



The Institute of
Company Secretaries of India
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

'ICSI House', 22 Institutional Area, Lodi Road, New Delhi-110003, India.
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CS UPDATE

September 13, 2007

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Disclaimer: - CS Update contains government notifications, case laws and contributions received from the members. Due care and diligence is taken in compilation of the CS Update. The Institute does not own the responsibility for any loss or damage resulting from any action taken on the basis of the contents of the CS Update. Anyone wishing to act on the basis of the contents of the CS Update is advised to do so after seeking proper professional advice.

FORTHCOMING PROGRAMMES

- 35th National Convention of Company Secretaries

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35th National Convention of Company Secretaries**Theme: "Excellence Through Business Value Addition"****Dates: September 20-22, 2007****Venue: B M Birla Auditorium, Statue Circle, Jaipur****Sub Themes**

1. **Championing Business Excellence**
2. **Corporate Compliance Management**
3. **Calibrating Competence for Professional Excellence**
4. **Global Dimensions of Business Value**

Delegate Fee*		PROGRAMME CREDIT HOURS
	Rs.	Members of the Institute will be entitled to ten programme credit hours. Students attending National Convention would be deemed to have complied with the requirement of attending 25 hours of Academic Development Programmes.
Members of ICSI/ICAI/ICWAI	3400	
Non-Members	3900	
Company Secretary in Practice	2900	
Senior Members (60 yrs.& above)	2900	
Members admitted after 31.12.2004	2900	
Students, ICSI	2400	
Accompanying Spouse	2400	
Licentiates, ICSI	2900	
Foreign Delegates	US\$150	

SPECIAL TRAVEL ARRANGEMENTS FROM NEW DELHI
A/C Luxury Coach Buses from New Delhi to Jaipur and back.

Date and Time of Departure (From New Delhi)	Date and Time of Return (From Jaipur)
20th September, 2007 at 5.30 A.M	22nd September, 2007 at 5.00 P.M.
<u>Starting Point</u> ICSI House, 22, Institutional Area, Lodi Road, New Delhi - 110 003	<u>Starting Point</u> Birla Auditorium, Statue Circle, Jaipur, Rajasthan.

Programme for Thursday, September 20, 2007	
Registration of Delegates	11.00 AM onwards
INAUGURAL SESSION	02.00 PM to 4.30 PM
TEA	4.30 PM TO 5.15 PM
SPECIAL SESSION I	05.15 PM to 6.30 PM
Cultural Programme and Dinner at Sisodia Garden	07.30 PM onwards

* The registration form duly completed along with a crossed demand draft drawn in favour of the "The Institute of Company Secretaries of India" payable at New Delhi may please be sent to the Secretary & CEO, 'The Institute of Company Secretaries of India', ICSI House, 22 Institutional Area, Lodi Road, New Delhi-110003.

Programme for Friday, September 21, 2007	
FIRST TECHNICAL SESSION Championing Business Excellence <ul style="list-style-type: none">• Expectations of Large and SM enterprises Learning Strategies• Stakeholder Relation Dynamics for Good Corporate Governance	09.30 AM to 11.30 AM
TEA	11.30 AM to 12.00 Noon
SECOND TECHNICAL SESSION Corporate Compliance Management <ul style="list-style-type: none">• Systems Approach to Compliance Management• Capturing the Spirit of Compliance Management	12:00 Noon to 2:00 PM
LUNCH	2.00 PM to 3.00 PM
THIRD TECHNICAL SESSION Calibrating Competence for Professional Excellence <ul style="list-style-type: none">• Restructuring Professional Firms for Growth• Developing New Areas for Domestic and International Practice [BPO;KPO;LPO]	3:00 PM to 5.00 PM
YOUNG PARLIAMENTARIANS SESSION <ul style="list-style-type: none">• Professional India – Vision 2020	5.00 PM to 6.30 PM
TEA	6.30 PM to 7.00 PM
Cultural Programme and Dinner at Choki Dhani	7.30 PM onwards

Programme For Saturday, September 22, 2007	
OPEN HOUSE SESSION (For Members of The ICSI only)	9.00 AM to 10.30 AM
TEA	10.30 AM to 11.00 AM
SPECIAL SESSION II (International)	11.00 AM to 12.00 Noon
FOURTH TECHNICAL SESSION <i>Global Dimensions of Business Value</i> <ul style="list-style-type: none">• Developing Expertise in Cross-border Acquisitions & Alliances• Sustainability, Ethics and Corporate Governance	12.00 Noon to 2.00 PM
LUNCH	2.00 PM TO 3.00 PM
VALEDICTORY SESSION	3.00 PM to 4.30 PM
TEA	4.30 PM

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MCA UPDATES

- September 2007 being observed as Investor Awareness Month

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SEPTEMBER 2007 being observed as Investor Awareness Month**MINISTRY OF CORPORATE AFFAIRS**

It has been decided to observe September 2007 as Investor Awareness Month. During the month, various activities relating to Investor Education and Protection have been planned which aim at empowering the investor. The informed investor would be in a better position to make an informed judgment regarding the investments. The Investor Awareness Programmes are proposed to be conducted at 58 locations throughout the country in partnership with the Institute of Chartered Accountants of India and Institute of Company Secretaries of India. The details of the location, date and time of these programmes are given below:

Investor Awareness Programmes**Organized by****The Institute of Chartered Accountants of India****September, 2007**

Sl. No.	Date	Day	Place	Region/ Chapter
1.	1 st September	Saturday	Ghaziabad	CIRC
2.	2 nd September	Sunday	Shimla	NIRC
3.	7 th September	Friday	Faridabad	NIRC
4.	8 th September	Saturday	Agra	CIRC
5.	8 th September	Saturday	Pune	WIRC
6.	8 th September	Saturday	Goa	WIRC
7.	8 th September	Saturday	Bhilai	CIRC
8.	11 th September	Tuesday	Tiruchirapalli	SIRC
9.	13 th September	Thursday	Hyderabad	SIRC
10.	14 th September	Friday	Bhubaneswar	EIRC
11.	14 th September	Friday	Vijayawada	SIRC
12.	14 th September	Friday	Guntur	SIRC
13.	15 th September	Saturday	Ludhiana	NIRC
14.	15 th September	Saturday	Gorakhpur	CIRC

15.	15 th September	Saturday	Jaipur	CIRC
16.	15 th September	Saturday	Bangalore	SIRC
17.	16 th September	Sunday	Allahabad	CIRC
18.	16 th September	Sunday	Jalagaon	WIRC
19.	20 th September	Thursday	Kolkata	EIRC
20.	22 nd September	Saturday	Chennai	SIRC
21.	22 nd September	Saturday	Tirupur	SIRC
22.	22 nd September	Saturday	Ambala	NIRC
23.	22 nd September	Saturday	Ahmedabad	WIRC
24.	22 nd September	Saturday	Guwahati	EIRC
25.	22 nd September	Saturday	Aurangabad	WIRC
26.	22 nd September	Saturday	Kakinda	SIRC
27.	23 rd September	Sunday	Nagpur	WIRC
28.	23 rd September	Sunday	Surat	WIRC
29.	23 rd September	Sunday	Amritsar	NIRC
30.	27 th September	Thursday	Karnal	NIRC
31.	28 th September	Friday	Udaipur	CIRC
32.	29 th September	Saturday	Coimbatore	SIRC
33.	29 th September	Saturday	Siliguri	EIRC
34.	29 th September	Saturday	Nashik	WIRC
35.	29 th September	Saturday	Rajkot	WIRC
36.	29 th September	Saturday	Chandigarh	NIRC

You are requested to get the details of the venue and time of the programmes from the concerned chapter/ region of the Institute.

Investor Awareness Programmes
Organized by
The Institute of Company Secretaries of India
September, 2007

Eastern Region : Patna, Muzafarpur & Samastipur

Northern Region : Bhilwara, Chandigarh, Modinagar, Amritsar, Kota & Ludhiana.

Southern Region: Mysore, Hassan, Nanjanguda, Mangalore, Pollachi, Thiruvannamalai, Madurai, Kothagudem, Ongole, Chilakaluripet & Thiruvananthapuram

Western Region: Bhopal, Indore, Pune, Vadodara, Anand & Sangli.

The exact schedule and venue of some of the programmes is as under:

01	Chilakaluripet	Date : 28.08.2007 Time : 11.00 am Venue: AT Function Hall, NRT Centre, Chilakaluripet, Andhra Pradesh
02	Ongole	Date : 28.08.2007 Time : 06.00 pm Venue: Taste Restaurant, Opp. Cheemakurti Eye Hospital, Kurnool Road, Ongole - 523 001
03	Patna	Date : 01.09.2007 Time : 03.00 pm Venue: Budh Marg, Opp. Patna Museum, Patna
04	Kothagudem	Date : 01.09.07 Time : 05.00 pm Venue: KCOA Club, Writers' Basti, Kothagudem , Andhra Pradesh
05	Hasan	Date : 06.09.07 Time : 06.30 pm Venue: Rotary Suvarna Bhavan, Kuvempunagar, Hasan Dist. Karnataka

06	Mysore	Date : 08.09.07 Time : 10.30 am Venue: Rotary Children Library Association Hall, JLB Road, Mysore
07	Muzafarpur	Date : 08.09.2007 Time : 03.00 pm Venue: Hotel Kaveri Restaurant, Sariys Ganj, Muzafarpur, Patna
08	Pune	Date : 08.09.07 Time : 04.00 pm to 07.00 pm Venue: Maratha Chamber of Commerce, Industry and Agriculture (MCCIA) Tilak Road, Pune - 30
09	Nanjangud	Date : 08.09.07 Time : 04.30 pm Venue: Nanjanguda Industries Association, KIADB Amenities Centre, Industrial Area, Nanjangud, Mysore District.
10	Mangalore	Date : 08.09.07 Time : 05.00 pm Venue: Meeting Hall, "Kanara Chamber of Commerce & Industry EXIM Facilitation Centre" Chamber Building, Bunder Area, Mangalore
11	Bhilwara	Date : 08.09.2007 Time : 06.00 pm to 09.00 pm Venue: Chambar Bhavan, Mewar Chamber of Commerce & Industry, Nagori Garden, Bhilwara - 311 001 (Raj)
12	Thiruvannamalai	Date : 09.09.2007 Time : 10.00 am to 02.00 pm Venue: District Vanigavalagam, Vengikkal Thiruvannamalai - 606 604(Puducherry)
13	Kota	Date : 09.09.07 Time : 10.00 am Venue: Lagat Bhavan, Behind Modi College, Vasant Vihar, Kota
14	Madurai	Date : 14.09.07 Time : 05.30 pm Venue: Hotel Prem Nivas, Madurai

15	Anand	Date : 15.09.07 Time : 09.00 am to 12.00 noon Venue: Vithal Udyognagar Association Hall (Election Hall), GIDC, Vithaludyognagar, Anand (Gujarat)
16	Vadodara	Date : 15.09.07 Time : 03.00 pm to 06.00 pm Venue: Hotel Surya Palace Opp. Parsi Agyari, Sayajigunj, Vadodara - 390 001 (Gujarat)
17	Samastipur	Date : 15.09.2007 Time : 03.00 pm Venue: Rajendra Agricultural University Campus, Pusa, Samastipur
18	Ludhiana	Date : 15.09.07 Time : 04.00 pm Venue: Main Hall, LSE Building, Firoze Gandhi Market, Ludhiana
19	Modinagar	Date : 16.09.07 Time : 11.00 am Venue: Conference Hall of Centre for Management Development (CMD) Delhi-Meerut G T Road Modinagar 201 204 (UP)
20	Chandigarh	Date : 29.09.07 Time : 04.00 pm Venue: Banquent Hall of Hotel Orange, SCO:301-302, Sector - 35B, Chandigarh
21	Amritsar	Date : 29.09.07 Time : 05.00 pm Venue: Hotel Kumar International Albert Road, Near Mohan International, Amritsar.
22	Pollachi	Date : 29.09.07 Time : 05.00 pm to 07.00 pm Venue: NGM College, Pollachi - 642 001 (Coimbatore)

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CAPITAL MARKET UPDATES

- SEBI refuses to renew the recognition granted to Magadh Stock Exchange Ltd.
- Withdrawal of Permanent Recognition granted to The Hyderabad Stock Exchange Ltd.
- Proof of Identity (POI) and Proof of Address (POA) for opening a Beneficiary Owner (BO) Account for non-body corporates
- SEBI initiates adjudication proceedings against 20 companies for non-compliance of Clause 49 norms

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PRESS RELEASE

PR No.253/2007

**SEBI refuses to renew the recognition granted to
Magadh Stock Exchange Ltd.**

Dr. T.C.Nair, Whole Time Member, SEBI has passed an Order under section 4(4) of the Securities Contracts (Regulation) Act, 1956 on August 30, 2007 refusing to renew the recognition granted to Magadh Stock Exchange Ltd. (MdhSEL).

