. Bandopadhyay Secretary
2. Shir Santosh Nautiyal, Additional Secretary
3. Shri P. Venkatesan, Deputy Secretary
4. Shri N.S. Pangtey, Deputy Director

Representatives of PHD, Chamber of Commerce and Industry:

1. Shri Vinod Chandiok, Chairman, Corporate Affairs Committee
2. Shri Sri Nath, Senior Member, Managing Committee
3. Shri Suman Khaitan, Member, Managing Committee
4. Mrs. Shalini Mathur, Deputy Secretary

Representatives of Indian Industries (CII) :

1. Shri Subodh Bhargava, Past President, CII & Adviser, Eicher Group
2. Shri Anand Pathak, Partner, Pathak & Associates
3. Shri K. Suresh, Solicitor, ITC Ltd.
4. Shri S. Sen, Deputy Director General
5. Shir Ajay Khanna, Deputy Director General
6. Dr. D.C. Ravi, Director
7. Shri N.B. Mathur, Advisor

Representatives of FICCI :

1. Shri R.S. Lodha, President-Elect
2. Shri M.K. Sharma, Vice Chairman, Hindustan Lever Ltd.
3. Dr. S.M. Dugar, Former Member, Company Law Board and Advocate
4. Shri Shailender Swarup, Advocate

2. The Chairman informed the members that in course of examination of the Competition Bill, 2001 it would be necessary to hear the views of the Captains of Industry and some other Mumbai based organizations like the Bombay Chamber of Commerce, Indian merchant chamber, ICICI etc. on the various aspects of the Bill and its possible implications on trade and industry in the country. Accordingly, the Committee proposed to visit Mumbai from 4th to 7th November, 2001 for the purpose.

2.1 The Committee, accordingly, authorized its Chairman to obtain permission of Hon'ble Chairman to undertake the proposed visit.

2.2 At the outset the Chairman welcomed the Secretary, Department of Consumer Affairs to the meeting outlining the import of the Competition Bill, 2001 and invited him to give his views before the Committee.

3. The Secretary, Department of Consumer Affairs, thanked the Chairman for giving him the opportunity to appear before the Committee and said there was no objection to the

objectives of the Competition Bill, 2001, and as a matter of fact this law was necessary. He said that National Consumers Disputes Redressal Commission (NCDRC) has 10,000 cases pending and unless the infrastructure of the NCRDC is augmented, any additional responsibility will infringe upon the efficiency of the Commission.

3.01 The Secretary further said that NCDRC does not have investigative agency like MRTPC. He informed the Committee that the Consumer Protection Bill has been introduced in the Rajya Sabha with composite amendment proposals after 3-4 years of continuous interactions with States/UTs, NGOs Consumer Form etc.

3.02 But the Secretary was apprehensive whether NCDRC with its present composition, its benches would be fully appreciative of the Complicated legal issues, nuances of the transferred cases from MRTPC where each and every member is without judicial knowledge. He also said that both Bills i.e. Consumer Protection (Amendment) Bill, 2001 and the Competition Bill, 2001 should be complementary and harmonious and not conflicting.

4. The Chairman wanted to know whether by making adequate provisions in the Competition Commission, will it be able to handle consumer disputes cases, sought to be transferred to NCDRC.

4.1 A member suggested that MRTP cases should not be transferred to already burdened consumer courts. Rather a transitory my provision should be made in the Bill that till all pending cases are cleared, staff will continue and existing infrastructure can take care of the pending cases of MRTPC.

4.2 The Chairman thanked the Secretary and requested him to send the written responses to the queries made by the members to the Secretariat within 10 days.

(The Secretary then withdraw)

5.0 The Chairman welcomed the representatives of the PHD Chamber of Commerce and Industry to the meeting and requested them to give their opinion on the Competition Bill, 2001.

6.0 The witness said that various clauses of the Bill may adversely affect Competition and expressed apprehension on the implementation of the provisions of the Bill. They pointed out that the salary to the staff of the CCI (Cl.49) should be given from the Consolidated Fund of India and not from Competition Fund of India. It was further suggested that 'appreciable adverse effect' of the Bill on trade and industry needs to be looked into.

7. The Chairman asked the witnesses whether they can send an alternative draft of the clauses which they feel, are not properly drafted or have missed out important points. A member wanted to know what was the witnesses' proposal for substitute expression of "appreciable adverse effect"

(The representatives of PHD Chamber of Commerce and Industry then withdraw)

(The Committee adjourned at 1.35 P.M. for lunch and reassembled after lunch at 3.30 P.M.)

8. The Chairman welcomed the representatives of the Confederation of Indian Industries (CII) to the meeting.

9. The witnesses said that the provisions in the Bills are not in-tune with the current thinking or new mindset. The assurances, given during the preliminary stages of discussion on the proposed Bill, have not been kept, they felt. They also felt that the Bill was too micro and too detailed. They suggested that assets and turnovers in relation to acquisitions and mergers should be deleted.

10. It was further suggested that overreaching powers of proposed Competition Commission of India (CII) would give it the position of a super regulator. Commenting on the composition of the Chairman and Members of the proposed CCI, the witnesses said that it should not become a parking place for old and retired people. Rather CCI must have experts in economics, corporate finance and accounts, corporate law, professional industry manager, and a consumer representative. Besides, extensive training and exposure, both abroad and within the country must be given to the CCI staff.

11. The witness pointed out that the Preamble of the Bill should focus only on consumers and consumers' protection.

12. The witness sought the attention of the Committee to the inclusion of dealing in share markets in the Bill. They said this was a very novel concept, and no where in the world, do the anti-trust laws regulate the share markets. A question was posed by them "if tomorrow they enter into a right of first refusal agreement with a company for the purchase of shares, will that be anti-competitive? Will that be regulated under the anti-trust rules?"

13. The witness pointed out that the Bill basically focuses on three primary areas. The first substantive provision (Clause 3) is the prohibition concerted practices, a prohibition that attacks the cartels, be it horizontal cartels or vertical cartels. The second substantive provision attacks the abuse of dominant position and the third regulates mergers and combination.

14. The Chairman thanked the representatives of CII and asked them to send alternative suggestions in concrete terms though in draft form to various clauses, which the Committee would consider while taking up the Bill, Clause-by-clause. The Chairman further asked the witnesses whether there should be some specific time period between the actual passage of the Bill and the implementation of the Act.

15. The Chairman further wanted to know whether there is a need for regulations for combinations and mergers in respect of Indian industries. Then he asked the witnesses to send their written responses and alternative formulations to various clauses of the Bill, to the Secretariat.

(The representatives of CII then withdraw.)

16. The Chairman welcomed the representative of FICCI to the meeting and invited their opinion/views on the Bill.

17. The witness thanked the Chairman and the Committee for the opportunity given to them to express their views on the Bill. They wondered whether timing was right and the atmosphere conducive for this kind of legislation. They opined that we

should understand our priorities and what subserved our national interest the best should be the foremost thing, and we must have a competition law best suited to our needs and ethos.

18. The witness said that consolidation of Indian industries must be allowed to happen and there should be nothing to prevent it. Size of an industry per se is not the cause of concern and even Supreme Court Judgment (1994) in Tomco Hindustan Liver Merger case has rule that it is the misuse or abuse of that size which has to be monitored.

19. The representatives pointed out that in the new Bill, quantitative criteria is sought to be substituted by qualitative criteria. They further said that CCI should have an advisory role rather than regulatory role. They were of the view that time was not ripe for changing the status quo and provisions of MRTP Act are more relevant even today.

20. The Chairman thanked the representatives of the FICCI and asked them to send their written memoranda to the Secretariat, with alternative suggestions. He also requested them to suggest in writing as to what amendment are required in MRTP Act, in case the bill is dropped and also let the Committee know whether CCI is a tribunal or a regulatory body? He again told them to submit a detailed memoranda so that the same can be circulated to members for comprehensive amendments to MRTP Act.

(The witness then withdrew)

21. The Committee then adjourned at 6.10 P.M.

XXXIX

THIRTY-NINTH MEETING

The Committee met at 11.00 A.M. on Thursday, 18 October, 2001 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

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MEMBERS PRESENT

1. **Shri Pranab Mukherjee** — *Chairman*

RAJYA SABHA

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2. **Shri Hansraj Bhardwaj**
 3. **Shri Hiphei**
 4. **Shri Sangh Priya Gautam**
 5. **Dr. L.M. Singhvi**
 6. **Shri S.Ramachandran Pillai**
 7. **Shri Drupad Borgohain**
 8. **Shri Jayanta Bhattacharya**

LOK SABHA

9. **Shrimati Jayashree Banerjee**
10. **Shri Vinay Katiyar**
11. **Shri P.H. Pandian**

12. **Shri Subodh Ray**
13. **Shri Anadi Sahu**
14. **Shri Iqbal Ahmed Saradgi**
15. **Dr. Raghuvansh Prasad Singh**
16. **Shri Beni Prasad Verma**
17. **Shri E. Ponnuswamy**

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Tapan Chatterjee, Director
Shri A.K. Singh, Under Secretary
Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

REPRESENTATIVES OF NON-GOVERNMENTAL ORGANISATIONS

Consumer Coordination Council (CCC)

Ms Mala Banerjee, Chairperson
Ms Sunita Roy, Executive Secretary

Voluntary Organisation in Interest of Consumer Education (VOICE)

Dr. Sri Ram Khanna, Managing Trustee
Shri Bijon Mishra, Advisor
Dr. Roopa Vajpayee, Editor
Ms. Zashmin Zafar, Legal Co-ordinator

Consumer Unity Trust & Society (CUTS)

Shri Ujjwal Kumar, Advisor
Shri Sanjay Verma, Member

REPRESENTATIVES OF PROFESSIONAL ORGANISATIONS

Institute of Chartered Accountants of India (ICAI)

Shri Amarjit Chopra, Chairman, Corporate Laws Committee
Shri Sunil Goyal, Central Council Member
Shri K.B. Sharma, Central Council Member

Institute of Cost and Works Accountants of India (ICWAI)

Shri V.V. Deodhar, President
Shri H.R. Subramanya, Central Council Member
Shri D. Chandra, Deputy Director

Institute of Company Secretaries of India (ICSI)

Dr. P.V.S. Jagan Mohan Rao, President
Shri R. Krishnan, Past President
Shri Girish Ahuja, Council Member
Shri G. Gehani, Council Member
Ms. Pallavi Shroff, Council Member
Shri Harish K. Vaid, Council Member
Shri Pawan Kumar Vijay, Council Member

2.0 At the outset Chairman welcomed the representatives of NGOs, - Consumer Coordination Council, Voluntary Organisation in Interest of Consumer Education & Consumer Unity Trust and Society. He shared with them the history of Competition Bill, 2001. He then invited them to introduce themselves and then to present their views one after another.

2.1 The Chairperson of the Consumer Coordination Council initiated the presentation by introducing the Council and made a mention that it had received many suggestions regarding the Bill.

2.2 She referred to clause 8 of the Bill and termed it confusing, as it provided for the appointment of Chairman and one member by the Central Government which contradicted the provision that the Competition Commission would comprise of Chairman and not less than two members. Next, she mentioned that Clause 19 which dealt with filing of complaint by consumer organizations, had not been properly defined. She wanted the clause to be more elaborately explained so as to do away with the problems already existing in the consumer courts, which applied discretionary powers in accepting complaint from consumer organizations. Referring to Clause 22 she wanted that the provision for additional member be spelt out properly. She demanded clear demarcation of jurisdiction of the benches and additional benches for bulk complaints. Then about clause 27 she suggested that to implement the penalty clause effectively it must be specified in detail.

2.3 Among others, she found flaw in Clause 39 too, which dealt with the provision of the execution of orders of the Commission. She felt that the execution system needed to be amended otherwise the purpose of the Bill would be defeated. Mentioning Clause 47, she viewed that this clause should not be encouraged. She said that the Commission should not be required to take up competition advocacy as provided in this Clause which might result in delay in pronouncement of judgement by it.

2.4 Dealing with Clause 49 which provided for Competition Fund, she said that the Competition Commission should be allowed to create an awareness and training by NGOs working in this field. Lastly, she suggested about a time limit to complete the proceedings.

3.0 The Chairman then invited the Members to seek clarifications on the issues arising out of the presentation of CCC.

3.1 Another member raised the issue of the aspects in the MRTP Act which marred the consumer interests and hindered competition. He also pointed out the discrepancy regarding qualification for the Chairpersons of MRTP Commission and CC, as in the case of MRTP Act the Chairperson was to be qualified to be a Supreme Court Judge whereas for

Competition Commission he should be qualified to be only a High Court Judge. He also enquired if the High Level Committee received any suggestion for amending MRTP Act in place of the proposed legislation.

3.2 The Chairman wanted the considered opinion of the witness on Clause 8(2) of the Bill, regarding the qualification for Chairperson and Members of the Commission. He requested the Chairperson of CCC to send the written responses to the queries to the Secretariat at the earliest.

4.0 Thereafter, the Managing Trustee of Voluntary Organisation in the Interest of Consumer Education drew the attention of the Committee to the fact that being a part of the consumer movement they were not happy with the Bill. Further he said that foreign companies Coca-cola, Gillette and Unilever came to India and took over the domestic manufacturer in their respective areas whereas the same could not have occurred in America as the Federal Trade Commission would have disallowed it. He then made certain observations with regard to the composition of the High Level Committee and also on the working of the MRTP Act.

5. The Chairman interrupted the witness and requested him to focus his presentation on the Competition Bill rather than on other issues.

6.0 The witness thereupon suggested for a strong Competition Commission on the lines of the Federal Trade Commission of US to provide anti-competitive protection.

6.1 Thereafter he pointed out the flaws in the Bill viz. in its adjudication procedure.

6.2 The witness then stated that the definition of 'Competition' was not clearly spelt. He suggested for the retention of the definition of 'group' as provided under section 2 (of) of the MRTP Act. Regarding 'inter-connected' enterprises, he suggested for substitution of Clause 5 (b) by section 2(8) of the MRTP Act. On the definition of 'ownership' too he was in favour of section 2(8) of the MRTP Act or for adoption of the definition from the Consumer Protection Act, vis-à-vis the meaning of the word 'consumer association'. He also suggested that definitions of 'retailer', 'trade association', 'wholesaler', should be adopted from sections 9(b), 2(t) and 2(x) of the MRTP Act. Further he wanted clause 3 to be more comprehensive and to include both formal and informal agreements, covering inter-brand competition, competition from paralled imports. He also suggested for inclusion of the concept of relevance of circumstantial evidence in the case of commercial conspiracies, in the Bill.

6.3 He also found fault with the provision under clause 4 regarding dominant position. He felt that the only way to make the definition of dominant position more concrete it would be appropriate to define dominance by market share. He appreciated one aspect of the Bill which provided for individual turnover assets of a group. He further mentioned that the heart of the Bill relates to appointments. He suggested for reversing of the recommendations of the high level committee and for providing the competition authority the power to divide companies. He also suggested for regulation of production, storage, supply, distribution or control of any goods. On the question of transfer of cases relating to unfair trade practices, to Consumer Courts he said that they were well equipped to deal with such behaviour. He also felt that in the qualification for the members of CCI, the words consumer affairs should be included and the selection process should also be transparent. So far as the repealing laws were concerned

he said that there were ambiguities regarding the transfer of cases relating to unfair trade practices which would stand transferred to Consumer Protection Act.

7.0 The representative of the Consumer Unity Trust & Society began by making certain observations on the purpose of the Bill and its preamble. He suggested for inclusion of temporal and functional dimensions in defining 'relevant market'. He also felt that the absence of preventive steps to prevent cartels should be taken care of. Besides there should be encouragement for those who provide information. He suggested for criminal penalty for individual Directors involved in the cartel, particularly in price fixing, output restriction etc. Referring to the intellectual property rights he stated that parallel imports or inter brand competition should be allowed. He expressed reservation at the high retirement age of Chairperson/Members. He also advocated for the curtailment of the blanket power given to the Government to intervene. He referred to the ambiguity in the jurisdiction of Competition Commission and other statutory authorities. Referring to competition advocacy, he suggested that it should also refer to past law and policy. He also stated that the constitution of the Competition Fund should be transparent.

7.1 Further with regard to clause 52, i.e. the power to exempt, he suggested for an Advisory Council to suggest as to what should be exempted. He also suggested for incorporation of a clause in the Bill empowering the Department of Company Affairs or others to list out the laws and policies which affect the Competition Law.

8.0 The Chairman thanked the witness for his presentation and asked him to send the written replies to the queries to be raised by members to the Secretariat. He invited members to seek queries/clarification from the witness.

8.1 One member wanted to know as to how consumer's interest could be protected by this Bill? Another member referring to sub-clause (6) of clause 19 wanted to know whether the witness felt that amendment was required in the clause. Further regarding clause 22, he asked for a clarification whether each Bench should have a Judicial Member or not.

(The witnesses then withdrew)

(The Committee then adjourned at 1.10 P.M. and reassemble at 3.00 P.M.)

9. The Chairman welcomed the representatives of the ICAI to the meeting. He apprised them about the history of Competition Bill.

10.0 The Chairman of Corporate Laws Committee of ICAI thanked the Chairman & Members for giving him opportunity to appear before the Committee. He welcomed the Bill terming it to be a watershed and said that the MRTP Act had become obsolete. He stated that the Bill aimed at providing provisions to see to it that the interests of consumers are paramount. He suggested for section 108 to be taken back to the Companies Act rather than keeping it in the Competition Bill. Referring to the amalgamation and mergers he viewed that these could be taken care of under Companies Act. He later said that bringing any kind of a limit in respect of turnover was not right. He wanted an ascertained limit to the definition of dominant position. Regarding clause 12, he felt that the Chairperson and other members should be barred for at least a year. Lastly he suggested that CAs should be considered for the purpose of appointment in the CCI as well as for investigation on behalf of the Director-General.

10.1 One member wanted to know whether the threshold limit for dominant position should be included in the clause itself or prescribed in the rules to be framed later on.

(The witnesses then withdrew)

11.0 On being invited by the Chairman to present their views on Competition Bill, 2001, the President, ICWAI gave a brief overview of the Institute. He welcomed the Bill and said that the definition of competition could have been more clear. Dealing with clause 4, regarding the dominant position he viewed that the ICWAI has a very significant role to play. He felt that the definition needed to be a little more elaborate. He gave his considered opinion that dominant enterprises which were the source of profiteering transactions leads to abuse of dominant position. He suggested for registration of such enterprises.

11.1 The other representatives of the ICWAI added on to the President's presentation and expressed his views about the precise definition of "competition". However he too felt that this definition should be elaborate. In the context of the Indian Competition Law, the International Patent Rights Act should be synergised with the Bill. Referring to clause 21(1) of the Bill, he stated that instead of a reference to the statutory authority, a reference to a responsible office should be made.

11.2 The Chairman, enquired whether the enacting formula where the word 'Competition' had been defined was adequate. Besides, he also wanted to know whether they felt that comprehensive amendments of the MRTP Act could have achieved the objective of the Competition Bill? Lastly he raised the issue of dominance and wanted to know whether provisions in the Bill to prevent the abuse of dominance were adequate.

(The witnesses then withdrew)

12.0 The Chairman then welcomed the President and Members of the ICSI.

12.1 The founder President of the Institute made the presentation on behalf of ICSI. He briefly referred to the various provisions of MRTP Act, then welcomed the Bill. Thereafter he drew attention of the Committee to clause 3 of the Bill dealing with appreciable adverse effect on Competition. He suggested that it would be worthwhile to reproduce in the section 33 together with section 2(o) of the MRTP Act.

12.2 Thereafter the representative of the Institute referred to clause 4 where he stated that the definition of dominant position was vague and which should be specific. He suggested that clause 6(1) should clearly define as to what was going to constitute appreciable adverse effect on competition on the issue of appointment he suggested that it should be made transparent. He wanted the Company Secretaries to the considered members of the CCI. Besides he advocated for a cadre of personnel drawn from different professions for the Competition Commission and wanted the age limit to be aligned with that of High Court Judge. Regarding the removal of members, he felt that the Supreme Court should not come into picture and the Government should be at liberty in case inefficiency or misbehaviour was proved.