The Order *inter-alia* directs that money available in the Investor Protection Fund and Investor Services Fund of MdhSEL shall be transferred to SEBI Investor Protection and Education Fund; the exchange shall set aside sufficient funds to provide for settlement of any claims; companies exclusively listed on the exchange may consider seeking listing at other stock exchanges or provide for exit option to the shareholders; certificate of registration of trading members granted by SEBI shall stand automatically cancelled. The Order further restrains MdhSEL from transferring or alienating any movable or immovable property of the exchange including Bank Accounts in any manner till further directions by SEBI in this regard.

SEBI had conducted inspection of MdhSEL in October 2006 in order to determine/examine whether MdhSEL has complied with the conditions of renewal of recognition, the instructions, guidelines, etc. issued by SEBI/Government of India from time to time. The inspection report observed 20 deficiencies in the functioning of the exchange including failure to appoint the Executive Director for its exchange, inadequate infrastructure, non recovery of dues from members and listed companies, failure to create the investor protection fund trust, wilful violation of SEBI's directives, etc.

During the period August 1-12, 2005, MdhSEL allowed trading in violation of the conditions of renewal of recognition mainly in the scrip of Boruka Financial Services Ltd. (BFSL) which accounted for nearly 99% of the trading volume of Rs 90.06 crores wherein the buyer was DLF Commercial Developers Ltd. and the sellers were the promoters of BFSL. It was further noted that BFSL was not listed on MdhSEL and as such it was listed only on Bangalore Stock Exchange Ltd. which was last traded in the year 1988 at a price of Rs.5.00. For this violation, SEBI passed an order. Further, MdhSEL also terminated the services of the Executive Director (Officiating) for allowing the trading on MdhSEL in violation of the conditions of renewal of recognition.

The Whole Time Member, in his aforesaid Order, observed that MdhSEL has time and again acted contrary and in defiance of SEBI directives/guidelines issued from time to time. Over the years, there were major regulatory lapses that led to super-session of the Council of Management and suspension of trading on the floor of the exchange. Further, the resources available with the exchange in terms of men, material, capital etc. are inadequate to function as

September 13, 2007

a stock exchange. MdhSEL neither provides a trading platform nor serves any public interest and has therefore ceased to perform the basic economic function for which it was set up, the Order said.

The order will come into force on September 19, 2007.

The full text of the [Order](#) is available on the website: www.sebi.gov.in

Mumbai

September 04, 2007

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PRESS RELEASE**PR No.252/2007****Withdrawal of Permanent Recognition granted to
The Hyderabad Stock Exchange Ltd.**

The Hyderabad Stock Exchange Ltd. (HSE) has failed to dilute 51% of its equity share capital to public other than shareholders having trading rights on or before August 28, 2007. Consequently, in terms of section 5(2) of the Securities Contracts (Regulation) Act, 1956 (SCRA), the recognition granted to HSE stands withdrawn with effect from August 29, 2007.

SEBI had notified The Hyderabad Stock Exchange Ltd. (Corporatisation and Demutualisation) Scheme, 2005 on August 29, 2005. As per SCRA, every recognized stock exchange whose scheme for corporatisation and demutualisation has been approved by SEBI shall ensure that at least fifty-one per cent of its equity share capital is held by the public other than shareholders having trading rights, within twenty four months from the date of publication of the scheme.

Mumbai
September 03, 2007

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September 13, 2007

CHIEF GENERAL MANAGER
Market Regulation Department-Division of Policy
E-mail: mdrao@sebi.gov.in

MRD/DoP/Dep/Cir-12/2007
September 7, 2007

1. The Managing Director
National Securities Depository Ltd.
Trade World, 4th Floor,
Kamala Mills Compound,
Lower Parel,
Mumbai – 400 013

2. The Executive Director
Central Depository Services (I) Ltd.,
28th Floor, P J Towers,
Dalal Street, Fort,
Mumbai – 400 023

Dear Sir/s,

Sub: Proof of Identity (POI) and Proof of Address (POA) for opening a Beneficiary Owner (BO) Account for non-body corporates.

1. Please refer to SEBI circular No. MRD/DoP/Dep/Cir-29/2004 dated August 24, 2004 on the captioned subject.
2. Subsequently, SEBI vide circular No. MRD/DoP/Cir-08/2007 dated June 25, 2007 has discontinued with the requirement of Unique Identification Number (UIN) under the SEBI (Central Database of market Participants Regulations), 2005 (MAPIN Regulations)/circulars.
3. In the light of the above, the Depositories are advised to discontinue with the practice of accepting 'MAPIN card' as one of the documents for the purpose of 'Proof of Identity' (PoI) while opening a Beneficial Owner (BO) account.
4. The Depositories are advised to:-
 - 4.1. make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision immediately as may be applicable/necessary;
 - 4.2. bring the provisions of this circular to the notice of the Depository Participants of the Depository and to disseminate the same on their website as well as monitor compliance by DPs.
 - 4.3. communicate to SEBI the status of the implementation of the provisions of this circular.
5. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 and Section 19 of the Depositories Act, 1996 to protect the interests of investors in securities market.

Yours faithfully,

S V Murali Dhar Rao

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PRESS RELEASE

PR No.257/2007

**SEBI initiates adjudication proceedings against 20 companies
for non-compliance of Clause 49 norms**

SEBI receives quarterly reports from Stock Exchanges regarding compliance with Clause 49 of the listing agreement. Clause 49 deals with corporate governance by companies listed on the exchanges. Based on these reports, SEBI has initiated adjudication proceedings against a total of 20 companies from the private sector and the public sector. Of the 20 Companies, five companies are public sector companies against whom proceedings have been launched for non-compliance with provisions relating to Board composition. The remaining 15 companies are in the private sector. Out of these 15 private sector companies, proceedings have been initiated against three companies for non-compliance with almost all the major provisions of Clause 49, against two companies for non-compliance with provisions like Board/Audit committee composition and CEO/CFO certification, while for the balance 10 companies, proceedings have been initiated for non-submission of compliance reports on Clause 49 to the Stock Exchanges.

Mumbai
September 11, 2007

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FEMA UPDATES

- Rupee Loans to NRI Employees of Indian Companies under Employees Stock Option (ESOP) Scheme

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RBI/2007-2008/118**A. P. (DIR Series) Circular No. 07**

August 22, 2007

To
All Authorised Dealer Category - I banks

Madam / Sir,

**Rupee Loans to NRI Employees of Indian Companies
under Employees Stock Option (ESOP) Scheme**

As you are aware, banks are allowed to extend loans in Rupees to resident employees of an Indian company to purchase shares of the company under Employees Stock Option (ESOP) Scheme, to the extent of 90 per cent of the purchase price of the shares or Rupees 20 lakh, whichever is lower. Rupee loans extended by banks under ESOP Scheme is treated as bank's exposure to capital market, within the overall ceiling of 40 per cent of its net worth.

2. In terms of Regulation 7 of FEMA Notification No. 4/2000-RB dated 3rd May, 2000 [Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000] as amended from time to time, AD banks are allowed to grant Rupee loans to Non-Resident Indians (NRIs) for certain purposes, subject to conditions.

3. We have been receiving requests from banks for allowing them to grant Rupee loans to NRI employees of Indian companies for the purpose of buying shares of the companies under the ESOP scheme. The requests have been examined and it has been decided to allow Authorised Dealer Category – I (AD Category – I) banks to grant Rupee loans to NRI employees of Indian companies for acquiring shares of the companies under the ESOP Scheme. The loan scheme should be as per the policy approved by the bank's Board and would further be subject to the following conditions :

- (i) The loan amount should not exceed 90 per cent of the purchase price of the shares or Rupees 20 lakhs per NRI employee, whichever is lower.
- (ii) The rate of interest and margin on such loans may be decided by the banks, subject to the directives issued by the Reserve Bank from time to time.
- (iii) The amount shall be paid directly by the bank to the company and should not be credited to the borrowers' non-resident accounts in India.
- (iv) The loan amount should be repaid by the borrower by way of inward remittances or by debit to his NRO / NRE / FCNR(B) account.
- (v) The loans will be included for reckoning capital market exposures and the bank will ensure compliance with prudential limits, prescribed by the Reserve Bank (DBOD) from time to time, for such exposure to capital market.

4. Necessary amendments to the Foreign Exchange Management (Borrowing and Lending in Rupees) Regulations, 2000 are being issued separately.