12.3 Regarding the qualification for appointment of the Director-General and other officials under clause 16(7) he suggested that it should be specified as experience in

investigation in economise trade or industry. He suggested that clause 19 (3) should be read with clause 20(4) and specifically spelt out. Dealing with clause 23 he suggested that the authority for transfer should be vested in the Chairman. He suggested minor amendments in clauses 28 & 38. So far as clause 40 was concerned, he suggested the Committee to reconsider whether the clause was appropriate. Regarding clause 43 (b) dealing with penalty he mentioned that the imposition thereof should be left to the Commission. On Clauses 58 & 60 he termed them as contradictory and suggested for their harmonization. Lastly about clause 64 he was of the view that the technical personnel should be transferred to the Commission.

12.4 Another representative of ICSI made suggestions on clause 3. Secondly she said that whereas by virtue of clauses 48 & 49, certain amount of financial autonomy was proposed to be given to the Competitive Commission, on the other hand clauses 53 & 54 empowered the Government to give directions on matters of policy in respect of the functioning of the Commission. She also referred to the issues of conflict between the Convergence Bill and the Competition Bill. Lastly he suggested for deferment of its implementation.

(The witnesses then withdrew.)

13. A verbatim record of the proceedings was kept.

14. The Committee then adjourned at 4.24 P.M. to meet again at 11.00 A.M. on 19 October 2001.

XXXXV

FORTY-FIFTH MEETING

**The Committee met at 11.00 A.M. on Monday, 5 November 2001 in Regal Room,
The Oberoy Towers, Mumbai.**

1. Shri Pranab Mukherjee- *Chairman*

RAJYA SABHA

2. **Shri Hansraj Bhardwaj**
3. Shri Sangh Priya Gautam
4. Dr. L.M. Singhvi
5. Shri C.P. Thirunavukkarasu
6. Shri Kuldip Nayyar
7. Shri Pritish Nandy
8. Shri B.S. Gnanidisekan

LOK SABHA

9. Shrimati Jayashree Banerjee
10. Shri Vinay Katiyar
11. Shri Arun Kumar

12. Shri Ram Nagina Mishra
13. Shri P.H. Pandian
14. Shri Subodh Ray
15. Shri Anadi Sahu
16. Shri Raghuraj Singh Shakya
17. Dr. Raghuvansh Prasad Singh
18. Shri E. Ponnuswamy

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Tapan Chatterjee, Director
Shri A.K. Singh, Under Secretary
Shri Narendra Kumar, Research Officer
Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

Shri Rahul Bajaj, CMD, Bajaj Auto Ltd.
Shri Keshab Mahindra, Chairman, Mahindra and Mahindra Ltd.
Shri K.V. Kamat, MD & CEO, ICICI Ltd.
Shrimati Kalpana Moraporia, ED
Shri P.P. Vora, CMD, IDBI

2. At the outset the Chairman welcomed the members and extended special welcome to a new Member of the Committee. He then briefly apprised them about the purpose of the visit to Mumbai and about the schedule of two days. The Chairman then invited the CMDs of Bajaj Auto Limited and Mahindra & Mahindra Limited and apprised them about the history and necessity of the Competition Bill. He thanked them for responding to the invitation of the Committee. He then explained them that the Committee wanted their opinion on the various provisions of the Bill even by way of pointing out the provisions which might prove detrimental to the growth and development of the Indian Industry. He then mentioned that the Members might seek certain queries arising out of their presentation which could be responded later in writing.

3.0 The Chairman, Mahindra & Mahindra Ltd. thanked the Committee for providing them this opportunity and said that he considered the Bill to be of paramount importance as it would affect the shape of economic development in our country in the years ahead. He said that the monopolies Act with its draconian laws stifled the economic development of the country for the last 20 years. Replying to some fundamental questions raised by himself he stated that it was primarily concerned with consumer interests. However, he hastened to say that the Consumer Protection Act was more than adequate to protect the consumer's interests. He added that he had serious reservations against the Bill and believed in creating an environment which would attract capital and technology. He felt that the present size of our economy was very small and putting any restriction on the growth of Indian Companies would affect the growth of our economy. He mentioned some examples of largest companies in their sector which spent a large sum in Research and Development and said that Indian Companies would not be able to compete with the multinational companies. Pointing out the lapses in the Bill he said that the word 'dominance' had not been defined anywhere in the

Bill. he also felt that the Bill must ensure the autonomy of the Independent members in the proposed Commission and there should also be a time bound programme in the Bill. He also felt strongly against the confusing of asset values and turnovers in the Bill. he suggested for keeping the monetary limits flexible so as to avoid frequent legislations on the change of circumstances. His suggestions included a fixed sum of penalty rather than a percentage of the turnover. Lastly he said that we should not copy laws of the developed world rather aspire to reach their stage.

4.0 The CMD, Bajaj Auto Ltd. in his presentation *inter alia* said that one of the main objectives of the Bill was consumer interest and welfare. He then mentioned that in every sector there were bad eggs and so was the case with industry where some unscrupulous players did the spoilsport. He also mentioned that in the world's population of poor people India contributed 50%. In this scenario he felt that there was an urgent need to take care of the needs of all the cross sections of the society. However, he simultaneously laid emphasis upon the concern for Industrialists. The Public Sector and the Private Sector industries also needed protection from the MNCs. he felt that MNCs might be allowed but not at the cost of closing down of all Indian Industries. He linked the interest of Industrial Sector to that of consumer's interest.

4.1 He agreed with the views of the other speaker and stated that the provisions of the Bill should not come in the way of growth. About the size criteria in the MRTP Act, he said that it was removed in 1991 but was introduced in the present Bill. He also suggested for some discretion to the commission, such as, for deciding the limits of dominance, however, too much discretion would lead to red tape and corruption. He suggested that competition was good as it controlled the bad manufacturer and prevented price fixation but even then a regulator was needed.

4.2 Further touching upon the aspect of penal provisions in the Bill he said that no economic legislations had such penal provisions as this law had. To him these were not necessary and would restrict the production of wealth, hence he suggested for its modification.

4.3 His another point was regarding the dual regulators. He felt that in the sectors like insurance and telecom where IRDA and TRAI were already regulating, the competition commission should not look into it. Regarding MRTP Act he said that it neither prevented anybody from becoming rich nor helped the consumers. So he felt that the Bill should protect consumer without hurting Indian Industry. He was of the view that if Indian Companies would not perform they should be taken over by Indian Companies itself.

4.4 Lastly he mentioned about corporate Governance issue which the CII had taken up and came out with a code on that. Its two major ingredients were disclosure and transparency.

5. The Chairman thanked the witnesses for their observations and for indicating what should be done in respect of having good corporate governance rules and regulations in the country. He enumerated the three major suggestions made by them viz. the change in purview of the operation of Competition Bill so that CCI could concentrate on companies having larger turnover and larger number of employees. Secondly, a clear definition of dominance depending upon share in the market of that particular product instead of

depending in size of the company, and lastly that Indian Consumers must be ensured a stake in the foreign companies. He wanted to know from them as to how it could be done.

6.0 A member pointed out to the diverging opinions of the two witnesses on whether MRTP Act was adequate with certain modifications or the new legislation was required. Nextly he pointed to their view that we were not yet economically ready for such a stage of regulation hence move slowly. He then stated that as mentioned by witnesses that dominance was not defined in the Bill, he disagreed and said that it was defined, although not with precision on the basis of the Report of the High Level Committee. He, then, enquired from the witnesses as to which way they wanted dominance to be defined because if the limit would be increased, the medium level companies which were less transparent would go scot-free and if it would be on the basis of market share which seemed easy, it would become a lawyer's paradise. Regarding combination he also wanted to know from the industry as to how they viewed it. Lastly on the issue of penalty, the Member felt that the idea of civil prison was not good. Besides, he wanted them to give concrete measures to bring greater accountability for the multinationals.

6.1 Another Member wanted to know whether the Competition Bill in its present form with certain modifications would help healthy competition. He also enquired whether clauses 47, 52, 53 and 60 would create problem for the industry at later stage and what they felt should have been the threshold limits for assets classification.

6.2 A Member specifically asked as to what was the unease in the minds of industry due to the competition Bill. Another Member enquired whether the multinationals carried out their export obligations at the time of entry and if not what punishment was given to them. Another Member wanted a collective memorandum as to what harm this Bill would cause to them and how would it benefit the foreign Companies. A Member suggested that a mechanism might be incorporated to recover the fine.

6.3 Another Member felt apprehension about the role of cartels in the Indian Industry. A Member wanted to know whether it was the ripe time to bring regulatory controls in the economy or we should allow Indian industry to acquire a critical mass. Another Member suggested absolute removal of penalties of sending people to jails and suggested the alternative of attachment of property. Another Member wanted to know whether clauses 53, 54, 19(4) regarding Competition Commission and power of the Government to supersede were alright?

6.4 A Member expressing his favour for the Bill wondered as to how Indian Companies became pigmies in comparison to their foreign counterparts. Another member queried as to how the industry would protect workers interest. Another enquired whether the industry had any collaboration with educational institutions to develop the industrial sector.

7. The Committee adjourned at 1:20 P.M. for lunch to meet at 3:00 P.M.

8. The Chairman welcomed the representatives of ICICI and reminded them of the purpose of the meeting. He wanted them to express their considered opinion regarding the provisions of the Bill such as amalgamation, merger, combination, etc. He briefly mentioned the objections of the other representatives to the certain provisions of the Bill. He apprised them with the rules of the Committee and left the floor for them.

9.0 The CMD, ICICI stated that his team would cover as to what were policy objectives, the business environment and the specific issues on the Bill. On the objective part he too mentioned the same things as ensuring freedom of trade, protection of consumers interests, increasing efficiency and making Indian Industry globally competitive. Touching upon the aspect of business environment, he said that industry had an opportunity as well as a challenge due to the moving from a protected market to a globalized market. Referring to the Companies which were under pressure in terms of inability to meet their obligations to lenders and in the market place, he suggested a solution to allow them to effectively merge so as to create companies of scale. he suggested that any Competition Bill would have to be viewed in the perspective of structural change consequent to globalizations so as to first have a platform of survival and then success. He then mentioned about the largest Indian Company i.e. the Indian Oil which was about one tenth of the size of the largest global oil company. Similarly, in terms of asset, ONGC, the largest Indian Company was about one hundredth to General Electric.

9.1 On these lines, he suggested that we needed to ensure that our companies got the strength and withstood the pressure of globalization. For this he felt that a timeframe of atleast five years was required for the industries to achieve the critical mass.

9.2 Adding on to his presentations, another witness from the ICICI highlighted the four provisions of the Bill which required relook, according to them. Firstly he stated that size of assets and turnover might not really create the appropriate environment. She suggested that the size needed to be would at in the content of enterprises in the global content. On the issue of predatory pricing she said that it should be left to the Commission to investigate and discover the face market cost of production on a reference basis. Regarding merger and amalgamation in the financial sector she suggested that there were well regulated and should be left out of the CCI's jurisdictions. Further on, she felt that mergers and amalgamations through a Court process should be completely outside the purview of the Commission . Lastly, on the penal provisions, she viewed that instead of criminal penalty there should be very stiff financial penalties.

10. The Chairman thanked the witnesses for their presentation and wanted clarifications from them that whether the timeframe for education and advocacy as provided in the Bill was not sufficient and whether the present Bill would not help the regulators which were already working in financial sector regulations.

11.0 A Member wanted to know some more examples of comparisons between domestic and global players and the monetary limits on combinations, mergers et al. Besides, he wanted to know the functionality in respect of the combinations and a test for combinations. He enquired as to what could be done to give more time.

11.1 Another Member, referring to clauses 6 and 28 wanted to know as to what would happen when the two authorities, regulating on a matter go in opposite direction. A member enquired as to how a timeframe of five years would be given for rich to grow richer. What would happen to the poor and the unemployed in that period. Another Member enquired about the laws which prevented Indian Industries from becoming internationally competitive. Few Members asked some general questions like whether any other regulatory Bill and regulatory authority was needed, how consumer interest would be protected, how would the backward areas be developed.

12. The Chairman, then asked the witnesses to send their written responses.

(The witnesses then withdrew)

13. The Chairman welcoming the representatives of the IDBI, mentioned the purpose of the meeting and apprised them with the rules of the Committee. He then requested them to present their views on the various provisions of the Bill.

14. The CMD, IDBI in his presentation suggested that multiplicity of regulators should be done away with and some specified definition of appreciable adverse effect be provided by rules. Similarly, on the aspect of dominant position, it needed to be more apparently defined from case to case from time to time and from industry to industry. Nextly he suggested that assets and turnovers for defining mergers and amalgamations were unrealistic as it presumed anti-competitive agreement as well as the figures were also same for all industries which were again unrealistic. Investor protection was the main object of SEBI regulations, hence further restrictions in the present Bill might amount to excessive regulation. He also suggested that in case of any alleged contravention of clauses 3(1) or 4(1) by any Bank or Financial Institution, the complaint should be entertained by the Commission only if it was complied by an RBI recommendations as it was the regulator for such institutions. It would check frivolous complaints. Speaking on the penal provisions in the Bill he suggested that at least the nominee directors should be exempted from such penalties because they did not look after the day-to-day management. Summing up he viewed that when we go for the anti-competition Bill it might have to be industry specific so that there were enough safeguards.

15. The Chairman thanked the witness for his lucid presentation and wanted a clarification as to how many sick industries were saved by way of mergers from dying. He then asked the witnesses to respond in writing to the queries of the Committee.

16. A Member suggested two models of doing away with multiplicity of regulators and wanted to know from the witness which one would be functionally most viable. He also wanted to know as to which method of defining dominance would be better. Lastly he wanted them to give concrete and specific suggestions on the issue of guidelines.

17. The Committee adjourned at 5:30 P.M. to meet again at 11.00 A.M. on 6 November 2001.

XXXXVI

FORTY-SIXTH MEETING

The Committee met at 11.00 A.M. on Tuesday, 6 November 2001 in Regal Room, The Oberoi Towers, Mumbai.

1. Shri Pranab Mukherjee- *Chairman*

RAJYA SABHA

2. Shri Sangh Priya Gautam
3. Dr. L.M. Singhvi

4. Shri C.P. Thirunavukkarasu
5. Shri Kuldip Nayyar
6. Shri Pritish Nandy
7. Shri B.S. Gnanidisekan

LOK SABHA

8. Shrimati Jayashree Banerjee
9. Shri Vinay Katiyar
10. Shri Arun Kumar
11. Shri Ram Nagina Mishra
12. Shri P.H. Pandian
13. Shri Subodh Ray
14. Shri Anadi Sahu
15. Shri Raghuraj Singh Shakya
16. Dr. Raghuvansh Prasad Singh
17. Shri E. Ponnuswamy

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Tapan Chatterjee, Director
Shri Narendra Kumar, Research Officer
Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

Representatives of Bombay Chamber of Commerce & Industry

Shri K. Ramchandran, Vice President and Vice Chairman & Managing
Director, Philips India Ltd.
Shri R. Prasanna, Chairman, Legal Affairs Committee
Shri S.H. Rajadhyaskha, Co-Chairman, Legal Affairs Committee
Ms. S.K. Bharucha, Past-Chairman, Legal Affairs Committee
Shri S.M. Bhandarkar, Past-Chairman, Legal Affairs Committee
Shri Bharat Vasani]
Smt. Sandhya Kudtarkar,] Member, Legal Affairs Committee
Shri S. Vutha]
Shri L.A.D'Souza, Executive Director
Smt. Manju Sood, Joint Director

Representatives of Indian Merchant Chamber

Shri Arvind Jolly, President
Shri Tanil Kilachanda, Past President
Shri S.S. Bhandare, Member, Managing Committee
Shri Pravin Ghatalia, Member, Managing Committee
Smt. Kiran Nanda, Chairperson, Economics & Business Reform Committee
Shri Nanik rupani, Chairperson, Electronic & telecommunication
Shri Shailesh Vaidya, Co-Chairan, Law & Company Affairs Committee

Dr. D.R. Pendse, Member, Managing Committee
Shri Pradip Shah, Member, Managing Committee
Shri P.N. Mogre, Secretary-General
Shri Jitendra Sanghvi, Secretary

Representatives of Securities and Exchange Board of India (SEBI)

Shri D.R. Mehta, Chairman
Shri Ananta Barua, Joint Legal Advisor

Representatives of National Stock Exchange.

Shri Ravi Narain, Managing Director & CEO

2. The Chairman welcoming the representatives of Bombay Chamber of Commerce and Industry mentioned the purpose of the meeting. While inviting their perceptions on the various provisions of the Bill, he mentioned about the basic objective of the Bill as facilitating competition and protecting the interests of the consumers. The Chairman thereafter hinted at attempts of the Government to bring in a series of legislations aimed at providing good corporate governance to suit the changed world economic scenario and thus to fulfil the international obligations. He referred to the changes already taken place in the Companies Act, 1956 and some of the changes therein on the anvil to bring in corporate governance. He then touched upon briefly salient features of Competition Bill and stated that the Bill aimed at facilitating competition among the various manufacturing and service providers to the best interests of ensuring competition and at the same time to protect the interests of the consumers. He then traced the history of the Bill to the Finance Minister's Budget Speech, and stated that after consultations at various level the Bill was introduced in Parliament and thereafter got referred to the Committee, which had taken up the work of eliciting opinion of the cross sections of Indian society. He mentioned that the representations of the various organisation/individuals already received by the Committee and the purpose of Mumbai visit of the Committee is to hear Mumbai based Chambers of Commerce & Industry and Captains of Industry.

3.0 The Vice-President of the BCCI began the presentations by thanking the Committee for this opportunity. He then stated that their observations were based on certain fundamental building blocks or the guiding principles such as the commercial enterprises must be made globally competitive, for that purpose the focus should be on productivity and cost competitiveness. Secondly he stressed upon encouraging commercial enterprises to achieve profitable growth. The third principle he mentioned was that to achieve these, the enterprises necessarily required a business climate that was investment friendly and attractive in terms of knowledge flow. Thereafter he left the floor to his colleagues for making his observations illustrative.

3.1 The other witness opined that the competition scenario in India was not such that require the proposed legislation at this point of time. He viewed that the players in the Indian market, by global benchmarks like global volumes and global markets, were very very small. He strongly felt that the Bill entailed to establish a Commission rather than a law, though the objects seemed to lay down a policy and a law concerning competition. In that context, he referred to four clauses i.e. 3,4,5 & 6 which proposed to lay down competition law which re-characterization of the principles laid in MRTP Act and other clauses talked

about the administration of that law by Competition Commission of India. The Competition policy is not rightly spelt out in the Bill, which must be evolved first. He felt that at the moment there was no need for such a competition law given the transition which India was going through in view of deregulation, privatization, etc. Citing the American experiences, he stated that competition law therein i.e., the Anti Trust Law had developed in stages and there were constant stabilization and mid course corrections by judicial pronouncements. He desired that a cooling period must be provided in the Bill. He viewed that the Competition in India has not reached the stage where it adversely affect either industry or consumer warranting intervention. He opined that replication of competition law of other country is incorrect but it should adapt to the Indian condition.

3.2 Another witness supplementing the views of expressed by his colleagues by pointing out the fact that clauses 5 & 6 of the Bill are akin to chapter 3 of the MRTP Act, 1969, which was scrapped in July 1991. He wanted to learn the kind of distortion in Indian Industry/market in the last ten years which led the Government to reintroduce these provisions in different form which would delay and hamper the growth of Indian corporate sector. These provisions would bring significant restrictions on joint venture, collaboration, acquisition and mergers. In that context he viewed that Indian Industries were facing slowdown and finding difficult to adjust to the realities of post WTO regime, there was a need for bigger scale; hence restriction in combination would hamper the growth. He cited the example of the chemical industry which were larger applicants for anti-dumper petition which were basically due to the fact that they were not able to match the international prices because of its low size and operation. He regarded the time as inopportune to introduce any new restrictions to allow industries to restructure itself. Indian Industry is not capable of meeting of challenges of globalisation. The capital intensive sector like power, telecom, petro-chemical have not commanded even ten percent market share.

3.3 One more witness added that pre notification requirement for merger would delay the whole process and thus deter competition. The aspects of mergers and acquisitions were already looked at under the Companies Act by the High Courts, which may lead to a situation where two bodies i.e. High Court and Competition Commission of India may give different judgement on the same issue.

3.4 The Chairman raised a few queries arising out of presentations made; viz. (i) why the Indian Industries failed to take the advantage of the deletion of chapter 3 of the MRTP Act, 1969 and (ii) what should be the cooling off period after which the country would have the competition Bill. Thereafter he sought elaborate written responses thereon.

3.5 Another Member wanted an alternative draft of the Bill. Another Member protested by saying that invitees amongst captain of industry did not appear before the Committee. Another Member wanted to know why the Bombay Chamber is sceptical about the vertical merger.

3.6 The Chairman thanking the representatives of BCCI requested them to send their written responses to the observations/queries of the Member and himself to the Secretariat of the Committee.

(The witnesses then withdrew)

5. The Chairman welcomed the representatives of Indian Merchant Chamber and briefly mentioned the purpose of the meeting and the history of the competition Bill. He thanked them for responding to the invitation. He also made a brief mention of the points raised by the Industry and requested the witnesses to give their considered opinions on those issues.

6.0 The President of the Chamber thanking the Committee for giving them an opportunity to present their views stated that in principle they welcomed the Bill. But, he opined that India was too pygmy an economy at this point of time to have this Bill. He said that other countries took 8-10 years to bring about such laws, we too should not hurry as it might stifle the economy. He advocated for some more time before bringing up the Bill and even for reconsidering of the harsh provisions in the Bill. He thereafter requested one of his teammates to deliberate on legal issues.

6.1 Supplementing the views of the President of the Chamber, he stated that consumer interests as an objective was a misfit for this Bill as there was a separate legislation for it. He stated that in Indian economy real competition is absent and pseudo competition exist and in that regard he questioned the necessity of a law to meet with requirement of the WTO regime. He felt that much more was required to be done in this country to bring about real competition to promote and sustain real competition. While questioned the composition of the selection committee, he desired that representatives of Industry should be in the selection process.

6.2 Another witness referring to the aspect of appreciable adverse effect in the Bill said that it is subjective would enable the regulatory authority to act in arbitrary manner. About the definition of dominant position he felt that the market share of the produce should be included as an indicator to determine dominant post as the measure by asset value or turnover appeared to be flawed. He also suggested that the President or Chairperson of the apex Chamber of Commerce and Industry could be nominated by rotation as a member on the Selection Committee and its Director General should be a professional person a Chartered Accountant & a lawyer. The CCI should not be subjected to take approval of the Central Government to transfer the case from one bench to another as stipulated under clause 23 of the Bill. In the Independant Advisory Committee as laid down under clauses 47, representatives from open industry should be considered.

7. A Member, thereafter asked the witnesses to spell out how competitions could be promoted by this Bill. He then wanted them to give a drafted version of representation of the chambers/industry for advising the government regarding policy framework. The Chairman requested the representatives to submit their written comments to the Secretariat.

(The witnesses then withdrew)

8. The Chairman welcoming the representatives of Securities and Exchange Board of India (SEBI) and National Stock Exchange (NSE), thanked them for their presence, described briefly the history of the Bill and issues relating to the Bill such as mergers, amalgamation, dominance, cooling off period.

9. The Chairman, SEBI, thanking the Committee for the invitation, welcomed the legislation and said that this was the right time to adopt it. He mentioned that the SEBI was concerned with legislation in limited way i.e. takeovers only. He further mentioned that takeover is necessary for a corporate entity to acquire proper size so to remain in the global

competition. He mentioned the provisions of takeovers by which investors interests were also protected. He suggested that dominance should not be characterized the size of the company as stipulated in the Bill but with the market share in the percentage term. He observed that with the enactment of the proposed legislation, overlapping of functions with regard to take over may occur thus was of the view that takeovers, along with acquisition, mergers which were being dealt by High Court, may be kept out of Competition Bill.

10. The MD & CEO, National Stock Exchange then expressing his gratitude to the Committee said that the provisions regarding preventing the practices which had adverse effect on Competition were essential. He also suggested that the Bill could also deal with the developmental objective of how to foster competition through strengthening the hand of the consumer. The objective could also be addressed from the consumers point of view rather than from producers and suppliers point of view. Regulation of competition may lead to conflict between Multiple Regulatory Authorities. He also gave examples as to illustrate this point as to how the multiplicity of regulators would hamper the functioning of the economy and make the task of the Commission unenviable.

11. The Chairman raised a query by saying that what would be the role of SEBI to protect the interest of shareholders when the Commission decides to unwind a combination of industries.

12.0 A Member then wanted from the witnesses some specific suggestions to minimize the multiplicity with reference to acquisitions, mergers and amalgamations He also wanted to know the measures for promoting competition in great details. Their specific response on the market share of a industry to define dominance was also sought by the Member.

12.1 Another Member enquired from the SEBI Chairman as to what would happen to Section 11 (2h) of the SEBI Act, 1992 after the enactment of the Competition Bill. he also wanted him to send in a tabulated form the instances which were not in consonance with the SEBI Act, 1992.

13. The Committee adjourned at 1:25 P.M.

II

SECOND MEETING

The Committee met at 3.00 P.M. on Thursday, 24 January 2002 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Pranab Mukherjee— *Chairman*

RAJYA SABHA

2. Smt. Basanti Sarma
3. Shri Kapil Sibal
4. Shri Sangh Priya Gautam

5. Dr. L.M. Singhvi
6. Shri K.M. Saifullah
7. Shri C.P. Thirunavukkarasu
8. Shri Janeshwar Mishra
9. Shri Drupad Borgohain
10. Shri Swaraj Kaushal
11. Shri Ram Jethmalani

LOK SABHA

12. Shri Lal Bihari Tiwari
13. Shri Anadi Sahu
14. Shri Prakash Mani Tripathi
15. Shri Ram Nagina Mishra
16. Shri Manabendra Shah
17. Sardar Buta Singh
18. Shri Iqbal Ahmed Saradgi
19. Shri M.O.H. Farooq
20. Shri Subodh Ray
21. Shri Anandrao Vithoba Adsul
22. Shri Brahma Nand Mandal
23. Shri Adhi Sankar
24. Dr. Bikram Sarkar
25. Shri Holkhomang Haokip
26. Dr. Jayanta Rongpi

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Tapan Chatterjee, Director
Shri A.K. Singh, Under Secretary
Shri Narendra Kumar, Research Officer
Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

Representatives of Department of Company Affairs, Ministry of Law, Justice and Company Affairs.

1. Dr. S. Chakravarthy, Consultant
2. Shri Rajiv Mehrishi, Joint Secretary

2. At the outset the Chairman welcomed all the Members of the Committee and briefed the new Members about mandate and functioning of the Committee. He also informed the Members about the next series of meetings to be held during 4 to 6 February and 18 to 20 February, 2002, to take up four Bills pending its consideration viz. the Competition Bill, 2001, the Companies (Amendment) Bill, 2001, the Companies (Second Amendment) Bill, 2001 and the Representation of the People (Amendment) Bill, 2001.

3.0 Touching upon the background of the Competition Bill, 2001 the Chairman said that the idea was for the first time announced by the Finance Minister in his Budget speech in 1999. Thereafter, an Expert Committee was appointed in October 1999 which submitted its report in May, 2001. A concept Bill drafted by the Expert Committee was also put on the website of the Department of Company Affairs. After inter-ministerial consultations, it was introduced in the Lok Sabha and subsequently referred to this Committee. Since the last Monsoon Session the Committee had been considering this Bill.

3.1 The Chairman then welcomed Dr. S. Chakravarthy, Consultant in the Department of Company Affairs alongwith the representative of the Department and invited him to make a presentation on the Competition Bill, 2001 and to clarify the points/issues raised by the Members and witnesses in the meetings of the Committee.

4.0 Thereupon, the Consultant in the Department of Company Affairs made an exhaustive power point presentation on the Competition Bill, 2001.

4.1 While elaborating on the features of the Bill, the witness said that Competition today had to be seen in the context of World Trade Organisation agreements to which India was a signatory. Then tariffs were to be lower resulting into cheaper imports. The Government was also obliged not to raise tariff beyond certain limits. While defining Competition, the witness said, "the Competition is a dynamic concept. It is a tool to mount market pressure to penalise the laggards and reward the enterprising".

4.2 Tracing the history of MRTPC, the witness said that other three decades had passed since it came into force in 1970. Looking at the experience of the MRTP Act, it was found that there was no clear definition of offences like 'abuse of dominance', 'cartel', 'collusion' and 'price fixing', 'Bid-rigging' 'Predatory pricing' etc. Though in some generic language, they found mention in some of the sections.

4.3 The witness quoted from the Finance Minister's Budget Speech of February 1999 that the MRTP Act had become obsolete in certain areas in the light of the international economic developments relating to competition laws and there was a need to shift a focus from curbing monopolies to promoting competition. Following this, a High-level Committee was set up on Competition policy which submitted a draft law in June 2001.

4.4 The witness then, explained the four components of the Competition Bill, viz. (i) the anti-competition agreements; (ii) abuse of dominance; (iii) control of combinations i.e. mergers, amalgamations, acquisitions and takeovers; and (iv) competition advocacy i.e. fostering competition.

5.0 A Member of the Committee requested the witness to simplify the presentation in concrete terms so that even a common person could understand it. He said, as far as he understood, there were three purposes of the Bill. The first was to benefit the consumers by outlawing a trade practice of coming together to hijack the prices. Secondly, to improve the quality of a product or service and thirdly to curb predatory capitalism of microsoft variety. He again urged the witness to explain the provisions of the Bill in simple terms.

6.0 The witness began with defining the cartels with an example of cement cartels and narrated how a horizontal agreement between producers in the manufacturing goods could lead to hijacking of the price and state of that when it became anti-competitive, there was a provision in the Bill to outlaw cartels.

6.1 According to the witness the Organisation of Petroleum Exporting Countries (OPEC) was the biggest cartel in the world, which control the price by reducing or increasing the production. No anti-cartel law applied to them as it was a Government cartel.

6.2 Explaining the concept of vertical agreements, the witness said tie-in arrangements were vertical agreements and those were not as bad as the horizontal agreements. He gave the example of tie-in arrangements like gas connection with a compulsory purchase of a hot-plate; refusal to deal and resale price maintenance.

6.3 Commenting upon the abuse of dominance, the witness said dominance *per se* was not objectionable but abuse of dominance was an offence. Denial of market access was one of the examples of abuse. Coming to the issues of combinations, mergers or amalgamations, the witness explained that out of existing four manufacturers, if three merged together, then there would be only two players in the market. When they merge they acquire enormous economic strength. This empowers them to discourage new entrants and then they dictate prices ultimately acquiring the dominance. To control this there was a need of regulation on competition perspective, the witness felt. He stated that the combinations would be subject to the merger regulation and notification of combinations had been made voluntary and not mandatory. He opined that once the proposed Competition Commission of India was informed of the merger, it was required by law to decide it within 90 working days or else it would be deemed to have been approved.

6.3 Regarding the small-scale sector or any class of enterprises like steel, fertilizer etc. the witness had stated that the Government had the power to exempt those industries from competition law for a particular period of time in the interest of national security or public interest.

6.4 Thereafter, the witness referred to composition and selection of proposed Competition Commission of India.

6.5.0 The witness then summarised the following apprehensions about the present Bill:

- (i) Is the Competition Law required at all?;
- (ii) the new law is draconian;
- (iii) the size in MRTP Act has been brought back through the back door in the new law;
- (iv) the combination of regulations will impede India from becoming globally competitive;
- (v) it would lead to possible injury to domestic industries, particularly to the small scale sector;
- (vi) the CCI will become a super regulator;
- (vii) the 'group concept' in combination regulation is regressive; and
- (viii) the new law supersedes all other laws and thus CCI becomes a behemoth.

6.5.1 The witness while answering the above points said that in the light of globalisation, foreign companies were arriving in our country and as a consequence anti-competition practices would surface which needed to be regulated. In order to fulfill WTO obligations, regulatory advocacy functions needed to be brought into force and that was why competition law was required.

6.5.2 Reacting to the apprehensions that this new law was draconian, the witness said that the number of *per se* offences in the MRTP Act were fourteen whereas in the new law there were only four offences which were *per se*. Apart from these four offences, the remaining ones in the new law were under the rule of reason. Elaborating on the *per se* offences in the new law, the witness explained that cartels, bid-rigging, limiting territory and limiting production were grave offences.

6.5.3 The witness then stated that for a merger a threshold limit of Rs.1000 crore assets or Rs.3000 crore turnover was prescribed only for combinations. He clarified that this threshold limit was intended only to screen out smaller mergers. Thus, size was no longer a factor in the new law.

6.5.4 Speaking on the need for combination control, the witness said that the Competition Law of 72 countries had been studied which included developed, developing and least developed countries. According to him, out of seventy-two countries fifty-one countries had mandatory pre-merger notification requirement. Besides, twelve countries had mandatory notification requirement but at a slightly later stages i.e. post closing stage. However, the new law prescribes own voluntary notification. Thus, out of Seventy-two countries, only nine had voluntary notification and India was one of them.

6.5.5 On the question whether the Companies Act could not take care of mergers on the same had provisions to that effect, the witness was of the view that the Companies Act regulated mergers in terms of shareholders' interests, share values, labour interests etc. The witness found nothing wrong in the mergers being handled under the Companies Act, except that the High Courts might take six months or one year or more than that for the purpose whereas the new law had a time limit of 90 working days to dispose of the merger cases.

6.5.6 The witness clarified that it was true that regulations organisations like the Telecom Regulatory Authority of India and the Electricity Regulatory Commission could refer issues within the competition perspective to the CCI for advice. The CCI would give its advice but that advice would not be binding on TRAI or ERC. Thus the CCI would not become a super regulator.

6.5.7 Defending the provision of exemptions under the term 'public interest' the witness said that if the law had no exemptions, there existed a possibility of devastating consequences on some sectors. Thus he justified the provisions.

6.5.8 Replying to the charge that the Competition Bill was being enacted under pressure from WTO, World Bank, IMF, ADB etc. the witness vehemently denied the same.

6.5.9 The witness stated that concerns were expressed over the provision of penalties especially civil imprisonment. He clarified that civil imprisonment was provided for only two offences viz. contravention of the order of the CCI and non-compliance or failure in complying. This penalty was to provide teeth to the CCI, lest the CCI should become ineffective like the MRTP Commission.

6.5.10 Regarding the interests of the staff of the MRTP Commission, the witness submitted that rights and interests of the staff would be protected. All deputationists would be reverted

back to their parent organisations/Ministries/Departments and regular employees of the MRTP Commission will become officers/employees of the Central Government with all their rights protected. However, the Chairman and Members of that Commission would have to vacate their offices with compensation not exceeding three months' pay and allowances.

6.6 The witness thereafter made a brief comparison between the MRTP Act and the proposed Competition Bill, as follows:

- (i) the MRTP Act was premised on size and the Competition Bill was premised on behaviour/conduct;
- (ii) The MRTP Act was only procedure oriented whereas the proposed Bill was result oriented;
- (iii) The MRTP Act was only reformatory without teeth and the Competition Bill was punitive;
- (iv) In the MRTP Act the offences were defined implicitly but in the new one the offences were defined explicitly;
- (v) The MRTP Act frowned on dominance whereas the new one frowned on abuse of dominance;
- (vi) The MRTP Act had a large number of *per se* offences whereas in the new law the number was only four;
- (vii) The MRTP Act covered unfair trade practices and thereby affected the individual consumer interests whereas in the new Bill the unfair trade practices were excluded and proposed to be covered under the Consumer Protection Act;
- (viii) The appointments in the MRTP Commission were political whereas in the new one it would be a collegium;
- (ix) In the MRTP Act there was no competition advocacy, but the CCI had competition advocacy role; and
- (x) The MRTP Act was reactive but the CCI was proactive.

7.0 The Chairman thanked the witness for a comprehensive presentation on the subject and informed him that the Members would seek clarifications on certain points and told him to note down the points raised by them and send written responses to the Secretariat later.

8.0 Members raised/made the following points/ queries/suggestions/ on the Competition Bill.

- (i) Was it not possible to amend only certain clauses in the MRTPC Act rather than bringing a new Bill whereas the purpose was just to benefit the consumers?
- (ii) Was it not necessary to comply with the W.T.O. objections relating to the labour laws, administered prices etc. before bringing the competition law in the statute book?
- (iii) Regarding the abuse of domination, the price preference and the purchase preference would remain for the public undertakings. Although the price preference had been deleted to some extent, purchase preference was still continued. In view of this, if the law was passed, would it not create a problem for the PSUs as many of them had not disinvested, and many may not disinvest in the near future?
- (iv) It would be advisable to have a Judge of the Supreme Court, sitting or retired, to be the Chairperson, as the appellate authority against the judgement of the CCI was the Supreme Court.
- (v) Clauses 52 and 53 had given lots of powers to the Central Government which may dilute the independent character of the CCI. Clause 47 needed to be suitably amended, keeping in view clause 52.
- (vi) There could be some legal difficulties in transferring over 5000 pending cases under the MRTP Act to the Consumer Courts. This required rethinking before this Committee took a decision as to whether all cases were to be sent to consumer Courts or as a transitional measure, the MRTP Commission could continue and dispose of those cases within a period of three-four years.
- (vii) What were the provisions regarding competition regulation in the USA and the European countries and to what extent this legislation was close to the legislations there? Was it possible to provide the Committee a chart in order to enable them to analyse it properly?
- (viii) Why can't the powers of the Commission be given to the District Judges instead of constituting a Competition Commission which will also facilitate enforcement of the decisions?
- (ix) Regarding bringing the small scale sector under the purview of Competition, it was pointed out that the transition period has to be longer than proposed 5-10 years.
- (x) There was no competition law anywhere in the world which gave powers to the Government to exempt industries from competition. The power of

exemption under Clause 52 of the Bill would destroy competition within the regime of the Competition Bill.

- (xi) The exempted categories should be clearly mentioned and the phrase 'public interest' may be deleted.
- (xii) The extra-territorial jurisdiction to regulate mergers and combinations outside the country might discourage the foreign investment in the country.
- (xiii) In the initial stages, when the economy was liberalised, there would be number of mergers and combinations and the industry should have this freedom in order to be competitive. This Bill envisaged the investigation after the merger took place. An apprehension was raised that when two companies merged into one entity, and suddenly the Commission decided to oppose it, there would be a huge financial impact on their business.
- (xiv) Regarding logistics it was observed that in a huge country like India, 10 Members of the Commission would not be able to deal with the mergers and combinations and anti-competitive prices. It was suggested that the number of members of the CCI should be 30 instead of 10.

9. The Chairman thanked the witness and requested him to send the written responses of the Department of Company Affairs to the Secretariat later.

(The witnesses then withdrew)

14. A verbatim record of the proceedings was kept.

15. The Committee then adjourned at 5.05 P.M. to meet at 3.00 P.M. on 4 February 2002.

IV

FOURTH MEETING

The Committee met at 11.00 A.M. on Tuesday, 5 February 2002 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Pranab Mukherjee— *Chairman*

RAJYA SABHA

2. Shri Hansraj Bhardwaj
3. Dr. L.M. Singhvi
4. Shri S. Ramachandran Pillai
5. Shri Swaraj Kaushal

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LOK SABHA

6. Shri Lal Bihari Tiwari
10. Shri Jaisingrao Gaikwad Patil

11. Shri Anadi Sahu
12. Shri Ram Nagina Mishra
13. Shri M.O.H. Farooq
14. Shri Swadesh Chakraborty
15. Shri Anandrao Vithoba Adsul
16. Shri P.H. Pandian
17. Dr. Bikram Sarkar
18. Shri Holkhomang Haokip

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Tapan Chatterjee, Director
Shri A.K. Singh, Under Secretary
Shri Narendra Kumar, Research Officer
Shri Ashok Kumar Sahoo, Committee Officer

2. Following the Committee's decision to discuss the Competition Bill, amongst ourselves', the Chairman traced the origin of the Bill which can be chronologically presented in the following manner:

2.1 First announced in the Budget speech of the Finance Minister on 27 February 1999. The Finance Minister said that in the 1990s, the country had undertaken some major economic liberalization programmes resulting into changed world environment rendering MRTP Act obsolete, and it had necessitated a new Competition Bill, instead of the MRTP Act.

2.2 In this context, a High Power Committee under Shri Raghavan was appointed, which submitted its Report in May, 2000, followed by consultations at various stages.