5. AD Category – I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

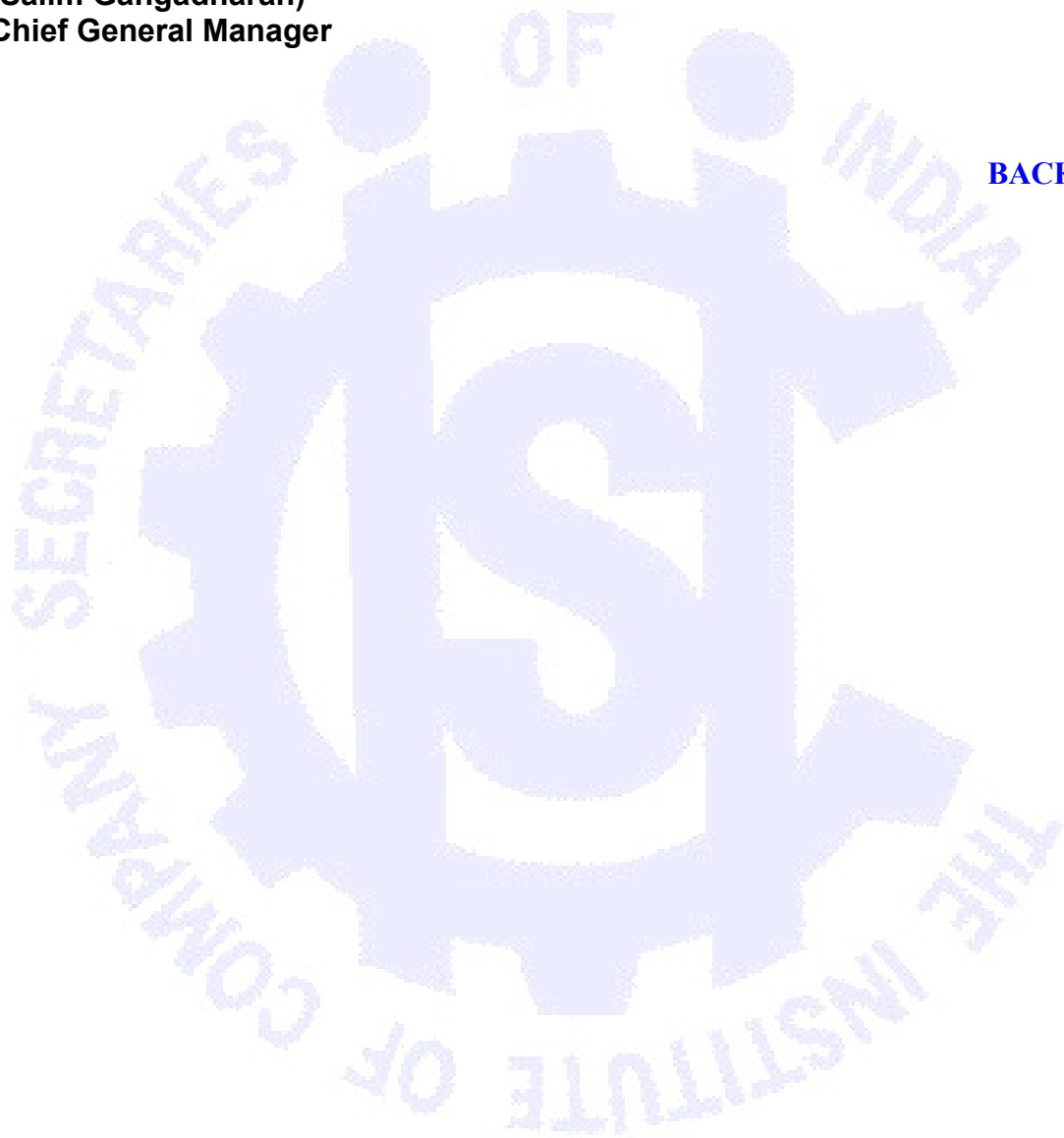
September 13, 2007

6. The directions contained in this circular have been issued under Sections 10(4) and 11(1) of the Foreign Exchange Management Act, 1999 (42 of 1999) and is without prejudice to permissions/approvals, if any, required under any other law.

Yours faithfully,

(Salim Gangadharan)
Chief General Manager

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COMPETITION LAW UPDATES

- Competition Amendment Bill, 2007 introduced in the Parliament
- THE COMPETITION (AMENDMENT) BILL, 2007

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Competition Amendment Bill, 2007 introduced in the Parliament¹

The Competition Amendment Bill, 2007 introduced in the Parliament on 5th September, 2007 makes it mandatory for all mergers and acquisitions – including between two overseas companies – to notify the competition regulator if the combined entity meets a specified threshold. A combined entity with more than Rs. 1,000 crore assets or Rs. 3,000 crore turnover in India or more than \$500 mn assets or \$1,500 mn turnover in India and outside taken together (in addition to separately meeting the local requirement) should notify the Commission. In case a group acquires an enterprise, the threshold is assets more than Rs. 4,000 crore or turnover more than Rs. 12,000 crore in India or assets more than \$ 2 billion or turnover more than \$ 6 billion in India and outside taken together.

The bill also introduces the concept of territorial nexus – minimum presence in Indian market for any two globally merging companies. The threshold for this is Rs. 500 crore assets and Rs. 1,500 crore turnover for the combined entity. CCI cannot take more than 210 days to decide on the application for approval. Violation of CCI's orders would be criminal offence from the second instance. Contravention of the order in the first instance will be a civil offence with monetary penalty. This would be Rs. 1 lac a day subject to a maximum of Rs. 10 crore. Disobeying the order or refusal to pay the penalty, will invite 3 year imprisonment and Rs. 25 crore as fine.

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¹ Source: Economic Times dated 2.9.07

As INTRODUCED IN LOK SABHA

Bill No. 70 of 2007

THE COMPETITION (AMENDMENT) BILL, 2007

A
BILL

to amend the Competition Act, 2002.

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

Short title and commencement

1.(1) This Act may be called the Competition (Amendment) Act, 2007.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:
Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment of section 2

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

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

Amendment of section 4

3. In section 4 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:— “(1) No enterprise or group shall abuse its dominant position.”:
(ii) in sub-section (2),—

(a) for the words, brackets and figure “under sub-section (1), if an enterprise”, the words “under sub-section (1), if an enterprise or a group” shall be substituted;

(b) in clause (c), after the word “access”, the words “in any manner” shall be inserted;

(iii) after sub-section (2), in the Explanation, after clause (b), the following clause shall be inserted, namely:—

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

Amendment of section 5

4. In section 5 of the principal Act, in clause (a),—

(a) in sub-clause (i), for item (B), the following item shall be substituted, namely:—

“(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars, including at least rupees five hundred crores in India, or turnover more than fifteen hundred million US dollars, including at least rupees fifteen hundred crores in India; or”

(b) in sub-clause (ii), for item (B), the following item shall be substituted, namely:—

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

Amendment of section 6

5. In section 6 of the principal Act, in sub-section (2),—

(a) for the words “may, at his or its option,”, the word “shall” shall be substituted;

(b) for the words “seven days”, the words “thirty days” shall be substituted;

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

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

Substitution of new section for section 8 Composition of Commission

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

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

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

competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.

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

Substitution of new section for section 9.

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

Selection Committee for Chairperson and Members of Commission.

“9. (1) The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of —

(a) the Chief Justice of India or his nomineeChairperson;

(b) the Secretary in the Ministry of Corporate AffairsMember;

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

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

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

Amendment of section 10.

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

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

Amendment of section 12.

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

Substitution of new section for section 13.

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

Administrative powers of Chairperson.

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

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

Amendment of section 16.

11. In section 16 of the principal Act, —

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

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

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

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

(c) in sub-sections (3) and (4), for the words "such other advisers, consultants or officers," the words "such officers or other employees," shall be substituted.

Substitution of new section for section 17.

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

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

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

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

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

Amendment of section 19.

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

Amendment of section 20.

14. In section 20 of the principal Act, in sub-section (2), the words, brackets and figures “or upon receipt of a reference under sub-section (1) of section 21” shall be omitted.

Amendment of section 21.

15. In section 21 of the principal Act,—

(a) in sub-section (1), the following proviso shall be inserted, namely: —
“Provided that any statutory authority, may, suo motu, make such a reference to the Commission.”;

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

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

Insertion of new section 21A.

16. After section 21 of the principal Act, the following section shall be inserted, namely:—

Reference by Commission.

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

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

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

Substitution of new section for section 22.

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

Meetings of Commission.

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

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

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

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

Omission of sections 23, 24 and 25.

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

Substitution of new section for section 26.

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

Procedure for inquiry under section 19.

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

Provided that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

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

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

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

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

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

(6) If, after consideration of the objections or suggestions referred to in subsection (5), if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

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

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

Amendment of section 27.

20. In section 27 of the principal Act,—

(i) in clause (b), for the proviso, the following proviso shall be substituted, namely:—

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

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

(iii) in clause (g), for the word “order”, the words “order or issue such directions” shall be substituted;

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

“Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group.”.

Amendment of section 28.

21. In section 28 of the principal Act,—

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

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

Amendment of section 29.

22. In section 29 of the principal Act, —

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

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

“(1A) After receipt of the response of the parties to the combination under sub-section (1), the Commission may call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct. ”;

(c) in sub-section (2), after the words “parties to the combination”, the words, brackets, figure and letter “or the receipt of the report from

Director General called under sub-section (1A), whichever is later" shall be inserted.

Substitution of new section for section 30.

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

"Procedure in case of notice under subsection (2) of section 6.

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

Amendment of section 31.

24. In section 31 of the principal Act, in sub-section (11),—

(a) for the words, brackets and figures "ninety working days from the date of publication referred to in sub-section (2) of section 29", the words, brackets and figures "two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6" shall be substituted;

(b) in the Explanation, for the words "ninety working", the words "two hundred and ten" shall be substituted.

Amendment of section 32.

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

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

(b) after the words "relevant market in India", occurring at the end, the words "and pass such orders as it may deem fit in accordance with the provisions of this Act" shall be inserted.

Substitution of new section for section 33.

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

Power to issue interim orders.

"33. Where during an inquiry, the Commission is satisfied that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the

conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.”.

Omission of section 34.

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

Amendment of section 35.

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

Substitution of new section for section 36.

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

Power of Commission to regulate its own procedure.

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

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

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavit;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, any public record or document or copy of such record or document from any office.

(3) The Commission may call upon such experts, from the 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 by it.

(4) The Commission may direct any person —

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

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

Omission of section 37.

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

Substitution of new section for section 39.

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

Execution of orders of Commission imposing monetary penalty.

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

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

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

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

Explanation 2.— The Tax Recovery Commissioner and the Tax Recovery Officer referred to in the Income-tax Act, 1961 shall be deemed to be the Tax Recovery Commissioner and the Tax Recovery Officer for the purposes of recovery of sums imposed by way of penalty, under this Act and reference made by the Commission under sub-section (2) would amount to drawing of a certificate by the Tax Recovery Officer as far as demand relating to penalty under this Act.

Explanation 3.— Any reference to appeal in Chapter XVIIID and the Second Schedule of the Income-tax Act, 1961, shall be construed as a reference to appeal before the Competition Appellate Tribunal under section 53B of this Act.”.

Omission of section 40.

32. Section 40 of the principal Act shall be omitted.

Amendment of section 41.

33. In section 41 of the principal Act, the following Explanation shall be inserted, namely:—

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

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

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

Substitution of new section for section 42.

34. For section 42 of the principal Act, the following section shall be substituted, namely: —

Contravention of orders of Commission.

“42. (1) The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.

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

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

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

Insertion of new section 42A.

35. After section 42 of the principal Act, the following section shall be inserted, namely:—

Compensation in case of contravention of orders of Commission.

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

Substitution of new section for section 43.

36. For section 43 of the principal Act, the following section shall be substituted, namely:—

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

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

- (a) the Commission under sub-sections (2) and (4) of section 36; or
- (b) the Director General while exercising powers referred to in sub-section (2) of section 41,

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

Insertion of new section 43A.

37. After section 43 of the principal Act, the following section shall be inserted namely :-

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

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

Amendment of section 45.

38. In section 45, of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:—

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

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

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

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

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

Amendment of section 46.

39. In section 46 of the principal Act, —

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

“Provided that lesser penalty shall not be imposed by the Commission in cases where the report of investigation directed under section 26 has been received before making of such disclosure:”;

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

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

“Provided also that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to cooperate with the Commission till the completion of the proceedings before the Commission.”.

Amendment of section 49.

40. In section 49 of the principal Act,—

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

“(1) The Central Government may, in formulating a policy on competition (including review of laws related to competition) or on any other matter, and a State Government may, in formulating a policy on competition or on

any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition and on the receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, or the State Government, as the case may be, which may thereafter take further action as it deems fit.”;

(b) in sub-section (2), after the words “Central Government”, the words “or the State Government, as the case may be,” shall be inserted;

(c) in sub-section (3), the words “, as may be prescribed,” shall be omitted.

Amendment of section 51.

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

(i) clause (b) shall be omitted;

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

Amendment of section 52.