2.3 The Bill was introduced in Lok Sabha on 6 August 2001 and it was referred to the Committee on Home Affairs for consideration and report thereon.

2.4 Representatives of various Chambers of Commerce and Industries, professional bodies like, Institute of Chartered Accountants, Institute of Cost Accountants, Institute of Company Secretaries etc. have already deposed on the Bill.

2.5 The Committee visited Mumbai in November 2001 and had interaction with the captains of Industry, financial institutions and Mumbai based Chambers of Commerce and Industry.

3. The Chairman briefly explained the objectives set out by the Bill, viz: to set up the Competition Commission of India (CCI); CCI to advocate competition; and to regulate the market and prevent unfair trade practices to facilitate competition;

3.1 The Chairman citing the issue of amalgamation and merger said that a large section of the corporate sector felt that India had not reached a stage where there should be discouragement to amalgamation, merger, acquisition etc. because the size of our corporate sector, compared to the multinationals, with whom they were expected to compete was quite

inadequate. Therefore, they felt, that instead of going in for the Competition Bill right now, we should watch the international situation and perhaps the Competition Bill, in its present shape and form, was a bit premature. He further said that the others felt that there should be a legal framework within which the market forces should be allowed to play its role on a level playing field and also not to the detriment of the interests of the consumer.

4. A member was of the view that there was no need to pass this piece of legislation in the present time and in its present form. His argument was that issues like Competition Policy, trade and investment and many related issues were discussed at WTO level and if we passed this legislation covering the whole Competition policy, we would be losing the bargaining power at the WTO. He suggested that since final decisions on these issues would be taken before 1 January 2005, we should not pass this Bill before that time. Rather if some changes were required in the MRTP Act, we could move such amendments so as to protect our industries or to facilitate competition.

5. The Chairman said that so far as the negotiation was concerned it had been agreed upon at the Ministerial meeting at Doha. However, the modality of negotiations had to be decided, which would start after the next round of Ministerial meeting in 2005.

5.1 In response to the Member's points, the Chairman further clarified that so far as the negotiation in the WTO was concerned, it was only among the trading partners. India would actually benefit in the absence of negotiations. However, once the negotiations started it would be mainly among the European Union, USA and Japan. Once these economic powers agreed and made the negotiations, then others did not have the option but follow as they happen to be the trading partners of most of the developing countries. He was of the opinion that India's bargaining power would have been much more if the negotiations were not agreed upon. Nevertheless, the Chairman felt, when the modalities of the negotiations were being discussed, we could wait and we should not show all our cards to them by saying that these were in our Competition Law.

6. The Member agreeing with the apprehensions raised by the Chairman felt that if the business was opened up fully, then the MNCs with big turnover would come in and capture the market which would be against the interest of Indian industries.

6.1 Referring to the public sector, he said that this Bill would adversely affect their functioning as safeguard provided in Clause 52 was not sufficient.

6.2 The member elaborating further on the implications of the Bill, said, the Government would be forced to retreat from most of the economic matters. Rather the Government had to play an important role in protecting the interest of small scale industries, handicrafts which influenced the poorer sections of society.

6.3 The member wanted to know the possible effect of the Competition Bill on the trade union rights such as the right to organise and to make collective bargaining.

7. The Chairman acknowledged the relevance of the above point which deserved examination.

8. The member concluded by saying that we should not rush with this piece of legislation and wait for at least up to 2005. In the meanwhile, he suggested, if some changes were required, the MRTP Act may be suitably amended.

9. Another member raised objection to Clause 52 which dwelt upon the power of the Government to exempt any enterprise in the name of security and public interest. He was of the view that 'public interest' was a matter of big discretion on the part of the government and it could be misused to favour certain interests and the very purpose of having the Competition Act would get defeated. He suggested that the words 'Public interest' should be defined and some guidelines must be laid down for that.

10. A member was of the view that our industry predominated by the Small Scale Industries did not have enough experience to face the onslaught of Competition from abroad especially in terms of size. The talk of consumer interest should go hand-in-hand with protecting the interests of those who contributed maximum to industrial growth. He further said that it would be in the fitness of things to amend some provisions of the MRTPC Act and keep this Bill in waiting.

11. Another member suggested that there should not be any hurry in enacting laws like this. He was of the opinion that the agrarian sector had been totally neglected because neither it was considered an industry nor was it considered a business proposition. However, to protect the interests of the consumers and not to protect the interests of the producers hit directly at the agrarian society that was employing more than 70% of our population. He pointed out that Section 52 of this Bill provided no protection to that sector.

11.1 He further said that big business houses had proposed that they were not yet ready for this Competition Bill in the present economic scenario.

11.2 Referring to a specific point the member said that it had been kept open as to who would be heading the Commission. He suggested that it should specifically be mentioned whether a retired Supreme Court judge or somebody else would head the Commission.

12. A member defending the MRTPC said that it was doing quite a useful job in the area of restrictive trade practices by giving injunction against dumping by MNCs in India. Though, he agreed that in the present scenario, the law needed some change, but whether we should hurry through this competition law was an important question, he felt. He said that in Punjab, small sector and medium sector industries had closed in the face of MNCs. Even the presence of MNCs in India had not benefited the consumers.

12.1 He was of the firm opinion that the Competition Bill was not going to help our small scale industries or consumers. Thus, he felt, we should wait for a proper climate, study what changes were to be made in the already existing MRTP Act and then replace it with another law.

12.2. He wondered as to why the Government wanted to bring the Competition Bill. None of the underdeveloped countries had this law. It was there only in UK and USA. He suggested that the Government should try to first strengthen our small scale and medium scale sectors and once our corporates were confident enough to take on to the MNCs, we should go for this law. Till then this Bill could wait.

13. Another member was of the view that unless we had satisfactory answers to some of the thorny issues which had been raised through this piece of legislation, we should not take up clause-by-clause consideration of this Bill.

13.1 He further said that it was much more of a policy matter. According to him, “the law is not what it says, but it is also what it does”, therefore, we must study this particular piece of proposed legislation in terms of what it would do and how it would do, how it would operate and how it would affect our country.

13.2 Speaking on competition, he said, competition itself was neither good nor bad. When it was a cut throat competition, it could be terrible and when it was for promoting quality, better price, it may be very good. But competition between unequal was always a matter of worry.

14.0 A member was of the view that competition should not be blocked. Giving specific example of Japanese investments he said, they preferred China to India, which was an insult to India and for this he squarely blamed the bureaucrats for putting so many dos and donts.

15.0 Another Member began by saying that this Bill, when it became an Act, would not be implementable because many powers had been given to the Competition Commissioner of India, but at the same time, lots of controls were vested in the Government. This would create a lot of conflicting problems.

15.1 Referring to the suggestions of the High Level Committee, the member said, labour laws, administered prices mechanism, disinvestments etc. had to be taken into account first, before we enacted this Competition Bill. Thus, he said, we were going in a hurry to pass this Bill. It would not be appropriate now to pass it at this stage. However, in case this Bill had to be passed, he would suggest that there should be a transitional phase of 4-5 years, before the CCI should takeover the MRTPC. During this transitional period the CCI should be entrusted with the role of advocacy, only.

15.2 He further said that re-reading and re-drafting of the Bill was necessary in order to ensure that we complied with the WTO agreement, but at the same time, we did not put our people to disadvantage like the small scale industries.

16. The Chairman thanked the members for their frank and learned opinion on the Bill. Giving his remarks on the Bill, he said, there was no tearing hurry to get the Bill passed in its formal shape as it had been presented to us. He felt that some of the provisions of the Bill were to be looked into in greater details.

16.1 The Chairman wanted the Government to clarify whether it was going to affect, in any way, our negotiations with our trading partners within the agreement of the WTO. There was no compulsion or directive from the WTO or from the IMF or from any other international or multinational agencies. In this case if we found that passage of such legislation was standing in our way of having a better bargain, we should not do it.

16.2 The Chairman was of the opinion that two things were emerging very clearly. If we wanted to maintain a reasonable level of GDP Growth, we could not allow our small scale

and medium scale industries to suffer. we could not have globalisation at the cost of our economy.

16.3 Though not directly linked to the subject, he wanted to know as to why the economic growth was slowing down in the last five years.

16.4 The Chairman pointed out that in the light of a major amendment to the company law to have the Insolvency Act, the comprehensive company legislations are there to govern the corporate sector. In this backdrop, he wondered, whether there was any need of any separate competition law.

16.5 While recalling a suggestion from the Secretary, Department of Company Affairs that instead of calling it a Company Act, we should use the epithet of corporate governance Act, the Chairman wanted to solicit opinion from the Committee whether the Competition could be a part of the corporate management instead of many separate legislations. However, he wanted to ensure that the restrictive trade practices must be prevented with adequate legal framework because certain other countries would try to dump their goods and predatory price would take place, a China was doing it, though indirectly through Nepal route.

16.6 The Chairman pointed out that this was the record consecutive year of the global recession, and unless in the next quarter, there was some recovery in certain items, there would be a tendency of the manufacturing countries to dump their goods and services into countries like India where there was reasonably expanded market. Thus, he felt, some provision should be there either in the existing MRTP Act by making necessary amendment or in the company law by adding a separate chapter, to prevent the practice of dumping in our country.

16.7 Provoking the Members to give their opinion on the mergers, amalgamations and acquisitions, the Chairman cited an example of Bank Managers. He said, if two-three banks could be merged together, it could be more effective as it would reduce operational cost. And this was applicable to the public sector as well as the private sector. He felt that the Committee should find out whether the public sector should no longer require the statutory protection which it was having earlier.

16.8 Speaking on the issue of dominance and abuse of dominance, the Chairman wondered as to who was going to determine the abuse of dominance, and whether there may not be high subjectivity in determining that a particular act amounted to the abuse of dominance or not. He felt, that while framing this legislation the element of subjectivity should be minimised and for this he called upon the members with legal background to guide the Committee.

16.9 The Chairman informed the Committee about inviting Mr. Evan Cox for an informed discussion on the Bill. He further informed the Committee that Mr. Cox was an expert in International Competition Laws and wanted to meet him on 15 February 2002. The Chairman invited the Member to join him, if interested in the matter.

16.10 Referring to the view expressed by a Member that very few countries had a competition law, the Chairman said that we should not necessarily be the Casablanca to stand on a burning deck and proclaim over the whole world that we were the first to do this, to help the corporate sector.

17. The Chairman told the Committee that he wanted to dispose off the Companies (Second Amendment) Bill, 2001, soon. Regarding the Companies (Amendment) Bill, 2001, he said that it would be taken up only after the Demands for Grants business was over.

18. A verbatim record of the proceedings was kept.

19. The Committee adjourned at 12.50 P.M.

XXII

TWENTY-SECOND MEETING

The Committee met at 11.00 A.M. on Thursday, 6 June 2002 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Pranab Mukherjee— *Chairman*

RAJYA SABHA

2. Shri Hansraj Bhardwaj
3. Shri Sangh Priya Gautam
4. Dr. L.M. Singhvi
5. Shri Drupad Borgohain
6. Shri Ram Jethmalani
7. Shri Moti Lal Vora

LOK SABHA

8. Shri Lal Bihari Tiwari
9. Shri Anadi Sahu
10. Shri Vinay Katiyar
11. Shri Manabendra Shah
12. Shri K. Karunakaran
13. Begum Noor Bano
14. Shri M.O.H. Farooq
15. Shri Swadesh Chakraborty
16. Shri Anandrao Vithoba Adsul
17. Shri Brahma Nand Mandal
18. Shri Holkhomang Haokip
19. Dr. Jayanta Rongpi
20. Shri Kishan Singh Sangwan

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Tapan Chatterjee, Director
Shri A.K. Singh, Under Secretary
Shri Narendra Kumar, Research Officer

Shri Ashok Kumar Sahoo, Committee Officer

2.0 At the outset, the Chairman welcomed the Members for the discussion on the Competition Bill 2001 and briefly evidences recorded in Delhi & Mumbai and in house discussions held on the Bill. He also *inter alia* touched upon the views expressed by the Members on the basic philosophy of the Bill. Thereafter, he recapitulated briefly the history of the Bill from its conception upto the current stage and its salient features for the Members who joined the Committee lately.

2.1 He mentioned that since the evidence part was over the Committee may hold an indepth discussion before taking up clause-by-clause considerations on the Bill and then invited the Members for an open discussion.

3.0 A Member reminded the earlier stand of the Committee and about the change in circumstances leading to the need to pass the Bill. While referring to the Ministry's reply which stated that the CCI was just like a judicial forum, he suggested changes in the qualification of its Chairperson so as to attract persons from judiciary inclusively. He also suggested change in the Composition of the Selection Committee for nominating Chairman & Members of CCI, by excluding the Ministries..

3.1 Another Member stated the predatory capitalism is bad and desired the price hijack to the prejudice of consumers needed to be discouraged and cooperative capitalism rather competitive capitalism needed to be encouraged which can be achieved by the enactment of this Bill. He sought more time to express his views on the Bill.

3.2 A Member suggested that the need of the time could be fulfilled even by amending the MRTP Act. He wanted to know about the fate of the officials and employees of the MRTP Commission.

3.3 Another Member expressing his apprehension about the fallout of consumer's interests after the enactment of the Bill wanted the Committee to consider the aspect deeply. He felt that the public sector which was responsible for supplying the essentials as well as Public Distribution System would be affected when they would be transferred to the private sector. In that context, he desired enlargement of the concept of 'public interest' as spelled out in clause 52 of the Bill.

3.4 A Member while referring to the provision of the Bill which gives an administrative status to mergers and amalgamations stated that it was overlapping with company law which should be taken care of. He wanted the CCI to be on the lines of National Company Law Tribunal by bringing in judicial officers as its Chairperson and Members. He also felt strongly as to how the same body i.e. the CCI would be a body corporate, judicial body and do competition advocacy.

3.5 Another member wanted that is tabulated documentation in respect of evidence in condensed form may be circulated to the Member before clause-by-clause consideration on the Bill.

4.0 The Chairman expressed that the report might reflect all the modalities of shape and character of the Bill. He further suggested that one of the basic objectives of the Bill being check on predatory capitalism, hence the regulatory authority should have the power

accordingly. He further assured the Members that they could get Government's views on their queries while taking clause-by-clause consideration.

4.1 The Committee then discussed the modalities to reflect the views of Members on the Bill in the Report. The Committee agreed to take up clause-by-clause consideration after another round in house discussion on the Bill.

5.0 The Committee decided the dates of next series of meetings viz. 17, 18, 19 and 20 June 2002.

5.1 The Committee adjourned at 12.13 P.M. to meet at 3.00 P.M. on 17 June 2001.

XXIX

TWENTY-NINTH MEETING

The Committee met at 3.30 P.M. on Wednesday, 17 July 2002 in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Pranab Mukherjee — *Chairman*

RAJYA SABHA

- 2. Shri Hansraj Bhardwaj**
- 3. Shri Ramachandran Pillai**
- 4. Shri Janeshwar Mishra**
- 5. Shri Drupad Borgohain**
- 6. Shri Ram Jethmalani**
- 7. Shri Moti Lal Vora**

LOK SABHA

- 8. Shri Lal Bihari Tiwari**
- 9. Shri Anadi Sahu**
- 10. Shri Manabendra Shah**
- 11. Shri Swadesh Chakraborty**
- 12. Dr. Bikram Sarkar**
- 13. Shri Holkhomang Haokip**
- 14. Sardar Simranjit Singh Mann**
- 15. Shri E. Ponnuswamy**

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Tapan Chatterjee, Director
Shri A.K. Singh, Under Secretary
Shri Narendra Kumar, Research Officer

Shri Ashok Kumar Sahoo, Committee Officer

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***** Relates to other matters.**

5.0 The Committee then took up the letter of the Union finance Minister, dated 9 July 2000 addressed to the Chairman of the Committee, requesting for the expeditious disposal of the Competition Bill by the Committee in view of its significant impact on the country's economy.

5.1 The Chairman enumerated the efforts made by the Committee in the process of examination of the Bill such as taking a number of evidences from different corners of the society, the visit to Mumbai and the number of meetings held for the purpose and requested the Members to express their view on the request of Finance Minister in this regard.

5.2 The Committee then considered the request of Finance Minister and acceded to the same and agreed to present the Report on Competition Bill, 2001 in the current session of Parliament.

6. The Committee then decided to meet on 30-31 July, 2002 to discuss further on the Competition Bill and to take up clause-by-clause consideration.

7. The Committee adjourned at 3.55 P.M.

XXXI

THIRTY-FIRST MEETING

The Committee met at 3.30 P.M. on Thursday, 1 August 2002 in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. Shri Pranab Mukherjee — Chairman

RAJYA SABHA

- 2. Shri Kapil Sibal**
- 3. Shri Hansraj Bhardwaj**
- 4. Shri Sangh Priya Gautam**
- 5. Shri Ramachandran Pillai**
- 6. Shri Ram Jethmalani**
- 7. Smt. Ambika Soni**

LOK SABHA

8. **Shri Lal Bihari Tiwari**
9. **Shri C.K. Jaffer Sharief**
10. **Shri Swadesh Chakraborty**
11. **Shri Subodh Ray**
12. **Shri P.H. Pandian**
13. **Dr. Bikram Sarkar**
14. **Sardar Simranjit Singh Mann**
15. **Shri E. Ponnuswamy**

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri A.K. Singh, Under Secretary
Shri Narendra Kumar, Research Officer
Shri Ashok Kumar Sahoo, Committee Officer

WITNESSES

Representatives of Ministry of Law, Justice and Company Affairs

Department of Company Affairs

1. Shri Vinod Dhall, Secretary
2. Shri Rajiv Mehrishi, Joint Secretary
3. Dr. S. Chakravarthy, Consultant
4. Shri S.B. Mathur, Consultant
5. Shri V.S. Rao, Director (Inspection & Investigation)
6. Shri Aditya Prakash, Director

Department of Legal Affairs

Shri K.D. Singh, Additional Secretary

Legislative Department

1. Shri V.K. Bhasin, Joint Secretary & Legislative Counsel
2. Shri A. Vijay Kumar, Deputy Legislative Counsel

2.0 The Chairman shared with the Members about the letter of Union Finance Minister for clearing the Competition Bill, 2001. He indicated that the Report on the Bill could be presented before the adjournment of Parliament. Thereafter he requested Shri Ram Jethmalani, M.P. and a Member of the Committee to express his views on the Competition Bill, 2001.

2.1 That Member mentioned that the Bill is based upon a new economic theory. He begun his presentation by referring to the notes of Dr. S. Chakravarthy, Mr. P.M. Narielvala and Mr. Sudhir Mulji appended to the High Level Committee on Competition Policy and

Law. He also mentioned that the elements of competition law had been present in India since long.

2.2 Speaking about Mr. Sudhir Mulji's note he felt that his idea that the law was not required was not proper. Again touching upon the views of Mr. Narielvala, he felt that the suggestion for doing away with the requirement of pre-notification was not appropriate. Thus, both of the views could be ignored. He said that this would in no way lead us to lose our bargaining power. He cited the efforts of WTO in formulating the International Competition Law just like our domestic competition law. Further on, he suggested that it would help the economy if the trade barriers are removed. He felt that at this stage after adoption of WTO views and the new philosophy there was no reason to object the Bill. He also referred to the fact that even China has become a member of WTO which shows that global consensus has emerged on the fact that market forces and economic efficiency are the best ways.

2.3 Referring to the issues of poverty and hunger which are global problem required global solution and not a regional one. He further pointed out that for equitable distribution a whole process was required and a modification of the existing one would not do.

2.4 On the aspect whether the Bill would affect the PSUs and small scale sector he believed that in a climate of disinvestments it would not affect the public interest. He felt that exposing the public sector was not bad as it would improve their efficiency and in turn will benefit the consumer.

2.5 He further said that anti-dumping law would remain and affect the domestic market. This Bill would rather protect against the predatory practices of the foreign companies. On the effect of Competition Law on the labour opportunities, he felt that in the long run due to increased wealth, new employment would be generated.

2.6 Thereafter another Member aired his disagreement with the basic approach of the Bill. He felt that Government is trying to bring distribution in the hands of market forces and benefit the enterprises. He apprehended that on coming into force of this Bill, the Public Distribution Scheme and Support Price Mechanism would be affected.

2.7 To his query Shri Jethmalani clarified that subsidies were not prohibited by Competition Bill. The Chairman also clarified that it would lead the Government to redraft the subsidies and only the negative subsidies would go.

2.8 At that stage the Consultant in Department of Company Affairs clarified that minimum support price of Government department is a sovereign power of the Government and the Bill would not affect that power of the Government.

2.9 The Committee then took up clause-by-clause consideration of the Bill.

Clause 2

3.0 One of the suggestions that words "is proposed to be engaged in any activity" in the definition of 'enterprise' in sub clause (g) of the clause appears to be confusing and thus may be deleted. The Department had agreed to delete those words. Further on the suggestion pertaining to sub-clause (t) only one professional service i.e. accounting has been included in

the definition of service whereas medical and legal services are excluded. The Department of Company Affairs had proposed deletion of 'accounting' in the clause.

3.1 The Committee adopted the clause subject to the aforesaid amendments.

Clause 3

4.0 On the suggestion that any of the four *per se* offences may have negative effect on desirable joint venture, and to exempt such joint ventures from *per se* offences, the Department had agreed to add proviso to the sub-clause (3) of the clause to the effect that the genuine joint venture would be exempted from *per se* offence but would be examined on the basis of rule of reason.

4.1 The Department had further agreed to the suggestion to add the words "in India" after the words adverse effect on competition "in sub clause (4) of the clause and proposed to bring an amendment to that effect.

4.2 The Department after examining the suggestion to give blanket exemption to Intellectual Property Rights (IPRs) had felt that clause 4(6) of the Concept Bill which permits the application of competition law to examine any unreasonable conditions that may be imposed by the right holder while exploiting his/her rights, may be incorporated in the present Bill.

4.3 The Committee adopted the clause subject to the amendments.

Clause 4

5.0 A suggestion was made to add a proviso to make the expression clear as the term 'discrimination' in clause 4(2) is without any additional guidance. The Department has agreed to the suggestion.

5.1 Another suggestion was received for deleting words "or outside India" in explanation (a) to clause 4(2) (e) not to discourage an Indian company having a position/strength outside India by the competition law of India to which the Department has agreed.

5.2 The Committee adopted the clause subject to the amendment.

Clause 8

6.0 The Committee desired that the Chairperson of the CCI should be a person from Judiciary i.e. a serving/retired judge of a High Court. Thus qualification for the office should be different from Members of the CCI.

6.1 The Committee adopted the clause subject to the amendment.

Clause 9

7.0 The Committee had observed that keeping Minister-in-charge of Ministries in the Selection Committee may lead to executive interference.

7.1 The Department had, accordingly, proposed change in the composition of the Selection Committee by bringing in Secretaries Ministry of Finance, Labour, Department of Company Affairs, Department of Legal Affairs and Legislative Department in place of Ministers.

7.2 The Committee adopted the clause subject to the proposed amendments.

Clause 10

8.0 The Department had proposed lowering age cap for the chairperson of the CCI to 67 years instead of 70 years as has been done in the case of proposed National Company Law Tribunal (NCLT) under the Companies Act, 1956.

8.1 The Committee adopted the clause subject to the amendment proposed.

Clause 11

9.0 The Department had agreed to delete sub-clauses (2) & (3) of the clause wherein the provision of reference to the Supreme Court for removal of Chairperson/Members of the CCI mentioned, on the suggestion of a witness.

9.1 The Committee adopted the clause subject to above amendments.

Clause 12

10.0 The Department had accepted the suggestion that Chairperson/Members of CCI should be debarred for a period of 12 months after retirement from accepting any employment instead of 6 months and agreed to bring an amendment in the clause to that effect.

10.1 The Committee adopted the clause subject to amendment.

Clause 16

11.0 The Department had accepted the suggestion not to count the experience in CBI/Police investigations for the post of Director-General and Additional/Joint/Deputy and Assistant Directors General in the CCI and agreed to provide it in the rules while defining investigation.

11.1 The Committee understood that the acceptance of such suggestion could not effect any amendment in the clause hence the clause is adopted without any change.

Clause 19

12.0 The Department had agreed to the suggestion to delete the sub-clause as IPRs would not be given blanket power to exert its dominance in relevant market in consultation with the Ministry of Law.

12.1 On the suggestion that while considering the relevant market, the CCI should consider both relevant geographic market and relevant product market and the Department had

proposed amendment in the sub-clause (5) to substitute the word 'or' between the relevant geographic market and the relevant product market with 'and'.

12.2 The Committee adopted the clause subject to above.

Clause 21

13.0 On the suggestion that the clause should make it mandatory for the statutory body to make a reference to the CCI but when any party to the proceeding raise that the issue is contrary to the competition law. The Department had proposed to substitute the word 'shall' in the last line of sub-clause (1) of the clause with 'may'.

13.1 On the suggestion that a time frame may be provided in the clause within which the CCI should dispose the reference made to it by statutory body. The Department has proposed a time limit of sixty days for the purpose under sub-clause (2).

13.2 The Committee adopted the clause subject to amendments.

Clause 23

14.0 The Department had not agreed to the suggestion to dispense with the requirement of prior approval of Union Government in case of a transfer of a member by the chairperson of the CCI in toto. The amendment proposed by the Department was to the effect that prior approval of the Central Government is required when there is transfer of a member from one city to another.

14.1 The Committee adopted the clause subject to above amendments.

Clause 27

15.0 The Department had agreed to correct the expression of 'an enterprise' occurring in the first line of the clause by 'or an enterprise' as pointed out by a witness.

15.1 The department had agreed to the suggestion to vest the authority with the CCI to protect whistle blower for setting leniency programme and incorporate appropriate leniency/ amnesty provision.

15.2 The Department had agreed to amend the sub-clause (b) to the effect that a penalty of three times the proven gain to the cartel may be levied subject to atleast 10% of the average turnover for the last three preceding financial years.

15.3 The Committee adopted the clause subject to the amendments.

Clause 31

16.0 A witness had suggested that the CCI should be conferred with powers to cooperate with competition authorities in other countries. The Department had clarified that such power should be with the Government rather than with the CCI. The Department had agreed to incorporate a provision in the Bill to provide power to Government in this regard.

16.1 The Committee adopted the clause subject to the amendment.

Clause 32

17.0 The Department had accepted the suggestion to delete sub-clause (c) as a consequential change of amendments to clause 4 (2) (C).

17.1 The Committee adopted the clause subject to the amendment.

Clause 38

18.0 The Committee had pointed out that under sub-clause 2(a) of the Clause, the CCI can amend any order passed by it *suo moto*.

18.1 The Committee recommended that the Government should make the clause specific to the extent that the amendment of its own order for rectification of mistakes, by the Commission should not touch the substantive part of its order.

Clause 47

19.0 On the suggestion that the CCI should have power to recommend to Central or State Government, after examining any existing or proposed law from competition angle. The Department had communicated the Committee that if the Government in its own discretion make a reference, the CCI can examine the policy/law from competition angle and to that extent the clause can be amended.

19.1 The Committee adopted the clause subject to the amendment.

Clause 52

20.0 A witness had pointed out that an enterprise may be performing sovereign and non-sovereign functions. Any exemption of the enterprise from the application of competition law would mean exemption relating to non-sovereign function also. Therefore, the provision under sub-clause (c) of the clause should lay emphasis on function rather than enterprise. He had accordingly suggested re wording of the sub-clause. The Department had welcomed the suggestion and proposed rewording of the sub-clause as: "any sovereign function including functions incidental thereto performed by an enterprise on behalf of the Central Government or a State Government".

20.1 The Committee adopted the clause subject to the amendment.

Clause 1, Enacting Formula and the Title

21.0 Clause 1, the Enacting Formula and the title were adopted with some changes which are of consequential nature, namely, '2001' and 'Fifty-second' to be substituted by '2002' and 'Fifty-third', respectively.

22.0 The Committee recommended that the bill may be passed after incorporating amendments suggested by it and giving due considerations to other observations of the Committee.

23.0 The Committee then adjourned at 5.00 P.M. to meet at 3.30 P.M. on Monday, 12 August 2002.

XXXII

THIRTY-SECOND MEETING

The Committee met at 3.30 P.M. on Monday, 12 August 2002 in Committee Room 'D', Ground Floor, Parliament House Annexe, New Delhi.

MEMBERS PRESENT

1. **Shri Pranab Mukherjee** — *Chairman*

RAJYA SABHA

2. **Shri Kapil Sibal**
3. **Shri Kalraj Mishra**
4. **Shri S. Ramachandran Pillai**
5. **Shri C.P. Thirunavukkarasu**
6. **Shri Drupad Borgohain**
7. **Shri Ram Jethmalani**
8. **Shri Moti Lal Vora**

LOK SABHA

9. **Shri Lal Bihari Tiwari**
10. **Shri Anadi Sahu**
11. **Shri Swadesh Chakraborty**
12. **Shri Ramji Lal Suman**
13. **Sardar Simranjit Singh Mann**
14. **Shri Kishan Singh Sangwan**
15. **Shri E. Ponnuswamy**

SECRETARIAT

Shri Satish Kumar, Additional Secretary
Shri Tapan Chatterjee, Director
Shri A.K. Singh, Under Secretary
Shri Narendra Kumar, Research Officer

2.0 The Chairman initiated the meeting by recalling the deliberations held in the previous meeting on the Competition Bill, 2001 in which clause-by-clause consideration of the Bill was taken up.

2.1 The Chairman then placed the draft Report on the Competition Bill, 2001 before the Committee for its approval and invited the Members to make suggestions thereon.

3.0 A Member suggested a change in para 7.23 of the draft report. He desired that there should be a reference to the need for certain safeguards and protection for certain period for the Indian industry, both private and public sector. The Chairman requested him to give his formulation in writing for being incorporated in the paragraph.

3.1 Another Member suggested a change in para 9.9.3 so as not to allow the Government to exclude officers from CBI for the posts of Additional, Joint, Deputy and Assistant Directors in CCI. The Member requested that his view in the matter should also be reflected in the Report. After a brief discussion on the contents of para 9.9.3 and the suggestion of the Member, the Committee decided to make suitable additions/modifications in para 9.9.3 with consequential changes in other paragraphs.

3.2 The Committee, then, adopted the draft Report and authorised the Chairman to present the Report, along with Evidence recorded on the Bill, to Hon'ble Chairman, Rajya Sabha during the inter-session period, as it could not be presented to Parliament because of the premature adjournment *sine die* of the Monsoon Session.

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|-----|---|---|---|
| 4.0 | * | * | * |
| 4.1 | * | * | * |
| 4.2 | * | * | * |
| 4.3 | * | * | * |
| 4.4 | * | * | * |
| 4.5 | * | * | * |

5.0 The Committee adjourned at 4.09 P.M.

***Relates to other matters.

ANNEXURE

ANNEXURE I

(See para 1, page 1 of the Report)

AS INTRODUCED IN LOK SABHA

On 6 August 2001

THE COMPETITION BILL, 2001

ARRANGEMENT OF CLAUSES

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PRELIMINARY

CLAUSES

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2. Definitions.

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4. Abuse of dominant position Prohibition of abuse of dominant position
5. Combinations. Regulation of combinations
6. Regulation of combinations.

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COMPETITION COMMISSION OF INDIA

7. Establishment of Commission.
8. Composition of Commission.
9. Appointment of Chairperson and other Members.
10. Term of office of Chairperson and other Members.
11. Resignation, removal and suspension of Chairperson and other Members.
12. Restriction on employment of Chairperson and other Members in certain cases.
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CLAUSES

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31. Orders of Commission on certain combinations.
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THE COMPETITION BILL, 2001

A

BILL

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

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

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Competition Act, 2001. Short title,
extent and
commencement.
- (2). It extends to the whole of India except the State of Jammu and Kashmir.
- (3). It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

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

2. In this Act, unless the context otherwise requires,- Definitions
- (a) "acquisition" means, directly or indirectly, acquiring or agreeing to acquire-
- (i) shares, voting rights or assets of any enterprise; or
 - (ii) control over management or control over assets of any enterprise;
- (b) "agreement" includes any arrangement or understanding or action in concert,-
- (i) **whether or not, such arrangement, understanding or action is formal or in writing; or**
 - (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;
- (c) "Chairperson" means the Chairperson of the Commission appointed under sub-section (1) of section 9;

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

(c) "consumer" means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;

(f) "Director General" means the Director General appointed under sub-section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section;

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

Explanation-For the purposes of this clause,

(a) "activity" includes profession or occupation;

(b) "article" includes a new article and "service" includes a new service;

(c) "unit or "division", in relation to an enterprise, includes-

(i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;

(ii) any branch or office established for the provision of any service;

(h) "financial institution" means a public financial institution specified under section 4A of the Companies Act, 1956 and includes a State Financial, Industrial or Investment Corporation; 1 of 1956

(i) "goods" means goods as defined in the Sale of Goods Act, 1930 and includes-

(A) products manufactured, processed or mined; 8 of 130

(B) debentures, stocks and shares after allotment;

(C) in relation to goods supplied, distributed or controlled in India, goods imported into India;

(j) "Members" means a Member of the Commission appointed under sub-section

(l) of section 9 and includes the Chairperson;

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

(l) "person" includes-

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm;

(v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

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

1 of 1956 (vii) **any body corporate incorporated by or under the laws of a country outside India;**

(viii) a co-operative society registered under any law relating to co-operative societies;

(ix) a local authority;

(x) every artificial juridical person, not falling within any of the preceding sub-clauses;

(m) "Practice" includes any practice relating to the carrying on of any trade by a person or an enterprise;

(n) "Prescribed" means prescribed by rules made under this Act;

(o) "price", in relation to the sale of any goods or to the performance of

any services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing;

(p) "regulations" means the regulations made by the Commission under section 62;

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

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

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

(t) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as accounting, banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

(u) "shares" means shares in the share capital of a company carrying voting rights and includes-

(i) any security which entitles the holder to receive shares with voting rights;

(ii) stock except where a distinction between stock and share is expressed or implied;

(v) "statutory authority" means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto;

(w) "trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services;

(x) "turnover" includes value of sale of goods or services;

(y) words and expressions used but not defined in this Act and defined in the Companies Act, 1956 shall have the same meanings respectively assigned to them in that Act.

1 of
1956

CHAPTER II

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

Prohibition of agreements

Anti-
competitive
agreements.

3. (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India

(2) Any agreement entered into in contravention of the provisions contained in sub-section (1) shall be void.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Nothing contained in this section shall apply to-

- (a) "copyright" under the Copyright Act, 1957;

- 14 of
1957 (b) "patent" or "exclusive right" granted under the Patents Act,
1970;
- 39 of
1970 (c) "collective mark", "permitted use", "registered proprietor",
"registered trade mark" or "registered user" under the Trade Marks Act,
1999;
- 47 of
1999 (d) "homonymous geographical indication" or "geographical
indications" registered under the Geographical Indications of Goods
(Registration and Protection) Act, 1999;
- 48 of
1999 (e) "design" registered under the Designs Act, 2000;
- 16 of
2000 (f) "layout-design" registered under the Semi-conductor Integrated
Circuits Layout-Design Act, 2000;
- 37 of
2000 (g) the right of any person to export goods from India to the extent
to which the agreement relates exclusively to the production, supply,
distribution or control of goods or provision of services for such export.

Prohibition of abuse of dominant position

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

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

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

(i) condition in purchase or sale of goods or services; or

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

(b) limits or restricts-

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

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

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

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

Abuse of
dominant
position

subject of such contracts; or

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

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

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

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

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

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

Regulation of combinations

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

Combination (a) any acquisition where-

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,-

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

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

(ii) any group or an enterprise belonging to such group whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,-

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

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or

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

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

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

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

(ii) the group or its constituent enterprise over which control has been acquired, or is being acquired along with the enterprise over which the acquirer already has direct or indirect, control jointly have,-

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

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or

(C) any merger or amalgamation in which-

(i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,-

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

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

(ii) the group, or its constituent enterprise remaining after merger of the enterprise created as a result of the amalgamation, as the case may be, have,-

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

(B) in India or outside India, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars.

***Explanation-*For the purposes of this section,-**

(a) “control” includes controlling the affairs or management by-

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

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

(b) “group” means two or more enterprises which, directly or indirectly, are in a position to-

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

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

(iii) control the management of affairs of another enterprise;

(c) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

6. (1) No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void.

Regulation of combinations.

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

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

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

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

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

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

Explanation-For purposes of this section, the expression-

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

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of
1961

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

CHAPTER III

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of
1961

COMPETITION COMMISSION OF INDIA

7. (1) With effect from such date as the Central Government may, by notification appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India".

Establishment
of
Commission

(2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.

(3) The head office of the Commission shall be at such place as the Central Government may decide from time to time.

Composition
of
Commission

(4) The Commission may establish offices at other places in India.

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

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

(2) The Chairperson and every other Member shall be the persons of ability, integrity and standing, who-

(a) are, or have been, or are qualified to be, a Judge of a High Court; or

(b) have special knowledge of, and professional experience in, not less than fifteen years, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, be useful to the Commission.

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

9.(1) The Chairperson and every other Member shall be appointed by the Central Government on the recommendation of a Selection Committee consisting of-

- | | | |
|--|---|---|
| (a) the Chief Justice of India or his nominee Chairperson; | - | Appointment of Chairperson and other Members. |
| (b) the Union Minister-in-charge of the Ministry of Finance – Member; | - | |
| (c) the Union Minister-in-charge of the Ministry or Department dealing with this Act Member; | - | |
| (d) the Governor of the Reserve Bank of India Member; | - | |
| (e) the Cabinet Secretary Member. | - | |

(2) The Secretary-in-charge of the Ministry or the Department of the Central Government dealing with this Act shall be the Convenor of the Selection Committee.

(3) The Central Government shall, within one month from the date of occurrence of any vacancy by reason of death, resignation or removal of the Chairperson or a member and six months before the superannuation or end of tenure of the Chairperson or a Member, make a reference to the Selection Committee for filling up of the vacancy.

(4) The Selection Committee shall finalise the selection of the Chairperson and a Member within one month from the date on which the reference under sub-section (3) is made to it.

(5) The Selection Committee shall recommend a panel of two names for every vacancy referred to it.

(6) Before recommending any person for appointment as the Chairperson or other Member of the Commission, the Selection

Committee shall satisfy itself that such person does not have any financial or other interest which is likely to affect prejudicially his functions as the Chairperson or a Member.

(7) No appointment of the Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

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

Term of office of Chairperson and other Members.

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

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

(2) A vacancy caused by the resignation or removal of the Chairperson or any other Member under section 11 or by death or otherwise shall be filled by fresh appointment in accordance with the provisions of section 9.

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

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

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

11. (1) The Chairperson or any other member may, by notice in writing under his hand addressed to the Central Government, resign his office:

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

Resignation, removal and suspension of Chairperson and other Members.

(2) Subject to the provisions of sub-section (4), any Member shall only be removed from his office by order of the Central Government on the ground of proved misbehaviour after the Supreme Court, on reference being made to it by the Central Government, has, on an inquiry, held in accordance with the procedure prescribed in this behalf by the Supreme Court, reported that the Member, ought on any such ground to be removed.

(3) The Central Government may suspend from office the Chairperson or a Member, as the case may be, in respect of whom a reference has been made to the Supreme Court under sub-section (2), until the Central Government has passed an order on receipt of the report of the Supreme Court on such reference.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Central Government may, by order, remove the Chairperson or any other Member from his office if such Chairperson or Member, as the case may be,-

(a) is, or at any time has been, adjudged as an insolvent; or

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

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

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or

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

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

(5) Notwithstanding anything contained in sub-section (4), 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 any inquiry, held by it in accordance with such procedure as prescribed in this behalf by the Supreme Court, reported that the Member, ought on such ground or grounds to be removed.

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

Restriction an
employment of
Chairperson

and other
Members in
certain cases.

Provided that nothing contained in this section shall apply to any
employment under the Central Government or a State Government
or local authority or in any statutory authority or any corporation
established by or under any Central, State or Provincial Act or a
Government company as defined in section 617 of the Companies
Act, 1956. 1 of
1956

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

Salary and allowances 14. (1) There shall be paid to the Chairperson a salary, which is equal to the salary of a Judge of the Supreme Court.

and other terms and conditions of Chairperson and other Members. (2) There shall be paid to a Member a salary, which is equal to the salary of a Judge of a High Court.