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

Insertion of new Chapter VIII-A.

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

‘CHAPTER VIII A COMPETITION APPELLATE TRIBUNAL

Establishment of Appellate Tribunal.

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

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

(b) to adjudicate on claim for compensation that may arise from the findings of the Commission or the orders of the Appellate Tribunal in an appeal against any finding of the Commission or under section 42A or

under sub-section (2) of section 53Q of this Act, and pass orders for the recovery of compensation under section 53N of this Act.

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

Appeal to Appellate Tribunal.

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

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

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

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

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

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

Composition of Appellate Tribunal.

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

Qualifications for appointment of Chairperson and Members of Appellate Tribunal.

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

(2) A Member of the Appellate Tribunal shall be a person of ability, integrity and standing having special knowledge of, and professional

experience of not less than twenty-five years in, competition matters, including competition law and policy, international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs, administration or in any other matter which in the opinion of the Central Government, may be useful to the Appellate Tribunal.

Selection Committee.

53E. (1) The Chairperson and Members of the Appellate Tribunal shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of—

- (a) the Chief Justice of India or his nomineeChairperson;
- (b) the Secretary in the Ministry of Corporate AffairsMember;
- (c) the Secretary in the Ministry of Law and JusticeMember.

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

Term of office of Chairperson and Members of Appellate Tribunal.

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

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

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

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

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

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

Vacancies.

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

Resignation of Chairperson and Members of Appellate Tribunal.

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

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

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

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

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

Removal and suspension of Chairperson and Members of Appellate Tribunal.

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

- (a) has been adjudged an insolvent; or
- (b) has engaged at any time, during his term of office, in any paid employment; or
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (d) has become physically or mentally incapable of acting as such Chairperson or other Member of the Appellate Tribunal; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member of the Appellate Tribunal; or
- (f) has so abused his position as to render his continuance in office prejudicial to the public interest.

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

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

53L. The Chairperson and other Members of the Appellate Tribunal shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Appellate Tribunal under this Act:

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.

Staff of Appellate Tribunal.

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

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

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

Awarding compensation.

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

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

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

Provided that the Appellate Tribunal may obtain the recommendations of the Commission before passing an order of compensation.

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

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

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

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

Procedure and powers of Appellate Tribunal.

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

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

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte;
- (i) any other matter which may be prescribed.

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

Execution of orders of Appellate Tribunal.

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

- (a) in the case of an order against a company, the registered office of the company is situated; or
- (b) in the case of an order against any other person, place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.

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

Contravention of orders of Appellate Tribunal.

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

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

(2) Without prejudice to the provisions of this Act, any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise contravening, without any reasonable ground, any order of the Appellate Tribunal or delaying in carrying out such orders of the Appellate Tribunal.

Vacancy in Appellate Tribunal not to invalidate acts or proceedings.

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

Right to legal representation.

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

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

(3) The Commission may authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to act as presenting officers and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

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

Appeal to Supreme Court.

53T. The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them:

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

Power to Punish for contempt.

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

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

Amendment of section 57.

44. In section 57 of the principal Act, for the words "the Commission", the words "the Commission or the Appellate Tribunal" shall be substituted.

Substitution of new section for section 58.

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

Chairperson, Members, Director General, Secretary, officers and other employees, etc., to be public servants.

"58. The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Secretary and officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code."

Amendment of section 59.

46. In section 59 of the principal Act, for the words "the Registrar or officers or other employees of the Commission", the words "the Secretary or officers or other employees of the Commission or the Chairperson, Members, officers and other employees of the Appellate Tribunal" shall be substituted.

Amendment of section 61.

47. In section 61 of the principal Act, for the word "Commission", the words "Commission or the Appellate Tribunal" shall be substituted.

Amendment of section 63.

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

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

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

(ii) clause (c) shall be omitted;

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

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

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

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

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

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

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

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

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

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

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

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

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

Amendment of section 64.

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

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

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

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

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

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

Amendment of section 66.

50. In section 66 of the principal Act,—

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

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

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

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

Restrictive Trade Practices Act, 1969 on or after the commencement of this Act.

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

- (a) the previous operation of the Act so repealed or anything duly done or suffered thereunder; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under the Act so repealed; or
- (c) any penalty, confiscation or punishment incurred in respect of any contravention under the Act so repealed; or
- (d) any proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, confiscation or punishment as aforesaid, and any such proceeding or remedy may be instituted, continued or enforced, and any such penalty, confiscation or punishment may be imposed or made as if that Act had not been repealed.”

(b) in sub-section (2), —

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

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

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

(iii) in the fourth proviso,—

(A) for the words “the Central Government shall, out of the monies standing”, the words “the Competition Commission of India or the

Appellate Tribunal, as the case may be, shall, out of the monies standing" shall be substituted;

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

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

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

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

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

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

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

STATEMENT OF OBJECTS AND REASONS

The Competition Act was enacted in 2002 keeping in view the economic developments that resulted in opening up of the Indian economy, removal of controls and consequent economic liberalization which required that the Indian economy be enabled to allow competition in the market from within the country and outside. The Competition Act, 2002 (hereinafter referred to as the Act) provided for the establishment of a Competition Commission, (the Commission) to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by

other participants in markets in India, and for matters connected therewith or incidental thereto.

2. The Competition Commission of India was established on the 14th October, 2003 but could not be made functional due to filing of a writ petition before the Hon'ble Supreme Court. While disposing of the writ petition on the 20th January, 2005, the Hon'ble Supreme Court held that if an expert body is to be created by the Union Government, it might be appropriate for the Government to consider the creation of two separate bodies, one with expertise for advisory and regulatory functions and the other for adjudicatory functions based on the doctrine of separation of powers recognised by the Constitution. Keeping in view the judgment of the Hon'ble Supreme Court, the Competition (Amendment) Bill, 2006 was introduced in Lok Sabha on the 9th March, 2006 and the same was referred for examination and report to the Parliamentary Standing Committee. Taking into account the recommendations of the Committee, the Competition (Amendment) Bill, 2007 is being introduced.

3. The Competition (Amendment) Bill, 2007, inter alia, provides for the following :—

- (a) the Commission shall be an expert body which would function as a market regulator for preventing and regulating anti-competitive practices in the country in accordance with the Act and it would also have advisory and advocacy functions in its role as a regulator;
- (b) for mandatory notice of merger or combination by a person or enterprise to the Commission within thirty days and to empower the Commission for imposing a penalty of up to one per cent. of the total turnover or the assets, whichever is higher, on a person or enterprise which fails to give notice of merger or combination to the Commission;
- (c) for establishment of the Competition Appellate Tribunal, which shall be a three member quasi judicial body headed by a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court to hear and dispose of appeals against any direction issued or decision made or order passed by the Commission;
- (d) for adjudication by the Competition Appellate Tribunal of claims on compensation and passing of orders for the recovery of compensation from any enterprise for any loss or damage suffered as a result of any contravention of the provisions of the Act;
- (e) for implementation of the orders of the Competition Appellate Tribunal as a decree of a civil court;
- (f) for filing of appeal against the orders of the Competition Appellate Tribunal to the Supreme Court;
- (g) for imposition of a penalty by the Commission for contravention of its orders and in certain cases of continued contravention a penalty which may extend to rupees twenty-five crores or imprisonment which may extend to three years or with both as the Chief Metropolitan Magistrate, Delhi may deem fit, may be imposed.

4. The Bill also aims at continuation of the Monopolies and Restrictive Trade Practices Commission (MRTPC) till two years after constitution of Competition Commission, for trying pending cases under the Monopolies and Restrictive Trade Practices Act, 1969 after which it would stand dissolved. The Bill also provides that MRTPC would not entertain any new cases after the Competition Commission is duly constituted. Cases still remaining pending after this two year period, would be transferred to Competition Appellate Tribunal or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases.

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 9th August, 2007.

PREM CHAND GUPTA

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

[Copy of letter No. 5/18/2006-IGC, dated the 20th August, 2007 from Shri Prem Chand Gupta, Minister of Corporate Affairs to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Competition (Amendment) Bill, 2007, recommends introduction of the Bill under article 117(1) of the Constitution and also recommends the consideration of the Bill under article 117(3) of the Constitution.

Notes on Clauses

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

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

The existing provisions of section 4 applies only to an enterprise and not to the group of enterprises. Clause (c) of sub-section (2) of section 4 states that there shall be an abuse of dominant position if an enterprise indulges in practice or practices resulting in denial of market access.

It is proposed to amend the provisions of section 4 so as to make it applicable to group of enterprises also. It is also proposed to amend clause (c) of sub-section (2) of said section so as to insert the words "in any manner". This amendment is clarificatory in nature.

Clause 4. —This clause seeks to amend section 5 of the Competition Act, 2002 relating to combination.

Under the existing provisions of section 5, there is no specific provision regarding local nexus for foreign entities which are parties to combinations.

It is proposed to substitute item (B) in sub-clause (i) and item (B) in sub-clause (ii) of clause (a) of section 5 to provide for a local nexus for combinations involving foreign entity and an Indian entity. A threshold value of local assets and operations in terms of asset value of at least rupees 500 crores and turnover of atleast rupees 1500 crores, is proposed for operations in India in addition to the existing global asset or turnover limits provided in the Act.

Clause 5. —This clause seeks to amend section 6 of the Competition Act, 2002 relating to regulation of combinations.

Under the existing provisions of section 6, it is voluntary for a person or enterprise to give notice of the formation of combination within seven days to the Commission.

It is proposed to amend sub-section (2) of section 6 so as to provide for mandatory notice of combinations to the Commission within thirty days. It is also proposed to add subsection (2A) providing that no combination shall come into effect until two hundred and ten days have passed from the day on which the notice has been given to the Commission or the Commission has passed orders under section 31, whichever is earlier.

Clause 6. —This clause seeks to substitute section 8 of the Competition Act, 2002 relating to composition of Competition Commission of India.

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

Clause 7. —This clause seeks to substitute section 9 of the Competition Act, 2002 relating to selection of Chairperson and other Members of the Competition Commission of India.

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

Parliament or a distinguished jurist or a Senior Advocate for five years or more – as Member, (b) a person who has special knowledge of, and professional experience of twenty-five years or more in international trade, economics, business, commerce or industry – as Member, (c) a person who has special knowledge of, and professional experience of twenty-five years or more in accountancy, management, finance, public affairs or administration – as Member nominated by the Central Government.

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

(c) the Secretary in the Ministry of Law and Justice—as Member and (d) two experts of repute having special knowledge in specified fields – as Member.

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

Clause 8.—This clause seeks to amend section 10 of the Competition Act, 2002 relating to term of office of Chairperson and other Members of the Competition Commission of India.

Under the existing provisions contained in section 10, no Chairperson of the Competition Commission of India shall hold office as such after he has attained the age of sixty-seven years and no other Member shall hold office as such after he has attained the age of sixty-five years.

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

Clause 9.—This clause seeks to amend section 12 of the Competition Act, 2002 relating to restriction on employment of Chairperson and other Members of the Competition Commission of India in certain cases.

Under the existing provisions contained in the said section, the Chairperson and other Members shall not, for a period of one year from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any enterprise which has been a party to a proceeding before the Commission under this Act. However, this provision does not apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State, or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956.

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

Clause 10.—This clause seeks to substitute section 13 of the Competition Act, 2002 relating to financial and administrative powers of Member Administration.

Under the existing provisions contained in the said section, the Central Government is to designate any Member as Member Administration who shall exercise such financial and administrative powers as are vested in him under the rules.