(3) The other terms and conditions of service including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be prescribed.

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

15. No act or proceeding of the Commission shall be invalid merely by reason of-

(a) any vacancy in, or any defect in the constitution of, the Commission; or

Vacancy, etc. not to invalidate proceedings of Commission. (b) any defect in the appointment of a person acting as a Chairperson or as a Member; or

(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

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

Appointment of Director-General, etc. (2) Every Additional, Joint, Deputy and Assistant Directors General shall exercise his powers, and discharge his functions, subject to the general control, supervision and direction of the Director General.

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

(4) The Directors General, and Additional, Joint, Deputy and Assistant Directors General shall be appointed from amongst persons of integrity and outstanding ability and who have experience in investigation, and

knowledge of accountancy, management, business, public administration, international trade, law or economics and such other qualifications as may be prescribed.

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

Registrar and officers and other employees of Commission.

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

CHAPTER IV

DUTIES, POWERS AND FUNCTIONS OF COMMISSION

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

19. (1) The Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) section 4 either on its own motion or on-

Duties, of Commission.

(a) receipt of a complaint from any person, consumer or their association or trade association; or

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

Inquiry into certain agreements and dominant position of enterprise.

(2) Without prejudice to the provision contained in sub-section (1), the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7).

(3) The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely:-

(a) creation of barriers to new entrants in the market;

(b) driving existing competitors out of the market;

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

(d) accrual of benefits to consumers;

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

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

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

(a) market share of the enterprise;

(b) size and resources of the enterprise;

(c) size and importance of the competitors;

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

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

(f) technical advantages including advantages such as copyright patents, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design referred to in clauses (a) to (f) of sub-section (5) of section 3, or similar commercial rights acquired by the enterprise;

(g) dependence of consumers on the enterprise;

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

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

(j) countervailing buying power;

(k) market structure and size of market;

(l) social obligations and social costs;

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

(5) For determining whether a market constitutes a “relevant market” for the purposes of this Act, the Commission shall have due regard to the “relevant

geographic market” or “relevant product market”.

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

(a) regulatory trade barriers;

- (b) local specification requirements;
- (c) national procurement policies;
- (d) adequate distribution facilities;
- (e) transport costs;
- (f) language;
- (g) consumer preferences;
- (h) need for secure, regular supplies or rapid after-sales services.

(7) The Commission shall, while determining the “relevant product market”, have due regard to all or any of the following factors, namely:-

- (a) physical characteristics or end-use of goods;
- (b) price of goods or service;
- (c) consumer preferences;
- (d) exclusion of in-house production;
- (e) existence of specialised producers;
- (f) classification of industrial products.

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

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

Inquiry into
combination
by
Commission

(2) The Commission shall, on receipt of a notice under sub-section (2) of section 6 or upon receipt of a reference under sub-section (2) of section 21, inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.

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

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

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

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

(c) level of combination in the market;

(d) degree of countervailing power in the market;

(e) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;

(f) extent of effective competition likely to sustain in a market;

(g) extent to which substitutes are available or are likely to be available in the market;

(h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;

(i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in market;

(j) nature and extent of vertical integration in the market;

(k) possibility of a failing business;

(l) nature and extent of innovation;

(m) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

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

(2) On receipt of a reference under sub-section (1), the Commission shall, after hearing the parties to the proceedings, give its opinion to such statutory authority which shall thereafter pass such order on the issues referred to in that sub-section as it deems fit.

Reference by
statutory
authority.

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

Benches of
Commission

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

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

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

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

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

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

Distribution of business amongst Commission and Benches.

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

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

(3) The Chairperson, with the prior approval of the Central Government, may-

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

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

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

Procedure for deciding a case

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

where

Members of a Bench differ in opinion. **25.** An inquiry shall be initiated or a complaint be instituted or a reference be made under this Act before a Bench within the local limit of whose jurisdiction.

Jurisdiction of Bench.

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

(b) any of the respondents, where there are more than one, at the time of the initiation of the inquiry or institution of complaint or making of reference, as the case may be, actually and voluntarily resides or carries on business or personally works for gain provided that in such case either

the leave of the Bench is given, or the respondents who do not reside, or carry on business, or personally works for gain, as aforesaid, acquiesce in such institution; or

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

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

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

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

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

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

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

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

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

(8) if the report of the Director General relates on a reference made under sub-section (1) and such report recommends that there is no contravention of the provisions of this Act, the Commission shall invite comments of the Central Government or the State Government or the statutory authority, as the case may be, on such report and on receipt of such comments, the Commission shall return the reference if there is no *prima facie* case or proceed with the

Procedure
for inquiry
on
complaints
under section
19

reference as a complaint if there is a *prima facie* case.

(9) if the report of the Director General referred to in sub-section (2) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

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

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

(a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;

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

(c) award compensation to parties in accordance with the provisions contained in section 34;

(d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

(e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;

(f) recommend to the Central Government for the division of an enterprise enjoying dominant position;

(g) pass such other order as it may deem fit.

Division of enterprise enjoying dominant position. **28. (1)** The Central Government, on recommendation under clause (f) of section 27, may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.

(2) In particular, and without prejudice to the generality of the foregoing powers, the order referred to in sub-section (1) may provide for all or any of the following matters, namely:

(a) the transfer or vesting of property, rights, liabilities or obligations;

(b) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;

(c) the creation, allotment, surrender or cancellation of any shares, stocks or securities;

(d) the payment of compensation to any person who suffered any loss due to dominant position of such enterprise;

(e) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;

(f) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;

(g) any other matter which may be necessary to give effect to the division of the enterprise;

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

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

Procedure for investigation of combinations.

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

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

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

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

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

30. Where any person or enterprise has given a notice under sub-section (2) of section 6, the Commission shall inquire:

(a) whether the disclosure made in the notice is correct;

(b) whether the combination has or is likely to have, an appreciable adverse effect on competition.

Inquiry into disclosures under sub-section (2) of section 6.

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

(2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.

Orders of Commission on certain combinations.

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

(4) The parties, who accept the modification proposed by the

Commission under sub-section (3), shall carry out such modification within the period specified by the Commission.

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

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

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

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

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

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

(a) the acquisition referred to in clause (a) of section 5; or

(b) the acquiring of control referred to in clause (b) of section 5; or

(c) the merger or amalgamation referred to in clause (c) of section 5, shall not be given effect to:

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

(11) If the Commission does not, on the expiry of a period of ninety working days from the date of publication referred to in sub-section (2) of section 29 pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the

Commission.

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

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

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

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

32. The Commission shall, notwithstanding that:

(a) an agreement referred to in section 3 has been entered into outside India, or

Acts taking place out-side India but having an effect on competition in India.

(b) any party to such agreement is outside India; or

(c) **an abuse of dominant position referred to in section 4 has taken place outside India; or**

(d) any enterprise abusing the dominant position is outside India; or

(e) a combination has taken place outside India; or

(f) any party to combination is outside India; or

(g) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India,

have power to inquire into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India.

Power to grant interim relief.

33. (1) Where during an inquiry before the Commission, it is proved to the satisfaction of the Commission, by affidavit or otherwise, that an act in contravention of sub-section (1) of section 3 or sub-section (1) section 4 or section 5 has been committed and continues to be committed or that such act is about to be committed, the Commission may grant a temporary injunction restraining any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary.

(2) The provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, apply to a temporary injunction issued by the Commission under the Act, 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 any inquiry before the Commission. 5 of 1908

Power to award compensation.

34. (1) Without prejudice to any other provisions contained in this Act, any person may make an application to the Commission for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of any contravention of the provisions of Chapter II, having been committed by such enterprise.

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

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

Appearance before Commission.

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

Explanation.- For the purposes of this section,-

38 of 1949 (a) “ chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1950 (b) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section of that Act;

23 of 1959 (c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) “legal practitioner” means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

5 of 1908

36. (1) The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have powers to regulate its own procedure including the places at which they shall have their sittings, duration of oral hearings when granted, and times of its inquiry.

Power of Commission to regulate its own procedure.

5 of 1908

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

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

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

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

1 of 1872.

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

(f) dismissing an application in default or deciding it ex parte;

(g) any other matter which may be prescribed.

45 of 1860
2 of 1974.

(3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

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

(5) The Commission may direct any person:

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

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

(6) If the Commission is of the opinion that any agreement referred to in section 3 or abuse of dominant position referred to in section 4 or the combination referred to in section 5 has caused or is likely to cause an appreciable adverse effect on competition in the relevant market in India and it is necessary to protect, without further delay, the interests of consumers and other market participants in India, it may conduct an inquiry or adjudicate upon any matter under this Act after giving a reasonable oral hearing to the parties concerned.

37. Any person aggrieved by an order of the Commission from which an appeal is allowed by this Act but no appeal has been preferred, may, within thirty days from the date of the order, apply to the Commission for review of its order and the Commission may make such order thereon as it thinks fit:

Review of
orders of
Commission.

Provided that the Commission may entertain a review application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from preferring the application in time:

Provided further that no order shall be modified or set aside without giving an opportunity of being heard to the person in whose favour the order is giving and the Director General where he was a party to the proceedings.

Rectification of orders. **38.** (1) With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of this Act.

(2) Subject to the other provisions of this Act, the Commission may make-

(a) an amendment under sub-section (1) of its own motion;

(b) an amendment for rectifying any such mistake which has been brought to its notice by any party to the order.

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

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

(b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated,

and thereupon the court to which the order is so sent shall execute the order as if it were a decree or order sent to it for execution.

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

Appeal. Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days:

5 of
1908

Provided further that no appeal shall lie against any decision or order of the Commission made with the consent of the parties;

CHAPTER V

DUTIES OF DIRECTOR GENERAL

41. (1) The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made thereunder.

Director-General to investigate contraventions.

(2) The Director-General shall have all the powers as are conferred upon the Commission under sub-section (2) of section 36.

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

CHAPTER VI

PANALTIES

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

Contravention of orders of Commission.

(2) The Commission may, while making an order under this Act, issue such directions to any person or authority, not inconsistent with this Act, as it thinks necessary or desirable, for the proper implementation or execution of the order, and any person who commits breach of, or fails to comply with, any obligation imposed on him under such direction, may be ordered by the Commission to be detained in civil prison for a term not exceeding one year unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

43. If any person fails to comply with a direction given by-

(a) the Commission under sub-section (5) of section 36; or

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

Penalty for failure to comply with directions of Commission and Director

General.

the Commission shall impose on such person a penalty or rupees one lakh for each day during which such failure continues.

44. if any person, being a party to a combination, -

(a) makes a statement which is false in any material particular, or knowing it to be false; or

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

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

Penalty for making false statements or omission to furnish material information

45. (1) Without prejudice to the provisions of section 44, if any person,

who furnishes or is required to furnish under this Act any particulars, documents or any information,-

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

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

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

Penalty for offences in relation to furnishing of information

the Commission shall impose on such person a penalty which may extend to rupees ten lakhs.

(2) Without prejudice to the provisions of sub-section (1), the Commission may also pass such other order as it deems fit.

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

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

Contravention by companies.

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

Explanation-For the purposes of this section-

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

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

CHAPTER VIII

COMPETITION ADVOCACY

Competition
advocacy.

47. (1) In formulating a policy on competition, the Central Government may make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of many such reference give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit.

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

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

CHAPTER VIII

FINANCE, ACCOUNTS AND AUDIT

48. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as the Government may think fit for being utilised for the purposes of this Act.

Grants by
Central
Government.

49. (1) There shall be constituted a fund to be called the “Competition Fund” and there shall be credited thereto-

(a) all Government grants received by the Commission;

**(b) the monies received as costs from parties to proceedings
before the Commission;**

Constitution of
Fund.

(c) the fees received under this Act;

(d) the interest accrued on the amounts referred to in clause (a) to (c)

(2) The fund shall be applied for meeting-

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

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

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

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

50. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts
and
audit.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

*Explanation-*For the removal of doubts, it is hereby declared that the orders of the Commission, being matters appealable to the Supreme Court, shall not be subject to audit under this section.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

51. (1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing measures for the promotion of competition advocacy, creating awareness and imparting training about competition issue, as the Central Government may, from time to time, require. Furnishing of returns, etc., to Central Government.

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

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

CHAPTER IX

MISCELLANEOUS

52. The Central Government may, by notification, exempt from the application of this Act, or any provision thereof, and for such period as it may specify in such notification-

(a) any class of enterprises if such exemption is necessary in the interest of security of the state or the public interest;

Power to exempt.

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

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

53. (1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time.

Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

Power of Central Government to issue directions.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Power of **54.** (1) If at any time the Central Government is of the question-
Central

Government to (a) that on account of circumstances beyond the control of the

supersede
Commission

Commission, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Commission has persistently made default in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Commission or the administration of the Commission has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification and for reasons to be specified therein, supersede the Commission for such period, not exceeding six months, as may be specified in the notification;

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Commission to make representations against the proposed suppression and shall consider representations, if any, of the Commission.

(2) Upon the publication of a notification under sub-section (1) superseding the Commission,-

(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Government may specify in this behalf;

(c) all properties owned or controlled by the Commission shall, until the Commission is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of suppression specified in the notification issued under sub-section (1), the Central Government shall reconstitute the Commission by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Restriction on disclosure of information.

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

Members, Director General, Registrar, officers and employees, etc., of Commission to be public servants.

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

45 of
1860

Protection of action taken in good faith.

57. No suit, prosecution or other legal proceedings shall lie against the Central Government or commission or any officer of the Central Government of the Chairperson or any Member or the Director-General, Additional, Joint, Deputy or Assistant Director-General or Registrar or officers or other employees of the Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Act to have overriding effect.

58. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

59. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Exclusion of jurisdiction of civil courts.

60. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Application of other laws not barred.

61. (1) the Central Government may, by notification, make rules to carry out the provisions of this Act.

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

Power to make
rules.

(a) the form and manner in which and the authority before whom the oath of office and of secrecy shall be made and subscribed under sub-section (3) of section 10;

(b) the other terms and conditions of service including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and

medical facilities to be provided to the Chairperson and other Members under sub-section (3) of section 14;

(c) the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Director General under sub-section (3) of section 16;

(d) the qualifications for appointment of the Directors General, Additional, Joint, Deputy or Assistant Directors General under sub-section (4) of section 16;

(e) the salaries and allowances and other terms and conditions of service of the Registrar and officers and other employees payable under sub-section (2) of section 17;

(f) the rules for the purpose of securing any case or matter which requires to be decided by a Bench composed of more than two Members under sub-section (4) of section 23;

(g) any other matter in respect of which the Commission shall have power under clause (g) of sub-section (2) of section 36;

(h) the promotion of competition advocacy, creating awareness and imparting training about competition issues under sub-section (3) of section 47;

(i) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 50;

(j) the time within which and the form and manner in which the Commission may furnish returns, statements and such particulars as the Central Government may require under sub-section (1) of section 51;

(k) the form in which and the time within which the annual report shall be prepared under sub-section (2) of section 51;

(l) the manner in which the monies transferred to the Central Government shall be dealt with by that Government under the fourth proviso to sub-section (2) of section 64;

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

(3) Every notification issued under sub-section (3) of section 20 and section 52 and every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule, or both Houses agree that the notification should not be issued or rule should

not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule, as the case may be.

Power to make regulations. 62. (1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

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

(a) the cost of production to be determined under clause (b) of the *Explanation* to section 4;

(b) the form of notice as may be specified and the fee which may be determined under sub-section (2) of section 6.;

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

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

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

Power to remove difficulties. 63. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty.

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal
and
saving.

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

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

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

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

14 of 1947.

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director General of Investigation and Registration or any officer or other employee, employed in the Monopolies and Restrictive Trade Practices Commission, to the Central Government shall not entitle such Director General of Investigation and Registration, additional, Joint, Deputy or Assistant Director General of Investigation and Registration or any officer or other employee any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

Provided also that where the Monopolies and Restrictive Trade Practices Commission has established a provident fund, superannuation, welfare or other fund for the benefit of the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Director Generals of Investigation and Registration or the officers and other employees employed in the Monopolies and Restrictive Trade Practices Commission, the monies relatable to the officers and other employees whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Monopolies and Restrictive Trade Practices Commission to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and vest in, the Central Government and such monies which stand so transferred shall be dealt with by the said Government in such manner as may be prescribed.

(3) All cases pertaining to monopolistic trade practices or restrictive trade practices pending before the Monopolies and Restrictive Trade Practices Commission on or before the Commencement of this Act, including such cases, in which any unfair trade practice has also been alleged, shall, on such commencement, stand transferred to the Competition Commission of India and shall be adjudicated by that Commission in accordance with the provisions of the repealed Act as if that Act had not been repealed.

54 of 1969.

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

68 of 1986

54 of 1969 (5) All cases pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 and pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India shall dispose of such cases as if they were cases field under that Act.

(6) All investigations or proceedings, other than those relating to unfair trade practices, pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, shall transferred to the Competition Commission of India, and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

(7) All investigations or proceedings, relating to unfair trade practices other than those referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 and the national Commission may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

54 of
1969.

68 of
1986

(8) All investigations or proceedings relating to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade practices Act, 1969 pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India and the Competition Commission of India may conduct or order for conduct of such investigation in the manner as it deems fit.

54 of
1969

(9) Save as otherwise provided under sub-section (3) or sub-section (4), all cases or proceedings pending before the Monopolies and Restrictive Trade Practices Commission shall abate.

10 of
1897.

(10) The mention of the particular matters referred to in sub-section (3) to (8) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect to repeal.

STATEMENT OF OBJECTS AND REASONS

In the pursuit of globalisation, India has responded by opening up its economy, removing controls and resorting to liberalisation. The natural corollary of this is that the Indian market should be geared to face competition from within the country and outside. The Monopolies and Restrictive Trade Practices Act, 1969 has become

obsolete in certain respects in the light of international economic developments relating more particularly to competition laws and there is a need to shift our focus from curbing monopolies to promoting competition.

2. The Central Government constituted a High Level Committee on Competition Policy and Law. The Committee submitted its report on the 22nd May, 2000 to the Central Government. The Central Government consulted all concerned including the trade and industry associations and the general public. The Central Government after considering the suggestions of the trade and industry and the general public decided to enact a law on Competition.

3. The Competition Bill, 2001 seeks to ensure fair competition in India by prohibiting trade practices which cause appreciable adverse effect on competition in markets within India and, for this purpose, provides for the establishment of a quasi-judicial body to be called the Competition Commission of India (hereinafter referred to as CCI) which shall also undertake competition advocacy for creating awareness and imparting training on competition issues.

4. The Bill also aims at curbing negative aspects of competition through the medium of CCI. CCI will have a Principal Bench and Additional Benches and will also have one or more Mergers Benches. It will look into violations of the Act, a task which could be undertaken by the Commission based on its own knowledge or information or complaints received and reference made by the Central Government, the State Governments or statutory authorities. The Commission can pass orders for granting interim relief or any other appropriate relief and compensation or an order imposing penalties etc. An appeal from the orders of the Commission shall lie to the Supreme Court. The Central Government will also have powers to issue directions to the Commission on policy matters after considering its suggestions as well as the power to supersede the Commission if such a situation is warranted.

5. The Bill also provides for investigation by the Director-General for the Commission. The Director-General would be able to act only if so directed by the Commission but will not have any *suo-moto* powers for initiating investigations.

6. The Bill confers power upon the CCI to levy penalty for contravention of its orders, failure to comply with its directions, making of false statements or omission to furnish material information, etc. The CCI can levy upon an enterprise a penalty of not more than ten per cent. of its average turn-over for the last three financial years. It can also order division of dominant enterprises. It will also have power to order demerger in the case of mergers and amalgamations that adversely affect competition.

7. The Bill also seeks to create a fund to be called the Competition Fund. The grants given by the Central Government, costs realised by the Commission and application fees charged will be credited into this Fund. The pay and allowances and the other expenses of the Commission will also be borne out of this Fund. The Bill provides for empowering the Comptroller and Auditor-General of India to audit the accounts of the Commission. The Central Government will be required to lay the annual accounts of the Commission, as audited by the Comptroller and Auditor-

General and also the annual report of the Commission before both the Houses of Parliament.

8. The Bill aims at repealing the Monopolies and Restrictive Trade Practices Act, 1969 and the dissolution of the Monopolies and Restrictive Trade Practices Commission. The Bill provides that the cases pending before the Monopolies and Restrictive Trade Practices Commission will be transferred to the CCI except those relating to unfair trade practices which are proposed to be transferred to the relevant for a established under the Consumer Protection Act, 1986.

9. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 24th July, 2001

ARUN JAITLEY

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

[Copy of letter No. PC-5/23/2000-IGC, dated the 30th July, 2001 from Shri Arun Jaitley, Minister of law, Justice and Company Affairs to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Competition Bill, 2001 has recommended its introduction in Lok Saber under article 117(1) of the Constitution and for its consideration by Lok Sabha under article 117(3) of the Constitution.

Notes on clauses

Clause 1.- This clause, *inter alia*, seeks to extend the provisions of the Bill to the whole of India excluding the State of Jammu and Kashmir.

Clause 2.- This clause defines various expressions used in the Bill.

Clause 3.- This Clause, *inter alia*, provides for prohibition of entering into anticompetitive agreements. It shall not be lawful for any enterprise or association of enterprises or person or association of persons to enter into an agreement in respect of production, supply, storage, distribution, acquisition or control of goods or provision of service which causes or is likely to cause an appreciable adverse effect on competition within India. All such agreements entered into in contravention of the aforesaid prohibition shall be void. This clause also specifies certain activities which shall be presumed to have an appreciable adverse effect on competition and also specifies certain agreements which shall be in adverse effect on competition and also specifies certain agreements which shall be in contravention of sub-clause (1) of the said clause if such agreement causes appreciable adverse on competition. The provision of this clause shall not apply to certain rights specified in sub-clause (5) of this clause.

Clause 4.- This clause prohibits abuse of dominant position by any enterprise. Such abuse of dominant position, *inter alia*, includes imposition, either directly or indirectly, of unfair or discriminatory purchase or selling prices or conditions, including predatory prices of goods or service, limiting production or restricting of goods or provision of service, indulging in practices resulting in denial of market access, making the conclusion of contracts subject to acceptance by other parties of supplementary obligations and using dominant position in one market to enter into or protect other market.

Clause 5.- This clause deals with combination of enterprises and persons. The acquisition of one or more enterprises by one or more persons or acquiring of control or merger or amalgamation of enterprises under certain circumstances specified in the said clause shall be construed as combination.

Clause 6.- This clause, *inter alia*, provides that no person or enterprise shall enter into a combination which is likely to cause or causes an appreciable adverse effect on competition within the relevant market in India. It further provides exemption from the provisions of this clause to certain institutions specified in sub-clause (2) of the said clause.

Clause 7.- This clause provides for the establishment of the Competition Commission of India. The commission shall be a body corporate by the aforesaid name having perpetual succession and a common seal with power to acquire, hold and dispose of property. The place of head office of the Commission shall be decided by the Central Government. However, the Commission can establish offices at other places in India.

Clause 8.- This clause provides for the composition of the Commission. The Commission shall consist of the Chairperson and not less than two and not more than ten other members, as may be specified by the Central Government. However the Central Government shall appoint the Chairperson and a member during first year of the establishment of the Commission. This clause also lays down that the Chairperson and other Members shall be persons of ability, integrity and standing. A person who is or has been or is qualified to be a Judge of a High Court or is having special knowledge of, and professional experience in, not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the central Government, be useful to the Commission, shall be eligible for appointment as the Chairperson or as a Member.

Clause 9.- This clause, *inter alia*, provides for the appointment of the Chairperson and Members of the Commission. The appointment shall be made by the Central Government on the recommendation of the Selection Committee consisting of the Chief Justice of India or his nominee, the Union Minister-in-charge of the Ministry of finance, the Union Minister-in-charge of the Ministry of Department of the Central government dealing with the proposed legislation, the Governor of the Reserve Bank of India and the cabinet Secretary. However, an appointment made to the office of the Chairperson or a Member shall not be invalid merely on the ground that there is any defect in the constitution of the Selection Committee or any vacancy therein.

Clause 10.- This clause, *inter alia*, provides for the term of office of the Chairperson and other Members. Such term of the office shall be five years. However, no Chairperson shall hold office after he attains the age of seventy years and no other member shall hold office after he attains the age of sixty-five years. This clause also provides for discharge of

functions of the Chairperson by the senior-most member in case the Chairperson is unable to discharge his functions.

Clause 11.- This clause, *inter alia*, contains provisions relating to resignation, removal and suspension of the chairperson and other Members. Sub-clause (1) of this clause provides for the manner of resignation of the Chairperson or any Member. Sub-clause (2) provides that the Chairperson or a Member shall not be removed from his office except by an order made by the Central Government on the ground of proved misbehaviour after an inquiry made by the Supreme Court in accordance with the procedure prescribed in this behalf by it. Sub-clause (3) confers power upon the Central Government to suspend the Chairperson or a Member in respect of whom a reference has been made to the Supreme Court. Sub-clause (4) provides for other circumstances under which the Chairperson or any Member can be removed from office by the Central Government.

Clause 12.- This clause provides that the Chairperson or a Member shall not, for a period of six months from the date on which they cease to hold office, accept any employment in or connected with the management or administration of any enterprise which has been a party to a proceeding before the Commission. However, such a restriction of employment shall not apply in case of any employment under the Central Government or a State Government or a local authority or a statutory authority or corporation established by a Central, State or Provincial Act, or in a Government Company.

Clause 13.- This clause empowers the Chairperson to have general superintendence, direction and control in respect of all administrative matters of the Commission.

Clause 14.- This clause deals with the salary and allowances and other terms and conditions of service of the Chairperson and other members of the Commission. The salary of the Chairperson shall be equal to that of a Judge of the Supreme Court and the salary of a Member shall be equal to that of a Judge of a High Court. The salary and allowances and other terms and conditions of service of the Chairperson and other members shall not be varied to their disadvantage after their appointment.

Clause 15.- This clause provides that any act or proceeding of the Commission shall not be invalidated merely on the ground of existence of any vacancy in or any defect in the constitution of the Commission or defect in any appointment or any irregularity in the procedure of the Commission not affecting the merits of the case.

Clause 16.- This clause provides for the appointment of Director General, Additional, Joint, Deputy and Assistant Directors General for the purpose of assisting the Commission in conducting inquiry into the contravention of the provisions of the proposed legislation, for conduct of cases before the Commission and performing such other functions as are or may be provided by or under the proposed legislation. It also empowers the Central Government to specify, by rules, their qualifications, the salary and allowances payable to them and the other conditions of their service.

Clause 17.- This clause empowers the Commission to appoint Registrar and other officers and employees necessary for the efficient performance of its functions under the proposed legislation. The salary and allowances payable to such officers and employees and other terms and conditions of their service shall be determined by rules made by the Central Government.

Clause 18.-This clause deals with the duties, of the Commission. It provides that it shall be the duty of the Commission to eliminate practices having adverse effect on competition, to promote and sustain competition in markets in India, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets in India.

Clause 19.-This clause empowers the Commission to inquire into violation of provisions of sub-clause (1) of clause 3 or sub-clause (1) of clause 4 of the Bill either on its own motion or on receipt of a complaint from any person, consumer or their association or trade association or on a reference made to it by the Central Government or a State Government or a statutory authority alleging violation of any of those provisions. This clause further lays down the factors which shall be considered by the Commission for the purpose of determining whether an agreement has an appreciable adverse effect on competition, whether an enterprise enjoys the dominant position, or whether a market constitutes a relevant market for the purposes of the proposed legislation.

Clause 20.-This clause, *inter alia*, empowers the Commission to make inquiry as to whether a combination causes or is likely to cause an appreciable adverse effect on competition in India. It also lays down the limitation of time for initiation of inquiry as one year from the date on which the combination has taken effect when such inquiry is conducted by the Commission upon its own knowledge or information. This clause further lays down the factors which the Commission would take into account for determining whether the combinations has appreciable adverse effect on the competition in the relevant market.

Clause 21.-This clause contains provisions relating to the circumstances under which a reference can be made to the Commission by statutory authorities. It provides that if in the course of a proceeding before any statutory authority, entrusted with the responsibility of regulating any goods or service or market therefor, a party has raised an issue that the decision taken by the statutory authority would be contrary to the provisions of the Bill, then the statutory authority shall be bound to make a reference to the Commission. The Commission, after hearing parties to the proceedings, shall, give to the statutory authority its opinion and the statutory authority shall thereafter pass its orders.

Clause 22.-This clause contains provisions relating to constitution of Benches of the Commission and exercise of the jurisdiction, powers and authority of the Commission by such Benches. Sub-clause (2) and (3) stipulate that each bench shall consist of two Members of which at least one Member shall be Judicial Member. A Judicial Member shall be a Member who is or has been or is qualified to be a Judge of a High Court. Sub-clause (4) provides that the Bench over which the Chairperson presides shall be the Principal Bench and the other Benches shall be known as Additional Benches. Sub-clause (5) empowers the Chairperson to constitute one or more Benches to be called the Mergers Benches which will exclusively deal with matters referred to in clauses 5 and 6 of the Bill. Sub-clause (6) empowers the Central Government to specify, by notification, the places at which the Principal Bench and other Benches shall sit.

Clause 23.-This clause deals with distribution of business of the Commission amongst its Benches. It also empowers the Chairperson to transfer a Member from one Bench to another and also to authorise a Member of one Bench to discharge the functions as a Member of any other Bench with the prior approval of the Central Government.

Clause 24.-This clause deals with the procedure for deciding a case where the Members of a Bench differ in opinion. It provides that if Members of a Bench differ in their opinion on any point or points, they shall state such point or points on which they differ and made a reference to the Chairperson. The Chairperson may hear such point or points himself or refer the case for hearing on such point or points by one or more of the other Members. The point or points as decided, according to the opinion of the majority of the Members who have heard the case including those who had first heard it, shall be the decision of the Commission.

Clause 25.-This clause lays down the jurisdiction of a Bench of the Commission. It provides that an inquiry shall be initiated or a complaint be instituted or a reference be made under the proposed legislation before a Bench within the local limits of jurisdiction of which the respondent or each of the respondents, actually and voluntarily resides or carries on business or personally works for gain or the cause of action, wholly or in part, has arisen. The Explanation to this clause specifies the category of respondents in whose case the registered or principal office or subordinate office shall be the place of his business.

Clause 26.-This clause lays down the detailed procedure for any inquiry initiated *suo motu* by the Commission and various complaints and references referred to in clause 19 of the Bill. In case the Commission is of the opinion in respect of any complaint referred to in item (a) of sub-clause (1) of clause 19 of the Bill that no *prima facie* case is existing, it shall dismiss the complaint and pass such orders as it may deem fit including imposition of costs, if any. If the Commission is of the opinion that there exists a *prima facie* case, it shall direct the Director General to cause an investigation to be made into the alleged matter. The Director General is required to submit a report on his findings on such allegation to the Commission within the period allowed by the Commission. On receipt of the report of the Director General in respect of the said matter, the Commission shall forward a copy of the same to the parties concerned or to the Central Government or the State Government, as the case may be. In case the report of the Director General recommends that there is no contravention of the provisions of the Bill, the complainant shall be given an opportunity to rebut the findings of the Director General. If, after hearing the complainant, the Commission agrees with the recommendations of the Director General, the Commission shall dismiss the complaint. In case, the Commission, after hearing the complainant, is of the opinion that further inquiry is required to be conducted, it shall direct the complainant to proceed with the complaint. If the report of the Director General relates to a reference and such report recommends that there is contravention of any of the provisions of the Bill, the Commission shall invite the comments from the Central Government or the State Government or the statutory authority, as the case may be, and it shall return the reference if there is no *prima facie* case or the Commission may proceed with the reference as a complaint if there is a *prima facie* case.

Clause 27.-This clause deals with various orders which the Commission is competent to pass after an inquiry. if, on inquiry, the Commission finds that the agreements or the actions of an enterprise in a dominant position are in contravention of the provisions of clauses 3 and 4, it may pass any order which may, *inter alia*, include an order directing any enterprise or association of enterprises or person or association of persons involved in the agreement or abuse of dominant position to discontinue and not to re-enter into any such agreement or abuse, as the case may be, imposing such penalty as the Commission deems fit which shall not be more than ten per cent. of the average of the turnover for the last three years upon each such person or enterprise which is a party to the agreement or abuse of

dominant position, awarding compensation to the parties, directing modification of the agreement, recommending to the Central Government the division of any such enterprise enjoying dominant position or complying with its directions including a direction to pay costs.

Clause 28.-This clause empowers the Central Government on the recommendation of the Commission to order division of an enterprise enjoying dominant position so as to ensure that it does not abuse its dominant position. Sub-clause (2) of the said clause enumerates the various matters relating to such division in respect which the Central Government may pass the order for division of such enterprise.

Clause 29.-This clause lays down the detailed procedure for investigation of combinations if the Commission is of the opinion that any combination is likely to cause or has caused an appreciable adverse effect on competition within the relevant market in India.

Clause 30.-This clause deals with an inquiry by the Commission on receipt of a notice under sub-clause (2) of clause 6. The Commission shall inquire into whether the disclosure mentioned in the notice is correct and whether the combination has or is likely to have an appreciable adverse effect on competition.

Clause 31.-This clause empowers the Commission to issue orders on certain combinations. Sub-clause (1) of the said clause provides that if the Commission is of the opinion that a combination does not or is not likely to have an appreciable adverse effect on competition, it shall, by order, approve the combination including a combination in respect of which a notice has been given under sub-clause (2) of clause 6. Sub clause (2) of the said clause empowers the Commission to direct that a combination shall not take effect, if it is of the opinion that the combination has or is likely to have an appreciable adverse effect on competition. Sub-clause (3) empowers the Commission to propose suitable modifications in the combinations in case the adverse effect could be eliminated. Sub-clause (4) to (12) contain provisions relating to acceptance of the modifications suggested by the Commission, amendments to such modifications proposed by the parties to the combination, within the time specified in those clauses and effect of acceptance or non-acceptance of such modifications and amendments by the Commission and the parties to the combinations.

Clause 32.-This clause empowers the Commission to inquire into an agreement or abuse of dominant position or combination if such agreements or dominant position or combination has or likely to have an appreciable adverse effect on competition in India even if such agreement or abuse of dominant position or combination as specified in sub-clauses (a) to (g) of the said clause take place outside India.

Clause 33.-This clause empowers the Commission to grant interim relief by way of temporary injunctions.

Clause 34.-This clause empowers the Commission to deal with applications made to it by any applicant for an order for recovery of compensation from any enterprise for any loss or damage shown to have been suffered by him as a result of any contravention of the provisions of Chapter II, and to award compensation to such applicant.

Clause 35.-This clause contains provisions relating to the persons who are entitled to appear in proceedings before the Commission. It provides that a complainant, defendant or

the Director General may either appear in person or authorise one or more chartered accountants, or company secretaries or cost accountants or legal practitioners, or any of the officers of such complainant, defendant or Director General to present the case before the Commission.

Clause 36.-This clause confers powers upon the Commission to regulate its own procedure while conducting inquiries. The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice. Sub-clause (2) confers upon the Commission the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit. Such powers include powers for summoning witnesses, production of documents, receiving evidence on affidavits, deciding cases *ex parte*, etc. Sub-clause (3) provides that the proceedings before the Commission shall be judicial proceedings within the meaning of section 193 and 228 and for the purposes of section 196 of the Indian Penal code. Sub-clause (4) confers powers upon the Commission to call certain experts from fields specified in this sub-clause to assist it in an inquiry or proceeding. Sub-clause (5) confers power upon the Commission to direct any person to produce, before the Director General or Registrar or any officer authorised by it, books, accounts or other documents in the custody or control of such person and to furnish to the Director General or Registrar or any officer authorised by the Commission, any information relating to trade which may be in possession of such person. Sub-clause (6) confers power upon the Commission to conduct inquiry or adjudicate in matters after giving oral hearing to the parties concerned.

Clause 37.-This clause provides for review of orders of the Commission in certain cases.

Clause 38.-This clause provides for rectification of orders of the Commission for rectifying any mistakes apparent from the record.

Clause 39.-The clause contains provisions regarding execution of orders of the Commission. The order of the Commission under the proposed legislation shall be enforced by the Commission in the same manner as if it were a decree or order made by a High Court or the principal civil court in a suit pending therein.

Clause 40.- This clause provides for filing of an appeal. Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order to him on one or more grounds specified in section 100 of the Code of Civil Procedure, 1908 arising out of such decision or order. However, in case of delay in filing such appeal before the Supreme Court, that Court may allow filing of appeal within a further period not exceeding sixty days if the appellant can satisfy the Court that he was prevented by sufficient cause from filing the appeal within the said period of sixty days.

Clause 41.- This clause seeks to empower the Director General to investigate contravention of the provisions of the proposed legislation or the rules or regulations made thereunder. The Director General shall, when so directed by the Commission, assist the Commission in investigating such contraventions. The provisions of section 240 relating to production of documents and evidence and section 240A relating to seizure of documents by Inspector under the Companies Act, 1956 shall, so far as may be, apply in conducting the

investigations by the Director General or any other person investigating under his authority as they apply to an inspector appointed under that Act.

Clause 42.- This clause provides that if any person contravenes without any reasonable ground the order of the Commission or any condition or restriction subject to which any approval, sanction, direction or exemption in relation to any matter accorded, given, made or granted under the proposed legislation or fails to pay the penalty imposed under the Act, he shall be liable to be detained in civil prison for a term which may extend to one year or shall be liable to a penalty not exceeding rupees ten lakhs.

Clause 43.- This clause provides for imposition of penalty for failure to comply with the directions of the Commission under sub-clause (5) of clause 36 or the Director General under sub-clause (2) of clause 41. The Commission may impose a penalty of rupees one lakh for each day during which the person has failed to comply with the direction given under those sub-clauses by the Commission or the Director-General, as the case may be.

Clause 44.- This clause provides for the penalty for making false statements or omission to furnish material information by any person being a party to a combination. Such penalty shall not be less than rupees fifty lakhs but it may extend up to rupees one crore, as may be determined by the Commission.

Clause 45.- This clause provides for the penalty for offences in relation to furnishing of information. If any person furnishes any statement or document which he knows or has reason to believe to be false in any material particular or omits to state any material fact, knowing to be material or wilfully alters, suppresses or destroys any document which is required to be furnished, the Commission may impose a penalty which may extend to rupees ten lakhs. The Commission may also pass such other orders as it deems fit.

Clause 46.- This clause contains provisions relating to contravention by companies. This clause, *inter alia*, provides that every person who, at the time of contravention of any of the provisions mentioned in that clause, was in charge of and was responsible to the company as well as the company, shall be deemed to have acted in contravention of the said provision and shall be liable to be proceeded against and punished accordingly. However, such person shall not be liable to punishment if he proves that contravention was committed without his knowledge or that he had exercised all due diligence to prevent such contravention.

Clause 47.- This clause contains provisions for competition advocacy by the Commission. In formulating policy, the Central Government may make a reference to the Commission for its opinion on possible effects of such policy on competition. The Commission is required to give its opinion to the Central Government within sixty days from the date of such reference. Such opinion shall not be binding upon the Central Government. The Commission is also required to take suitable measures for the promotion of competition advocacy creating awareness and imparting training about the competition issues as may be prescribed.

Clause 48.- This clause provides for grants to the Commission by the Central Government. The grants shall be made after due appropriation made by Parliament.

Clause 49.- This clause provides for the constitution of a fund to be called the “Competition Fund”. There shall be credited to the fund all Government grants, monies received as costs and fees received and the interest accrued on the said amounts. The Fund may be applied for meeting the various expenses of the Commission including payment of salary to the Chairperson and other members, Director General, Additional, Joint, Deputy and Assistant Directors General, Registrar, officers and staff of the Commission. The Fund shall be administered by a committee of such Members of the Commission as may be determined by the Chairperson.

Clause 50.- This clause provides that the commission shall maintain proper accounts and other relevant records in the form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India and those accounts shall be audited by the Comptroller and Auditor-General of India with the same rights and privileges as in the case of audit of Government accounts. This clause also provides that the accounts of the Commission as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be laid every year before each House of Parliament. It is further provided that the orders of the Commission being matters appealable to the Supreme Court, shall not be subject to audit under this clause.