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

Clause 11.—This clause seeks to amend section 16 of the Competition Act, 2002 relating to appointment of Director General, etc.

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

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

Clause 12.—This clause seeks to substitute section 17 of the Competition Act, 2002 relating to Registrar and officers and other employees of the Competition Commission of India by a new section.

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

It is proposed to substitute said section so as to confer power upon the Commission to appoint a Secretary instead of Registrar in addition to officers and other employees in the discharge of its functions under the

said Act and also proposed to confer power on the Commission to engage such experts and professionals of integrity and outstanding ability who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission.

Clause 13.—This clause seeks to amend section 19 of the Competition Act, 2002 relating to inquiry into certain agreements and dominant position of enterprise.

Under the existing provisions contained in clause (a) of sub-section (1) of said section, the Commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on receipt of a complaint.

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

Clause 14. —This clause seeks to amend sub-section (2) of section 20 of the Competition Act, 2002 relating to inquiry into combination by the Commission.

Under the existing provisions contained in sub-section (2) of section 20, the Commission shall, upon receipt of a reference under sub-section (1) of section 21, inquire whether the combination referred to in the reference is likely to cause an appreciable adverse effect on competition in India.

It is proposed to amend the said sub-section (2) so as to delete the provision of inquiry on a reference from a statutory authority as the reference has been made on an issue, which is under consideration of the statutory authority.

Clause 15.—This clause seeks to amend sub-sections (1) and (2) of section 21 of the Competition Act, 2002 relating to reference by statutory authority.

Under the existing provisions contained in sub-section (1) of said section where in the course of a proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take, is or would be, contrary to any of the provisions of the Act then such statutory authority may make a reference in respect of such issue to the Commission. Under the existing sub-section (2), on receipt of a reference from a statutory authority, 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.

It is proposed to add a proviso to said sub-section (1) so as to provide that any statutory authority may suo motu make a reference to the

Commission. It is also proposed to amend sub-section (2) so as to provide that the statutory authority on the opinion of the Commission shall give its findings recording reasons therefor.

Clause 16.—This clause seeks to insert a new section 21A regarding reference by Commission.

This new section provides for making of a reference by the Commission to statutory authorities on an issue raised in any matter before it or suo motu. The statutory authority shall be duty bound to give its opinion within sixty days to the Commission and the Commission shall consider the opinion of the statutory authority and give its findings recording reasons therefor.

Clause 17.—This clause seeks to substitute section 22 of the Competition Act, 2002 relating to Benches of the Competition Commission of India.

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

It is proposed to substitute the said section for the meetings of the Competition Commission of India. It, inter alia, provides that the Commission shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be provided by the regulations. It also provides that all questions which come up before any meeting of the Commission shall be decided by a majority of the members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote. It also provides that the quorum for such meeting shall be three Members.

Clause 18. —This clause seeks to omit sections 23, 24 and 25 of the Competition Act, 2002 relating to distribution of business of the Competition Commission of India amongst Benches, procedure for deciding a case where Members of a Bench differ in opinion and jurisdiction of Bench.

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

It is proposed to provide that on receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received under section 19, if the Commission is of the opinion that there exists a prima facie case, it shall direct the Director General to cause an investigation to be made into the matter. It also provides that on receipt of reference under the above provision, if the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or

the statutory authority or the parties concerned, as the case may be. The Director General on receipt of direction under the above provision shall submit a report on his findings within such period as may be specified by the Commission. The Commission may forward a copy of the report to the parties concerned. It also provides that if the report of the Director General recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General. It provides that if the Commission agrees to the recommendations of the Director General, it shall close the matter and pass such order as it deems fit and communicate its order to the authorities mentioned. It further provides that after consideration of the objections or suggestions referred to above, if any, the Commission is of the opinion that further investigation is called for, it may direct for further investigation. It further provides that if the report of the Director General recommends that there is contravention of any of the provisions of the 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 the Act. It is also proposed to provide that if the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

Clause 20. —This clause seeks to amend section 27 of the Competition Act, 2002 relating to orders by Commission after inquiry into agreements or abuse of dominant position.

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

The power to award compensation is proposed to be conferred upon the Appellate Tribunal by new section 53N proposed to be inserted by clause 43 of the Bill. It is, therefore, proposed to omit clauses (c) and (f) of section 27 which confer powers on the Commission to pass orders awarding compensation.

It is also proposed to add a proviso to this section providing that if the Commission comes to a finding that an enterprise, in contravention to section 3 or section 4 of the Act, is a member of a group as defined in clause (b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass any orders against such members of the group.

Clause 21. —This clause seeks to amend section 28 of the Competition Act, 2002 relating to division of enterprise enjoying dominant position.

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

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

Clause 22. —This clause seeks to amend section 29 of the Competition Act, 2002 relating to procedure for investigation of combinations.

It is, inter alia, proposed to insert a new sub-section (1A) to provide that the Commission may, after receipt of the response of the parties to the combination under subsection (1), call for a report from the Director General and such report shall be submitted by the Director General within such time as the Commission may direct.

Clause 23. —This clause seeks to substitute section 30 of the Competition Act, 2002 relating to inquiry into disclosures under sub-section (2) of section 6.

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

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

Clause 24.—This clause seeks to amend sub-section (11) of section 31 of the Competition Act, 2002 relating to orders of Commission on certain combinations.

Under the existing provisions contained in the said sub-section (11) the combination is deemed to have been approved by the Commission if the Commission does not pass orders on expiry of a period of ninety working days from the date of publication referred to in sub-section (2) of section 29.

It is proposed to provide for deemed approval for the combination if the Commission does not pass orders in two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6. This amendment is consequential in nature.

Clause 25. —This clause seeks to amend section 32 of the Competition Act, 2002 relating to acts taking place outside India but having an effect on competition in India. The proposed amendment is clarificatory in nature.

Clause 26. —This clause seeks to substitute section 33 of the Competition Act, 2002 relating to power to grant interim relief.

The existing provisions of section 33 provides that where during an inquiry before the Commission it is proved to the satisfaction of the Commission that an act in contravention of sections 3, 4 and 6 has been committed, the Commission may by order grant a temporary injunction restraining any party from carrying on such act. It also provides that where during the inquiry before the Commission, if the Commission is satisfied that import of any goods is likely to contravene sections 3, 4 and 6 it may, by order, grant a temporary injunction restraining any party from importing such goods until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary and a copy of such order granting temporary injunction shall be sent to the concerned authorities. It further provides that the provisions of rules 2A to 5 (both inclusive) of Order XXXIX of the First Schedule to the Code of Civil Procedure, 1908 shall, as far as may be, apply to a temporary injunction issued by the Commission under this Act, as they apply to temporary injunction issued by a civil court.

The proposed section 33 provides that where during an inquiry, the Commission is satisfied that an act in contravention of sections 3, 4 and 6 has been committed, the Commission may, by order, temporarily restrain any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party.

Clause 27. —This clause seeks to omit section 34 of the Competition Act, 2002 relating to power to award compensation.

The power to award compensation is proposed to be conferred upon the Appellate Tribunal by new section 53N proposed to be inserted by clause 43 of the Bill. It is, therefore, proposed to omit aforesaid section 34 conferring power upon the Competition Commission of India to award compensation.

Clause 28. —This clause seeks to amend section 35 of the Competition Act, 2002 relating to appearance before the Competition Commission of India.

Under the existing provisions contained in the said section, a complainant or defendant or the Director General may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Commission.

It is proposed to amend the said section so as to substitute the words "person or an enterprise", for the words "complainant or defendant" for appearance before the Commission.

Clause 29. —This clause seeks to substitute section 36 of the Competition Act, 2002 relating to power of Commission to regulate its own procedure. The existing section 36 confer powers upon the Commission, inter alia, to dismiss an application in default or deciding it ex parte or exercise power in respect of any other matter which may be prescribed. It also provides that every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code and the Commission shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

It is proposed to substitute the said section so as to provide that the Commission may direct any person to produce before the Director General or Secretary or an officer authorised by it the books or other documents, being documents relating to any trade, in the custody or under the control of such person for the purpose of examination under the Act and also that the Commission may direct any person to furnish to the Director General or Secretary or any officer authorised by it, such other information as may be in his position in relation to the trade carried on by such person as required for the purpose of this Act.

Clause 30. —This clause seeks to omit section 37 of the Competition Act, 2002 relating to review of orders of the Competition Commission of India.

Clause 31. —This clause seeks to substitute section 39 of the Competition Act, 2002 relating to execution of orders of the Competition Commission of India.

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

It is proposed to substitute said section, inter alia, to provide that if a person fails to pay any monetary penalty imposed on him under the Act, the Commission shall proceed to recover such penalty, in the manner as may be specified by regulations. Sub-section (2) of proposed section provides that in a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under the Competition Act, 2002 in accordance with the provisions of the Income-tax Act, 1961, it may make a reference to this effect to the concerned income-tax authority under the Income-tax Act, 1961 for recovery of the penalty as tax due under the said Act. It is also proposed to provide that any reference made by the Commission under sub-section (2) would amount to drawing of a certificate by the Tax Recovery Officer as far as demand relating to penalty under this Act and any reference to appeal in Chapter XVIID and the Second Schedule of the Income-tax Act, 1961, shall be construed as a reference to appeal before the Competition Appellate Tribunal under section 53B of this Act.

Clause 32. —This clause seeks to omit section 40 of the Competition Act, 2002 relating to appeal.

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

It is proposed to insert, by clause 43 of the Bill, new sections 53B and 53T to provide filing of appeal from any direction, decision or order referred to in clause (a) of new section 53A to the Appellate Tribunal and filing of an appeal to the Supreme Court from any decision or order of the Appellate Tribunal. Omission of section 40 is therefore consequential in nature.

Clause 33.—This clause seeks to amend section 41 of the Competition Act, 2002 relating to Director General to investigate contraventions.

The existing sub-section (3) of section 41 provides that, 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.

It is proposed to add an Explanation to sub-section (3) of section 41 to provide that the words "the Central Government" under section 240 of the Companies Act, 1956 shall be construed as "the Commission" and the word "Magistrate" under section 240A of the Companies Act, 1956 shall be construed as "the Chief Metropolitan Magistrate, Delhi".

Clause 34.—This clause seeks to substitute section 42 of the Competition Act, 2002 relating to contravention of orders of the Competition Commission of India.

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

It is proposed to substitute the said section so as to provide that if any person, without reasonable cause fails to comply with the orders or directions issued under the sections specified therein, he shall be punishable with fine which may extend to rupees one lakh for each day subject to a maximum of rupees ten crore as the Commission may determine. It also provides that if any person does not comply with the orders or directions issued under this section, he shall be punishable with

imprisonment for a term which may extend to three years or with fine which may extend to rupees twenty-five crore or with both as the Chief Metropolitan Magistrate, Delhi may deem fit. It further provides that the Chief Metropolitan Magistrate, Delhi may pass such orders as it may deem fit on a complaint filed before it by the Commission for non-compliance of its orders.

Clause 35.—This clause seeks to insert a new section 42A regarding compensation in case of contravention of orders of Commission.

The proposed new section provides that any person may make an application to the Appellate Tribunal for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of the said enterprise violating directions issued by the Commission or contravening, without any reasonable ground, any decision or order of the Commission.

Clause 36. —This clause seeks to substitute section 43 of the Competition Act, 2002 relating to penalty for failure to comply with the directions of the Competition Commission of India and Director General of the Commission. The new section seeks to provide that a penalty which may extend to rupees one lakh for each day subject to a maximum of rupees one crore may be imposed on the person who, without reasonable cause, fails to comply with the directions given by the Commission and the Director General issued under the specified sections.