Clause 51.- This clause provides for furnishing of returns, etc., by the Commission to the Central Government.

Clause 52.- This clause empowers the Central Government, by notification, to exempt any class of enterprises from all or any of the provisions of the proposed legislation for such period as may be specified in that notification if such exemption is necessary in the interest of security of the State or public interest or any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty or international agreement or convention. This exemption may also be given to any enterprise which performs a sovereign function on behalf of the Central Government or a State Government.

Clause 53.- This clause empowers the Central Government to issue directions on questions of policy to the Commission. The Commission shall, in exercise of its powers or the performance of its functions under the proposed legislations, be bound on such directions on questions of policy. The Commission shall be given an opportunity to express its views before any such direction is given.

Clause 54.- This clause provides for supersession of the Commission in certain circumstances. The Central Government may, by notification, supersede the Commission for a period not exceeding six months, by notification, if the Central Government is of the opinion that on account of circumstances beyond the control of the Commission, it is unable to discharge its functions or perform its duties under the provisions of the proposed legislation or that the Commission has persistently defaulted in complying with any direction given by the Central Government under the proposed legislation or in the discharge of its functions or performance of the duties imposed on it by or under the provisions of proposed legislation and as a result of such default the financial position of the Commission or the administration of the Commission has suffered or that circumstances exist which render it necessary in the public interest so to do. The Central Government before issuing a notification of supersession shall give the Commission a reasonable opportunity to make representation against such supersession and shall also consider such representations, if any, made by the Commission. Sub-clause (2) deals with the effect of supersession. Sub-clause

(3) provides for reconstitution of the Commission by a fresh appointment of Chairperson and other members. Sub-clause (4) provides for laying of the notification and a full report of any action taken under this clause before each House of Parliament.

Clause 55.- This clause deals with restriction on disclosure of information by the Commission.

Clause 56.- This clause provides that the Chairperson and other Members and the Director General, additional, Joint, Deputy or Assistant Directors General Registrar and other officers and employees of the Commission shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Clause 57.- This clause provides for protection of action taken in good faith by the Central Government or Commission or any officer of the Central Government or Chairperson or any Member or Director General, Additional, Joint, Deputy or Assistant Directors General or Registrar or officers or other employees of the Commission for anything which is in good faith done or intended to be done under the proposed legislation or any rules and regulations made thereunder.

Clause 58.- This clause provides that the provisions of the proposed legislation shall have overriding effect on any other law for the time being in force.

Clause 59.- This clause provides for exclusion of jurisdiction of civil courts in respect of any matter which the Commission is empowered by or under the proposed legislation to determine.

Clause 60.- This clause seeks to provide that the provisions of the proposed legislation shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Clause 61.- This clause confers upon the Central Government the power to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the various matters in respect of which such rules may be made. Sub-clause (3) provides that every notification issued under sub-clause (3) of clause 20 and clause 52 and every rule made by the Central Government under the proposed legislation shall be laid before both Houses of Parliament.

Clause 62.- This clause confers power upon the Commission to make regulations consistent with the proposed legislation and the rules made thereunder, to carry out the purposes of the proposed legislations. Sub-clause (2) enumerates the various matters in respect of which such regulations may be made by the Commission. Sub-clause (3) provides for laying of regulations before both Houses of Parliament.

Clause 63.- This clause seeks to empower the Central Government to made provision, by order, published in the official Gazette, to remove difficulties which may arise in giving effect to the provisions of the Bill. However, such order can be issued only within a period of two years from the date of commencement of the proposed legislation. The orders made under this clause shall be required to be laid before both Houses of Parliament.

Clause 64.- This clause provides for repeal and savings. This clause, *inter alia*, proposes to repeal the Monopolies and Restrictive Trade Practices Act, 1969. Upon such repeal, the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the said Act shall stand dissolved. Sub-clauses (2) to (10) deal with the matters arising out of such repeal.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 7 of the Bill provides for the establishment of a Commission to be known as the Competition Commission of India with effect from such date as the Central Government may, by notification, appoint in this behalf. Sub-clause (3) provides that the head office of the Commission shall be at such place as the Central Government may decide. Sub-clause (4) enables the Commission to establish offices at other places in India.

2. Sub-clause (1) of clause 8 of the Bill provides that the Commission shall consist of a Chairperson and not less than two and not more than ten other Members to be appointed by the Central Government. During first year of its establishment, the Commission shall consist of a Chairperson and one Member. The Chairperson and other Members shall be the whole-time Members.

3. Sub-clause (1) of clause 14 of the Bill provides that the Chairperson shall be entitled to a salary equal to the salary of a Judge of the Supreme Court. Sub-clause (2) provides that a Member shall be paid salary equal to that of a Judge of a High Court. Sub-clause (3) provides that the other conditions of service relating to travelling expenses, provision of house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be specified by rules made by the Central Government.

4. Clause 16 of the Bill provides for appointment of a Director General and as many Additional, Joint, Deputy or Assistant Directors General as the Central Government may think fit for assisting the Commission in conducting inquiry into contravention of the provisions of the proposed legislation and for performing such other functions as may be provided by or under the proposed legislation. Sub-clause (3) provides that the salary, allowances and other conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General shall be such as may be prescribed by the Central Government.

5. Sub-clause (1) of clause 17 of the Bill enables the Commission to appoint a Registrar and such officers and employees of the Commission as it considers necessary for the efficient performance of its functions under the proposed legislation. Sub-clause (2) provides that the salary and allowances payable and other terms and conditions of service of the Registrar, other officers and employees of the Commission shall be such as may be prescribed by the Central Government.

6. Clause 22 of the Bill provides that the jurisdiction, powers and authority of the Commission may be exercised by Benches thereof. The Chairperson may constitute one or more Bench including Mergers Benches.

7. Clause 48 of the Bill provides that the Central Government may, after due appropriation made by Parliament by law, make to the Commission grants of such sums of money as the Government may think fit for being utilised for the purposes of the proposed legislation.

8. The details of recurring and non-recurring expenditure for the first year, second year, third year and subsequent years for the establishment of the Competition Commission of India shall be as under:-

Statement showing year-wise Expenses (Rs. in lakhs)

| | Recurring | Non-recurring | Total |
|---|------------------|----------------------|---------------|
| First Year | | | |
| Principal Bench | 56.94 | 24.26 | 81.21 |
| Director General's office | 39.67 | 19.90 | 59.57 |
| | 96.61 | 44.17 | 140.78 |
| | | | |
| | Recurring | Non-recurring | Total |
| Second Year | | | |
| 1. Principal Bench | 63.02 | 18.19 | 81.21 |
| 2. Director General's office | 43.63 | 15.94 | 59.57 |
| Three Benches | 147.05 | 55.77 | 202.82 |
| 4. Three Additional Director General's Offices | 90.33 | 40.77 | 131.10 |
| | 344.03 | 130.67 | 474.70 |
| | | | |
| | Recurring | Non-recurring | Total |

Third Year and each subsequent year

| | | | |
|--|---------------|---------------|---------------|
| 1. Principal Bench | 73.70 | 7.51 | 81.21 |
| 2. Director General's Office | 53.03 | 6.54 | 59.57 |
| 3. Three Benches | 161.75 | 41.07 | 202.82 |
| 4. Three Additional Director General Offices | 103.54 | 27.56 | 131.10 |
| 5. One Merger Bench | 44.98 | 22.62 | 67.60 |
| | 26.09 | 17.61 | 43.70 |
| 6. One Additional Director General's Office | | | |
| | 463.09 | 122.91 | 586.00 |

9. The Bill will not involve any other expenditure of recurring or non recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (3) of clause 20 of the Bill confers power upon the Central Government to enhance or reduce the value of assets or the value of turnover for the purposes of combination under the proposed legislation.

2. Clause 52 of the Bill confers power upon the Central Government to exempt, by notification, from the application of the proposed legislation or any provision thereof and for such period as it may specify in such notification, any class of enterprises if such exemption is necessary in the interest of security of the State or public interest or any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty or international agreement or convention or any enterprise which performs a sovereign function on behalf of the Central Government or a State Government.

3. Clause 61 of the Bill confers power upon the Central Government to make rules for carrying out the provisions of the Bill. The matters in respect of which rules may be made relate, *inter alia*, to provide for the form and manner in which, and the authority before whom, the oath of office and of secrecy shall be made and subscribed under sub-section (3) of section 10; the other conditions of service relating to travelling expenses, house rent allowances and conveyance facilities, sumptuary allowance and medical facilities to be provided to the Chairperson and other Members under sub-section (3) of section 14; the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General under sub-section (3) of section 16; the qualifications for appointment of the Director General or Additional, Joint, Deputy or Assistant Directors General under sub-section (4) of section 16; the salaries, allowances and other terms and conditions of service of the Registrar and officers and other employees payable under sub-section (2) of section 17; the rules for the purpose of securing any case or matter which requires to be decided by a Bench composed of more than two Members under sub-section (4) of section (23); any other matter in respect of which the Commission shall have power under clause (g) of sub-section (2) of section 36; the promotion of competition advocacy, creating awareness and imparting training about competition issues under sub-section (3) of section 47; the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 50; the time within which, and the form and manner in which the Commission may furnish returns, statements and such particulars as the Central Government may require under sub-section (1) of section 51; the form in which, and the time within which, the annual report shall be prepared under sub-section (2) of section 51; the manner in which the monies transferred to the Central Government shall be dealtwith by that Government under fourth proviso to sub-section (2) of section 64; any other matter which is to be, or may be, prescribed or in respect of which provision is to be, or may be, made by rules.

4. Clause 62 of the Bill confers power upon the Competition Commission of India to make regulations consistent with the Act and the rules made thereunder to carry out the purposes of the Act. The matters in respect of which, regulations may be made, relate, *inter alia*, to provide for the cost of production to be determined under clause (b) of the Explanation to section 4; the form of notice as

may be specified and the fee which may be determined under sub-section (2) of section 6; the form in which details of the acquisition shall be filed under sub-section (5) of section 6; any other matter in respect of which provision is to be, or may be, made by regulations.

5. The notifications issued under sub-section (3) of section 20 and section 52, the rules made by the Central Government and the regulations made by the Competition Commission of India shall be laid, as soon as may be, after they are made, before each House of Parliament.

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

LOK SABHA

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BILL

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

(Shri Arun Jaitley, Minister of Law, Justice and Company affairs)

ANNEXURE – II

(See para 5.0, page vii of the Introduction)

NAMES OF INDIVIDUALS/ORGANISATIONS REPRESENTING ON THE COMPETITION BILL, 2001.

1. PHD Chamber of Commerce and Industry
2. Federation of India Chambers of Commerce And Industry (FICCI)
3. The Associated Chambers of Commerce And Industry of India (ASSOCHAM)
4. The Indian Merchants Chamber (IMC)
5. Bombay Chamber of Commerce & Industry
6. Reliance industries Limited
7. Bajaj Auto Limited
8. Mahindra & Mahindra Limited
9. Tata Sons Limited
10. Industrial Development Bank of India (IDBI)
11. National Stock Exchange (NSE)
12. Industrial Credit And Investment Corporation of India (ICICI)
13. Consumer Coordination Council (CCC)
14. Voluntary Organisation in Interest Of Consumer Education (VOICE)
15. The Consumer Protection Forum

16. India Defence Foundation
17. Consumer Unity & Trust Society (CUTS)
18. Endeavour Foundation
19. Organisation of Pharmaceuticals Producers of India
20. The All India Association of Industries
21. Nath Bros. Exim International Ltd.
22. Confederation of Indian Industry (CII)
23. Institute of Company Secretaries of India (ICSI)
24. Institute of Chartered Accountants of India (ICAI)

MEMORANDUM RECEIVED FROM INDIVIDUALS

1. Mr. Evan Cox, Washington-based law firm Covington & Burling
2. Majmudar & Co., Internation Lawyers, Mumbai.
3. Shri K.B.S. Rajan, Advocate on Record, Supreme Court of India
4. Shri N. Ranganathasamy, 314-A, SFS Flats, Pankha Road, C-3, Janakpuri, New Delhi – 110058.
5. Shri Kedar Nath Laldas
6. Shri TSV Panduranga Sarma, A-3/205, Ekta Gardens, 9- Patparganj, Mother Dairy, Delhi 110092.
7. Shri Ramesh Upadhyay, Mahendervi Bhawan, Lanka – Sankat Mochan Road, Lanka, Varanasi.
8. Shri M S Pandit, Advocate, E-206, Bramha Memories, Pune – 411007.
9. Shri P.K. Agarwal, Q – 441, Sector – 21, Noida – 201301.
10. Shri R.K. Gupta, Advocate, H – Block, Chendmeri Road, Howrah.
11. Shri R. Krishnan, E-18, B-I Extn., Mathura Road, Mohan Cooperative, Industrial Estate, New Delhi – 1104.
12. Shri V.T. Korde, D – 4/4093, Vasant Kunj, New Delhi – 110070.
13. Shri K.S. Sundara Rajan, 10-11, G.M. Colony, Chittoor – 517001.
14. Dr. (Maj.) Umacharan Panigrahi, Station Road, Rayagada – 765001.
15. Mr. Vinod Kumat, 18-B, Neenuch Mata Scheme Udaipur – 313001.

15.

^a Nominated w.e.f. 25 February 2002.

^b Nominated w.e.f. 19 April 2002.

[¥] Nominated w.e.f. 2 September 2002.

(iv)

^z Published in the Gazette of India Extraordinary, Part-II, Section 2, dated 6 August, 2001.

[•] Rajya Sabha Parliamentary Bulletin Part-II, No. 39102, dated 21 August, 2001.

^{***} vide Cabinet Secretariat circular No. 1/22/1/2002-Cab.(i) dated 2 July 2002.

(v)

¹ Monopolies and Restrictive Trade Practices Act has become obsolete in certain areas in the light of international economic developments relating to competition laws. We need to shift our focus from curbing monopolies to promoting competition. Government has decided to appoint a committee to examine this range of issues and propose a modern competition law suitable to our conditions. (Extracts from FM's Budget Speech dated 27 February 1999)

² Nine member High Level Committee constituted on 25 October 1999, submitted its Report on 22 May 2000. Volume-I of the Report is on Competition Policy and Law; Volume-II contains the concept Bill on Competition policy christened as 'Indian Competition Act –Draft Bill.

³ The Expert Group was constituted as an off-shoot of the first WTO Ministerial Conference held at Singapore in December 1996 for implementation of WTO agreement which submitted its Report in January, 1999. The Group addressed issues related to competition: viz. (i) Mergers, Amalgamations, Acquisitions and Take-overs (ii) Intellectual Property Rights (iii) Foreign Investment (iv) Anti-Dumping Measures, Subsidies and Countervailing Measures and Safeguard Measures (v) State Monopolies, Exclusive Rights and Regulator Policies (vi) Sanitary and Phytosanitary Measures (vii) Technical Barriers to Trade (viii) Professional Services (ix) Government Procurement (x) WTO Provisions.

⁴ A process wherein the economic firms try to win over the customer by offering a product at a lower price than the competitors thereby increasing its market share. (Monographs on Investment and Competition Policy (Vol. 6), All about competition policy & law by CUTS, Jaipur, P.1).

⁵ A process wherein the economic firm adopts methods of sales promotion, advertisement, after sales service, etc. The product differentiation is the main form of non-price competition. The product is basically the same but the customer is persuaded to believe that the product is different by advertisement, promotional sale, difference in packaging/design, etc. (ibid, p. 2)

⁶ RTP is a set of unfair means used by enterprises to distort or eliminate competition in order to acquire and abuse monopoly power.

⁷ agreement between two or more enterprises that are at the same stage of production chain and in the same market and engaged in identical trade of goods or provision of service. It is between wholesalers or retailers or suppliers dealing in same product. Ex:suppliers of same products, agreed not to compete with each other.

⁸ agreement between enterprises that are at different stages/levels of production chain in different market. Ex:agreement between producer and distributors.

⁹ agreement (written, oral or even tacit) amongst competitors to stop competing with each other by controlling production, distribution, sale, price of trade of goods or provision of services for the purpose of eliminating others. Cartels can be domestic cartels (designed to control national market), or international cartels (aimed at capturing international market), import cartels (aimed at restricting imports often obtaining lowest prices for imported raw materials) or export cartels (directed at extracting highest possible prices from exports). But export cartels are outside the purview of competition law in the interest of Balance of Trade and/or Balance of Payment although it is against the concept of free competition.

¹⁰ provision of per-se illegality rooted in the provisions of US Law and has parallel in most legislations on the subject.

¹¹“tie-in arrangement” includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;

¹² “exclusive supply agreement” includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person.

¹³ “exclusive distribution agreement” includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods.

¹⁴ “refusal to deal” includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;

¹⁵ “resale price maintenance” includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

¹⁶ A dominant undertaking is one which is in a position of such economic strength that it can behave to an appreciable extent, independently of its competitors and customers. Dominance is determined by taking into account one or more of the factors i.e. market share of the enterprise, size and resources of the enterprise, size and importance of the competitors, Economic power of the enterprise with reference to patents, copyright, know-how etc., dependence of consumers, monopoly status or dominance acquired as a result of any statute (like public sector undertakings), entry barriers, countervailing buying powers and market structure and size of the market.

¹⁷ “dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, whether in India or outside India, which enables it to-(i) operate independently of competitive forces prevailing in the relevant market; or (ii) affect its competitors or consumers or the relevant market in its favour.

¹⁸ High level Committee Report on Competition Policy and Law, p. 37.

¹⁹ relevant market to be determined by the Competition Authority (CCI) with reference to its dimensions i.e. (i) relevant product market (ii) relevant geographical market. "Relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand or goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas. "Relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristic of the products or services, their prices and intended use;

The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:- (a) regulatory trade barriers (b) local specification requirements (c) national procurement policies (d) adequate distribution facilities (e) transport costs (f) language (g) consumer preferences (h) need for secure, regular supplies or rapid after-sales services.

The Commission shall, while determining the "relevant product market", have due regard to all or any of the following factors, namely, (a) physical characteristics or end-use of goods (b) price of goods or service (c) consumer preferences (d) exclusion of in-house production (e) existence of specialized producers (f) classification of industrial products.

²⁰ Merger/Amalgamation is a fusion between two or more enterprises where identity of one or more is lost and results in single enterprise.

²¹ The value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

²² US & European Union (EU) laws require prior approval for mergers above certain threshold limits. The extant UK law does not prescribe any such prior notification.

²³ In the first year of establishment of CCI, only one member will be appointed .

²⁴ The Chairperson and every other Member shall be the persons of ability, integrity and standing, who-(a) are, or have been, or are qualified to be, Judge of High Court; or (b) have special knowledge of, and professional experience in, not less than fifteen years, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which, in the opinion of the Central Government, be useful to the Commission.

²⁵ Similar type of fund getting grants from the CFI duly voted by Parliament exist in the Acts viz. (a) The Jute Manufacturers Development Council Act, 1983 (Section 10) (b) The Agriculture and Processed Food Products Export Development Authority Act, 1985 (Section 16) (c) The Spices Board Act, 1986 (Section 21) (d) The National Oilseeds and Vegetable Oils Development Board Act, 1983 (Section 12)

²⁶ The use of the word 'trust' to denote a monopoly is peculiar to the U.S. and has persisted for historical reasons.

²⁷ In Korea, and Sri Lanka (Fair Trading Commission) in Poland (Anti-monopoly Office).

²⁸ As on 31.05.2002, 3946 cases are pending with MRTPC. Cases at complaint stage with MRTPC would be abated.

²⁹ *Clause 36(2) confers power on the CCI, as are vested in a Civil Court under the Code of Civil Procedure in respect of (a) summoning and enforcing the attendance of any person and examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavits; (d) issuing commissions for the examination of witnesses or documents; (e) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office; (f) dismissing an application in default or deciding it ex parte.*

³⁰ Any person aggrieved by the decision/order of the CCI can appeal to the Supreme Court on one or more of the grounds specified in Section 100 of the Civil Procedure Code, 1908.

² Reliance Industries Ltd. and Tata Sons Ltd. submitted only written memoranda which are placed at Annexure III.

³¹ *Agriculture Produce Market Committee vs. Ashok Harikuj* (2002) 8 SCC 61 and *Nagendra Rao & Co. vs. State of Andhra Pradesh* (1994) 6 SCC., 205