Clause 37.—This clause seeks to insert a new section 43A regarding power to impose penalty for non-furnishing of information on combinations.

The new section seeks to empower the Commission for imposing a penalty on the person or enterprise for not giving the notice to the Commission about the combination under sub-section (2) of section 6. This insertion is consequential in nature.

Clause 38.—This clause seeks to substitute sub-section (1) of section 45 of the Competition Act, 2002 regarding penalty for offences in relation to furnishing of information.

The existing provision provides for imposition of a penalty on a person, which may extend to rupees ten lakh, for furnishing documents or making statements which he knows and has reasons to believe to be false.

It is proposed to provide for imposition of a fine which may extend to rupees one crore, as the Commission may determine, on a person for furnishing documents or making statements which he knows and has reason to believe to be false.

Clause 39.—This clause seeks to amend section 46 of the Competition Act, 2002 relating to power to impose lesser penalty.

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

It is proposed to substitute said first proviso to provide that the Commission shall not impose lesser penalty in cases where the report of investigation directed under section 26 has been received before making of such disclosure. It is also proposed to amend second proviso so as to provide for lesser penalty upon a person who discloses the information about a cartel. It is also proposed to add a third proviso to the said section providing that lesser penalty shall not be imposed by the Commission if the person making the disclosure does not continue to co-operate with the Commission till the completion of the proceedings before the Commission.

Clause 40.—This clause seeks to amend section 49 of the Competition Act, 2002 relating to Competition advocacy.

Under the existing provisions contained in sub-section (1) of the said section the Central Government may, in formulating a policy on competition (including review of laws related to competition), make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit. The existing sub-section (2) provides that the opinion given by the Commission shall not be binding upon the Central Government in formulating such policy. The existing sub-section (3) provides that the Commission shall take suitable measures, for the promotion of competition advocacy, creating awareness and imparting training about competition issues in the manner as may be prescribed by rules.

It is proposed to amend sub-section (1) of the said section so as to enable the Central Government to make reference to the Commission on any other matter also apart from the existing proviso of making a reference on policy on competition (including review of laws related to competition) and also to enable the State Government to make a reference to the Commission in formulating a policy on competition or on any other matter. It is also proposed to amend sub-section (2) of the said section to provide that the opinion of the Commission shall not be binding on State Government as well as the Central Government. It is further proposed to amend sub-section (3) of the said section to provide that the Commission shall take suitable measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues in the manner as may be decided by the Commission and not as may be prescribed by rules.

Clause 41. —This clause seeks to amend section 51 of the Competition Act, 2002 relating to constitution of fund.

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

It is proposed to omit said clause (b).

Clause 42. —This clause seeks to amend section 52 of the Competition Act, 2002 relating to accounts and audit.

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

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

Clause 43. —This clause seeks to insert new Chapter VIIIA to the Competition Act, 2002 relating to establishment of Competition Appellate Tribunal.

The new Chapter VIIIA contains provisions for (a) establishment of Appellate Tribunal, (b) appeal to Appellate Tribunal, (c) composition of Appellate Tribunal, (d) qualifications for appointment of Chairperson and Members of Appellate Tribunal, (e) Selection Committee, (f) term of office of Chairperson and Members of Appellate Tribunal, (g) terms and conditions of service of Chairperson and Members of Appellate Tribunal, (h) vacancies, (i) resignation of Chairperson and Members, (j) Member of Appellate Tribunal to act as Chairperson in certain cases, (k) removal and suspension of chairperson and Members of Appellate Tribunal,

(l) restriction on employment of Chairperson and other Members in certain cases, (m) staff of Appellate Tribunal, (n) Procedure for awarding compensation, (o) procedure and powers of Appellate Tribunal, (p) execution of orders of Appellate Tribunal, (q) contravention of orders of Appellate Tribunal, (r) vacancy in Appellate Tribunal not to invalidate acts or proceedings,

(s) right to legal representation, (t) appeal to the Supreme Court and (u) power to punish for contempt.

Clause 44. —This clause seeks to amend section 57 of the Competition Act, 2002 relating to restriction on disclosure of information.

It is proposed to bring the Appellate Tribunal also within the scope of section 57 of the Competition Act, 2002 consequent to the proposal to

insert a new Chapter VIII-A vide clause 43 of the Bill. The proposed amendment is consequential in nature.

Clause 45.—This clause seeks to amend section 58 of the Competition Act, 2002 relating to Members, Director General, Registrar, officers and other employees, etc., of the Competition Commission of India.

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

Clause 12 of the Bill proposes to confer power upon the Commission to appoint a Secretary instead of Registrar. Clause 43 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 to establish the Competition Appellate Tribunal. Hence, it is proposed to bring the Secretary, officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal within the scope of section 58 of the Competition Act, 2002. The proposed amendment is consequential in nature.

Clause 46.—This clause seeks to amend section 59 of the Competition Act, 2002 relating to protection of action taken in good faith.

Under the existing provisions contained in the said section, no suit, prosecution or other legal proceedings can lie against the Central Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director General, Additional, Joint, Deputy or Assistant Directors General or Registrar or officers or other employees of the Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Clause 12 of the Bill proposes to confer power upon the Commission to appoint a Secretary instead of Registrar. Clause 43 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 proposing to establish the Competition Appellate Tribunal. It is proposed to bring the Secretary, officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal within the scope of the aforesaid section. The proposed amendment is consequential in nature.

Clause 47.—This clause seeks to amend section 61 of the Competition Act, 2002 relating to exclusion of jurisdiction of civil courts.

Under the existing provisions contained in the said section, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission is empowered by or under this Act to

determine and no injunction shall be granted by 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.

Clause 43 of the Bill proposes to insert new Chapter VIII-A in the Competition Act, 2002 proposing to establish the Competition Appellate Tribunal. It is proposed to exclude the jurisdiction of civil courts in respect of any matter in which the Commission or Appellate Tribunal is empowered to determine. The proposed amendment is consequential in nature.

Clause 48. —This clause seeks to amend section 63 of the Competition Act, 2002 relating to power to make rules.

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

Clause 49.—This clause seeks to amend section 64 of the Competition Act, 2002 relating to power to make regulations by the Competition Commission of India.

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

Clause 50. —This clause seeks to amend section 66 of the Competition Act, 2002 relating to repeal and saving.

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

It is proposed to amend said section 66 so as to provide that the Monopolies and Restrictive Trade Practices Commission may continue to exercise jurisdiction and powers under the Monopolies and Restrictive Trade Practices Act, 1969 for a period of two years from the date of bringing into force of section 66 of the Competition Act, 2002 only in respect of cases or proceedings filed before such commencement. It further provides for the transfer of pending cases after the two years period to the Appellate Tribunal or the National Commission under the Consumer Protection Act, 1986 depending on the nature of cases. It also provides that the staff of the Monopolies and Restrictive Trade Practices Commission who has been employed on regular basis by the Monopolies and Restrictive Trade Practices Commission shall, on its dissolution, become employees of the Competition Commission or the Appellate Tribunal in the manner as may be specified by the Central Government.

FINANCIAL MEMORANDUM

Clause 43 of the Bill seeks to establish a Competition Appellate Tribunal with a Chairperson and up to two Members, along with associated staff, whose expenses would be paid from the Consolidated Fund of India. However, clause 6 of the Bill seeks to reduce the strength of the Competition Commission from ten additional Members to six additional Members. Clause 17 of the Bill further provides for Commission to function as a collegium and not through Benches, leading to absence of need for provision of offices to these Benches, and the need for branches of Director General's office at these Benches.

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

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

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 48 of the Bill seeks to amend section 63 of the Competition Act, 2002. This clause empowers the Central Government to make rules, by notification, to carry out the provisions of the proposed legislation. The matters in respect of which such rules may be made are specified therein. These matters relate to, inter alia, provide for (a) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 9; (b) the number of Additional, Joint, Deputy or Assistant Directors General or such officers or other employees in the office of Director General and the manner in which such Additional, Joint, Deputy or Assistant Directors General or such officers or other employees may be appointed under sub-section (1A) of section 16; (c) the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General or such officers or other employees under sub-section (3) of section 16; (d) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or such officers or other employees under subsection (4) of section 16; (e) the salaries and allowances payable to, and other terms and conditions of service of, the Secretary and officers and other employees of the Commission and the number of such officers and other employees under sub-section (2) of section 17; (f) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (2) of section 53B and the fees payable in respect of such appeal; (g) the term of the Selection Committee and the manner of selection of panel of names under sub-section (2) of section 53E; (h) the

salaries and allowances and other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 53G; (i) the salaries and allowances and other conditions of service of the officers and other employees of the Appellate Tribunal under sub-section (3) of section 53M; (j) the fee which shall be accompanied with every application made under sub-section (2) of section 53N; (k) the other matters under clause (i) of sub-section (2) of section 53-O in respect of which the Appellate Tribunal shall have powers under the Code of Civil Procedure while trying a suit; (l) the manner in which the monies transferred to the Competition Commission of India or the Appellate Tribunal, as the case may be, shall be dealt with by the Commission or the Appellate Tribunal under the fourth proviso to sub-section (2) of section 66.

2. Clause 49 of the Bill seeks to amend section 64 of the Competition Act, 2002. This clause empowers the Competition Commission of India to make regulations, by notification, to carry out the purposes of the proposed legislation. The matters in respect of which such regulations may be made are specified therein. These matters relate to, inter alia, (a) the procedure to be followed for engaging the experts and professionals under sub-section (3) of section 17; (b) the manner and fee which may be determined under clause (a) of subsection (1) of section 19; (c) the rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 22; (d) the manner in which penalty shall be recovered under sub-section (1) of section 39; (e) any other matter in respect of which provision is to be, or may be, made by regulations.

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

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

ANNEXURE

EXTRACTS FROM THE COMPETITION ACT, 2002 (12 OF 2003)

* * * * *

Definitions.

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

* * * * *

Prohibition of abuse of dominant position

Abuse of dominant position.

4. (1) No enterprise shall abuse its dominant position. (2) There shall be an abuse of dominant position under sub-section (1), if an enterprise,—

- (a) directly or indirectly, imposes unfair or discriminatory—
 - (i) condition in purchase or sale of goods or service; or
 - (ii) price in purchase or sale (including predatory price) of goods or service.

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

- (b) limits or restricts—
 - (i) production of goods or provision or services or market therefor; or
 - (ii) technical or scientific development relating to goods or services to the prejudice of consumers; or
- (c) indulges in practice or practices resulting in denial of market access; or
- (d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or
- (e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

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

- (a) “dominant position” means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—
 - (i) operate independently of competitive forces prevailing in the relevant market; or
 - (ii) affect its competitors or consumer 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, or production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

Regulation of combinations

Combination.

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—

(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) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would 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

* * * * *

Regulation of combinations.

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

(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) 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.

* * * * *

Composition of Commission.

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

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

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

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

Selection of Chairperson and other Members.

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

Terms of office of Chairperson and other Members.

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

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

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

* * * * *

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

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

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a

Government company as defined in section 617 of the Companies Act, 1956.

Financial and administrative powers of Member Administration.

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

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

* * * * *

Appointment of Director-General, etc.

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

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

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

(4) The Director General and Additional, Joint, Deputy and Assistant Directors General or such other advisers, consultants or officers shall be appointed from amongst persons of integrity and outstanding ability and who have experience in investigation, and knowledge of accountancy, management, business, public administration, international trade, law or economics and such other qualifications as may be prescribed.

Registrar and officers and other employees of Commission.

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.

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

* * * * *

Inquiry into certain agreements and dominant position of enterprise

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

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

* *

* * *

Inquiry into Combination by Commission

20. (1)* * * * *

(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 (1) 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.

* * * * *

Reference by statutory authority.

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

(2) On receipt of a reference under sub-section (1), the Commission shall, after hearing the parties to the proceedings, give its opinion to such statutory authority which shall thereafter pass such order on the issues referred to in that sub-section as it deems fit:

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

Benches of Commission.

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

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

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

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

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

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

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

Distribution of business of Commission amongst Benches.

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

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

(3) The Chairperson may—

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

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

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

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

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

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 Members of a 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.

Jurisdiction of Bench.

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

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

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

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

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

Procedure for inquiry on complaints under section 19

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

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

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

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

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

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

(7) If, after hearing the 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 reference as a complaint if there is a prima facie case.

(9) If the report of the Director General referred to in sub-section (2) recommends that there is contravention of any of the provisions of this Act, and the Commission is of the opinion that further inquiry is called for, it shall inquire into such contravention in accordance with the provisions of this Act.

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

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

* * * * *

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

Provided that in case any agreement referred to in section 3 has been entered into by any cartel, the Commission shall impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty equivalent to three times of the amount of profits made out of such agreement by the cartel or ten per cent. of the average of the turnover of the cartel for the last preceding three financial years, whichever is higher;

(c) award compensation to parties in accordance with the provisions contained in section 34;

* * * * *

(f) recommend to the Central Government for the division of an enterprise enjoying dominant position;

(g) pass such other order as it may deem fit.

Division of enterprise enjoying dominant position

28. (1) The Central Government, on recommendation under clause (f) of section 27, may, notwithstanding anything contained in any other law for the time being in force, by order in writing, direct division of an enterprise enjoying dominant position to ensure that such enterprise does not abuse its dominant position.

(2) In particular, and without prejudice to the generality of the foregoing powers, the order referred to in sub-section (1) may provide for all or any of the following matters, namely:—

* * * * *

(d) the payment of compensation to any person who suffered any loss due to dominant position of such enterprise;

* * * * *

Procedure for Investigation of Combination

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.

(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.

* * * * *

Inquiry into disclosures under subsection (2) of section 6.

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.

Orders of Commission on certain combinations.

31. (1) * * * * *

(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 provision of sub-section (1) or sub-section (2) or subsection (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.

* * * * *

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

32. The Commission shall, notwithstanding that,—

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

have power to inquire into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India.

Power to grant interim relief.

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

(2) Where during the inquiry before the Commission it is proved to the satisfaction of the Commission by affidavit or otherwise that import of any goods is likely to contravene sub-section (1) of section 3 or sub-section (1) of section 4 or section 6, it may, by order, grant a temporary injunction restraining any party from importing such goods until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary and a copy of such order granting temporary injunction shall be sent to the concerned authorities.

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

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.

Appearance before Commission.

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

Explanation.—For the purposes of this section,—

- (a) "chartered accountant" means a chartered accountant as defined in clause 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;
- (b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- (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.

Power of Commission to regulate its own procedure.

36. (1) The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by 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.

(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;
- (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.

(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 45 of 1860. of the Indian Penal Code and the Commission shall be deemed to be a civil court for the 2 of 1974. 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.

Review of orders of Commission.

37. Any person aggrieved by an order of the Commission from which an appeal is allowed by this Act but no appeal has been preferred, may, within thirty days from the date of the order, apply to the Commission for review of its order and the Commission may make such order thereon as it thinks fit:

Provided that the Commission may entertain a review application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from preferring the application in time:

Provided further that no order shall be modified or set aside without giving an opportunity of being heard to the person in whose favour the order is given and the Director General where he was a party to the proceedings.

* * * * *

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 it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court, as the case may be, within the local limits of whose jurisdiction,—

- (a) in the case of an order against a person referred to in sub-clause (iii) or subclause (vi) or sub-clause (vii) of clause (1) of section 2, the registered office or the sole or principal place of business of the person in India or where the person has also a subordinate office, that subordinate office, is situated;
- (b) in the case of an order against any other person, the place, where the person concerned voluntarily resides or carries on business or personally works for gain, is situated,

and thereupon the court to which the order is so sent shall execute the order as if it were a decree or order sent to it for execution.

Appeal.

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

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:

Provided further that no appeal shall lie against any decision or order of the Commission made with the consent of the parties.

* * * * *

CHAPTER VI

PENALTIES

Contravention of orders of Commission.

42. (1) Without prejudice to the provisions of this Act, if any person contravenes, without any reasonable ground, any order of the Commission, or any condition or restriction subject to which any approval, sanction direction or exemption in relation to any matter has been

accorded, given, made or granted under this Act or fails to pay the penalty imposed under this Act, he shall be liable to be detained in civil prison for a term which may extend to one year, unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

(2) The Commission may, while making an order under this Act, issue such directions to any person or authority, not inconsistent with this Act, as it thinks necessary or desirable, for the proper implementation or execution of the order, and any person who commits breach of, or fails to comply with, any obligation imposed on him under such direction, may be ordered by the Commission to be detained in civil prison for a term not exceeding one year unless in the meantime the Commission directs his release and he shall also be liable to a penalty not exceeding rupees ten lakhs.

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

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,

the Commission shall impose on such person a penalty of rupees one lakh for each day during which such failure continues. * * * * *

Penalty for offences in relation to furnishing of 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 any material fact knowing it to be material; or
- (c) willfully alters, suppresses or destroys any document which is required to be furnished as aforesaid,

the Commission shall impose on such person a penalty which may extend to rupees ten lakhs.

* * * * *

Power to impose lesser penalty.

46. The Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon

such producer, seller, distributor, trader or service provider a lesser penalty as it may deem fit, than leviable under this Act or the rules or the regulations:

Provided that lesser penalty shall not be imposed by the Commission in cases where proceedings for the violation of any of the provisions of this Act or the rules or the regulations have been instituted or any investigation has been directed to be made under section 26 before making of such disclosure:

Provided further that lesser penalty shall be imposed by the Commission only in respect of a producer, seller, distributor, trader or service provider included in the cartel, who first made the full, true and vital disclosures under this section:

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

- (a) not complied with the condition on which the lesser penalty was imposed by the Commission; or
- (b) had given false evidence; or
- (c) the disclosure made is not vital, and thereupon such producer, seller, distributor, trader or service provider may be tried for the offence with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.

* * * * *

CHAPTER VII COMPETITON ADVOCACY

Competition advocacy.

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

(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.

* * * * *

Constitution of Fund.

51. (1) There shall be constituted a fund to be called the "Competition Fund" and there shall be credited thereto—

* * * * *

(b) the monies received as costs from parties to proceedings before the Commission;

* * * * *

(d) the interest accrued on the amounts referred to in clauses (a) to (c). *

* * * * *

Accounts and audit.

52.(1) * * * * *

(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.

* * * * *

Restriction on disclosure of information.

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

Members, Director General, Registrar, officers and other employees, etc., of Commission to be public servants.

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

Protection of action taken in good faith.

59. No suit, prosecution or other legal proceedings shall lie against the Central Government or Commission or any officer of the Central Government or the Chairperson or any Member or the Director General, Additional, Joint, Deputy or Assistant Directors General or Registrar or officers or other employees of the Commission for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

* * * * *

Exclusion of jurisdiction of civil courts.

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

* * * * *

Power to make rules.

63. (1) * * * * *

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

(a) the manner in which the Chairperson and other Members shall be selected under section 9;

* * * * *

(c) the financial and administrative powers which may be vested in the Member Administration under section 13;

* * * * *

(e) the salary, allowances and other terms and conditions of service of the Director General, Additional, Joint, Deputy or Assistant Directors General or such other advisers, consultants or officers under sub-section (3) of section 16;

(f) the qualifications for appointment of the Director General, Additional, Joint, Deputy or Assistant Directors General or such other advisers, consultants or officers under sub-section (4) of section 16;

(g) the salaries and allowances and other terms and conditions of service of the Registrar and officers and other employees payable, and the number of such officers and employees under sub-section (2) of section 17;

(h) for securing any case or matter which requires to be decided by a Bench composed of more than two Members under sub-section (4) of section 23;

(i) any other matter in respect of which the Commission shall have power under clause (g) of sub-section (2) of section 36;

(j) the promotion of competition advocacy, creating awareness and imparting training about competition issues under sub-section (3) of section 49;

* * * * *

(n) the manner in which the monies transferred to the Central Government shall be dealt with by that Government under the fourth proviso to sub-section (2) of section 66;

Power to make regulations.

64. (1)* * * * *

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

* * * * *

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

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

* * * * *

Repeal and saving.

66. (1) The Monopolies and Restrictive Trade Practices Act, 1969 is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under subsection (1) of section 5 of the said Act (hereinafter referred to as the repealed Act) shall stand dissolved.

(2) On the dissolution of the Monopolies and Restrictive Trade Practices Commission, the person appointed as the Chairman of the Monopolies and Restrictive Trade Practices Commission and every other person appointed as Member and Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration and any officer 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 Director General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission, employed on regular basis by the Monopolies and Restrictive Trade Practices Commission, shall become, on and from such dissolution, the officer and employee, respectively, of the Central Government with the same rights and privileges as to pension, gratuity and other like matters as would have been admissible to him if the rights in relation to such Monopolies and Restrictive Trade Practices Commission had not been transferred to, and vested in, the Central Government and shall continue to do so unless and until his employment in the Central Government is duly terminated or until his remuneration, terms and conditions of employment are duly altered by that Government:

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee, employed in the Monopolies and Restrictive Trade Practices Commission, to the Central Government shall not entitle such Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

Provided also that where the Monopolies and Restrictive Trade Practices Commission has established a provident fund, superannuation, welfare or other fund for the benefit of the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or the officers and other employees employed in the Monopolies and Restrictive Trade Practices Commission, the monies relatable to the officers and other employee whose services have been transferred by or under this Act to the Central Government shall, out of the monies standing, on the dissolution of the Monopolies and Restrictive Trade Practices Commission to the credit of such provident fund, superannuation, welfare or other fund, stand transferred to, and

vest in, the Central Government and such monies which stand so transferred shall be dealt with by the said Government in such manner as may be prescribed.

(3) All cases pertaining to monopolistic trade practices or restrictive trade practices pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act, including such cases, in which any unfair trade practice has also been alleged, shall, on such commencement, stand transferred to the Competition Commission of India and shall be adjudicated by that Commission in accordance with the provisions of the repealed Act as if that Act had not been repealed.

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

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

(5) All cases pertaining to unfair trade practices referred to in clause (x) of subsection (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 and pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India shall dispose of such cases as if they were cases filed under that Act.

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LOK SABHA

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BILL
to amend the Competition Act, 2002.

(Shri Prem Chand Gupta, Minister of Corporate Affairs)

MGIPMRND—3357LS(S5)—22-08-2007.

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August 30, 2007

RBI releases Annual Report for 2006-07

Assessment of 2006-07

Overall Performance

During 2006-07, the Indian economy exhibited acceleration in growth, led by manufacturing and services sector activities. The sustained high growth since 2003-04 has been supported by increase in domestic savings and investment. Robust growth during 2006-07, however, was accompanied by inflationary pressures on account of rising capacity utilisation, strong growth in monetary and credit aggregates, demand-supply gaps in domestic production of foodgrains and oilseeds, and firm global commodity prices. A series of timely and appropriate measures undertaken by the Reserve Bank and other supply side responses to rising prices made by the Government helped to contain headline inflation.

More importantly, the measures facilitated the anchoring of inflationary expectations to a certain extent. Strong growth in general and of the industrial sector in particular enabled the corporate sector to maintain high profitability. This, in turn, resulted in buoyant tax collections and played a major role in improving public finances. The growth process was facilitated by financial market conditions, which remained orderly, barring a few episodes of volatility.

However, interest rates in various segments of the financial market hardened to some extent.

Strong growth led to a widening of the trade deficit. Nonetheless, the current account deficit, as per cent of GDP, remained unchanged from the previous year since the widening of the merchandise trade deficit was offset to a large extent by the continuing buoyancy in net invisibles surplus. Large capital flows led by external commercial borrowings and net foreign direct investment (FDI) inflows resulted in large accretion to foreign exchange reserves.

Real GDP growth accelerated from 9.0 per cent during 2005-06 to 9.4 per cent during 2006-07. The growth, thus, averaged 8.6 per cent per annum during the four-year period ended 2006-07. Real GDP growth during the Tenth Five Year Plan period averaged 7.6 per cent per annum, the highest in any Plan period. Acceleration in the growth rate during 2006-07 was attributable to buoyancy in the industrial and services sectors, which exhibited double-digit growth (11.0 per cent each). Higher growth in the industry and services sectors more than offset the deceleration in the agricultural sector. Growth in the agricultural sector decelerated from 6.0 per cent in 2005-06 to 2.7 per cent in 2006-07, partly on

account of uneven rainfall during the South-West monsoon and partly due to the base effect. Although the overall foodgrains production rose by 3.6 per cent in 2006-07, the production of major crops still did not reach the previous peak touched in 2001-02. Amongst the non-foodgrains, the production of sugarcane and cotton scaled new peaks during 2006-07, while that of oilseeds declined.

Monetary Developments

Money supply (M₃) increased by 21.3 per cent (Rs. 5,80,733 crore) during 2006-07 as compared with 17.0 per cent (Rs. 3,96,878 crore) during 2005-06. Amongst the major components, time deposits exhibited a growth of 23.2 per cent (Rs. 4,41,913 crore) during 2006-07 as compared with 15.3 per cent (Rs. 2,53,056 crore) during 2005-06. Higher growth in time deposits could be attributed to factors such as higher interest rates on bank deposits and availability of tax benefits under Section 80C for bank deposits. On the sources side, growth of bank credit remained high, although there was some moderation. Demand for bank credit was largely broad-based with agriculture, industry and personal loans absorbing 14 per cent, 36 per cent and 24 per cent, respectively, of incremental expansion in overall non-food credit during 2006-07. Growth of credit to sectors such as real estate remained high, *albeit* with some moderation. In order to maintain asset quality, the Reserve Bank further tightened the provisioning requirements in respect of sectors witnessing high growth in credit. Banks' SLR investments, as a proportion of their net demand and time liabilities (NDTL), declined further to 28.0 per cent by end-March 2007 (close to the prescribed ratio of 25 per cent) as the expansion in investments did not keep pace with the expansion in the NDTL. Net foreign assets remained the key driver of reserve money and the Reserve Bank continued to modulate market liquidity through operations under the liquidity adjustment facility (LAF), issuance of securities under the market stabilisation scheme (MSS) and use of the cash reserve ratio (CRR). Headline inflation firmed up from 4.0 per cent, y-o-y, on April 1, 2006 to 5.9 per cent on March 31, 2007 with an intra-year high of 6.7 per cent on January 27, 2007 and a low of 3.7 per cent on April 15, 2006. Both demand and supply side factors added to inflationary pressures during 2006-07. Demand pressures emanated from both high investment and consumption demand, strong growth in credit and monetary aggregates, and elevated asset prices. Supply side pressures emerged from demand-supply gaps in domestic production of major foodgrains and oilseeds amidst rising global prices. Although there was some improvement in domestic agricultural production during 2006-07, the production of major foodgrains has exhibited stagnation over the past few years. For instance, the production of rice, wheat and pulses during 2006-07 was still lower than the previous peaks touched during 2001-02, 1999-2000 and 1998-99, respectively. Consumer price inflation rose from 4.9-5.3 per cent in March 2006 to 6.7-9.5 per cent in March 2007, mainly reflecting the impact of higher food prices. In order to contain inflation and to stabilise inflationary expectations, the Reserve Bank persevered with the policy of pre-emptive actions and gradual withdrawal of monetary accommodation, using various instruments at its disposal flexibly. Between the second half of 2004 and July 31, 2007, the repo and the reverse repo rates were increased by 175 basis points and 150 basis points, respectively. In addition, the cash reserve ratio was raised by 250 basis points (including the increase of 50 basis points effective August 4, 2007). The Government also took various fiscal and supply-side measures to contain inflation during the latter part of 2006-07.

Balance of Payments

India's balance of payments in 2006-07 reflected a number of positive features. Merchandise trade continued to exhibit robust growth during 2006-07, although there was some loss of pace from the strong growth of 2005-06. The higher growth of imports *vis-à-vis* exports led to a persistent rise in the trade deficit, on a balance of payments basis. Nonetheless, the current account deficit, as per cent of GDP, remained unchanged (1.1 per cent of GDP) from the previous year since the widening of the merchandise trade deficit was offset to a large extent by the continuing buoyancy in net invisibles surplus. Net capital inflows to India remained buoyant (4.9 per cent of GDP), far exceeding the current account deficit. Higher capital flows could be attributed to the strengthening of macroeconomic fundamentals, greater investor confidence and ample global liquidity. Net FDI inflows from abroad of US \$ 19.4 billion exceeded FII inflows (net) during 2006-07 aggregating US \$ 3.2 billion. The debt flows (net) at US \$ 25.0 billion were led by external commercial borrowings reflecting strong investment demand. Net capital flows, after financing the current account deficit, led to accretion of US \$ 36.6 billion, excluding valuation changes, to foreign exchange reserves during 2006-07.

Financial Markets

Financial markets remained orderly during 2006-07, barring some episodes of volatility, especially during the second half of March 2007. Capital inflows and movements in Government cash balances continued to be the key drivers of liquidity conditions and overnight interest rates. Interest rates in the various market segments hardened during the year, broadly in tandem with the preemptive monetary tightening measures taken by the Reserve Bank. By and large, the exchange rate of the Indian rupee exhibited two-way movement with respect to the main reserve currencies during 2006-07. The stock market remained buoyant with the benchmark indices reaching record highs during 2006-07 amidst intermittent corrections. The primary segment of the capital market exhibited buoyant conditions.

Outlook for 2007-08

Available information so far indicates continuation of the growth momentum during 2007-08 at a strong pace with the impulses of growth getting more broad-based. Steady increases in the rate of gross domestic saving and investment, consumption demand, addition of new capacity as well as more intensive and efficient utilisation/capitalisation of existing capacity are expected to provide support to growth during 2007-08. For monetary policy purposes, the Reserve Bank, in its Annual Policy Statement (April 2007), placed the real GDP growth for 2007-08 at around 8.5 per cent, assuming no further escalation in international crude prices and barring domestic or external shocks. In view of the lagged and cumulative effects of monetary policy on aggregate demand and assuming that supply management would be conducive, capital flows would be managed actively and in the absence of shocks emanating in the domestic or global economy, the Reserve Bank in its Annual Policy Statement noted that the policy endeavour would be to contain inflation close to 5.0 per cent in 2007-08. The Reserve Bank in its First Quarter Review of the Annual Statement of Monetary Policy in July 2007 retained its projection of real GDP growth at around 8.5 per cent, barring domestic and external shocks. Assuming that aggregate supply management will continue to receive public policy attention and that a more

active management of the capital account will be demonstrated, the outlook for inflation in 2007-08 in the First Quarter Review remained unchanged. Accordingly, it was indicated in the Review that holding headline inflation within 5.0 per cent in 2007-08 assumed priority in the policy hierarchy; while reinforcing the medium-term objective to condition policy and perceptions to reduce inflation to 4.0-4.5 per cent on a sustained basis.

Monetary Management

Expansion of money supply (y-o-y) as on August 3, 2007 was higher (21.7 per cent) than a year ago (19.3 per cent) and also higher than the indicative projection of 17.0-17.5 per cent set out in the Annual Policy Statement. Growth in aggregate deposits accelerated, led by time deposits. Bank credit witnessed some moderation from the strong pace of the preceding three years. Growth of non-food credit of scheduled commercial banks was 23.6 per cent, yo-y, as on August 3, 2007 as compared with 32.5 per cent a year ago. Commercial banks' investments in SLR securities, as per cent of their net demand and time liabilities, at 28.6 per cent were marginally higher than those at end-March 2007, but below those of 31.1 per cent a year ago. Growth of reserve money as on August 10, 2007 at 26.9 per cent (19.6 per cent adjusted for the first round impact of the increase in the CRR) was higher than a year ago (17.2 per cent), mainly on account of accretion to the Reserve Bank's net foreign assets.

Headline inflation, based on movements in the wholesale price index (WPI), moderated to 4.1 per cent, y-o-y, on August 11, 2007 from 5.9 per cent at end-March 2007 and 5.1 per cent a year ago. Inflation for all the three sub-groups of the WPI eased from their end-March levels. Fuel group inflation turned negative (-2.1 per cent) reflecting cuts in domestic prices during November 2006 and February 2007. International crude oil (average) prices have, however, increased by around 28 per cent up to July 2007 from February 2007, when domestic prices were cut last. Non-oil global commodity prices also remained firm led by food and metals. Various measures of consumer price inflation were placed lower in June 2007 (5.7-7.8 per cent) than those in March 2007 (6.7-9.5 per cent). However, consumer price inflation continued to exceed wholesale price inflation mainly on account of higher food prices. Although inflation has eased since end-March 2007, inflationary pressures could potentially persist for several reasons. There are concerns regarding further hardening of international commodity prices, in particular, oil prices. Moreover, the possibility of inflationary pressures from domestic factors such as strong growth in monetary aggregates, elevated asset prices and large capital flows with implications for domestic liquidity conditions need to be recognised. Accordingly, a continuous vigil supported by appropriate policy actions by all concerned would be needed to maintain price stability so as to anchor inflationary expectations on a sustained basis.

The stance of monetary policy in 2007-08, as observed in the Annual Policy Statement, would be conditioned by the patterns in which the global and, more particularly, the domestic environment unfold. The likely evolution of macroeconomic and financial conditions indicates an environment supportive of sustaining the current growth momentum in India. Monetary policy, while contributing to growth, has to ensure and maintain conditions of price and financial stability. Accordingly, the policy preference for the period ahead was articulated strongly in favour of reinforcing the emphasis on price stability and

anchoring inflation expectations. The Reserve Bank in its First Quarter Review of the Annual Statement of Monetary Policy in July 2007 observed that monetary policy in India would continue to be vigilant and proactive in the context of any accentuation of global uncertainties that pose threat to growth and stability in the domestic economy. The domestic outlook continues to be favourable and would dominate the dynamic setting of monetary policy in the period ahead. It is important to design monetary policy such that it protects growth by contributing to the maintenance of stability. Accordingly, while the stance of monetary policy would continue to reinforce the emphasis on price stability and well-anchored inflation expectations and thereby sustain growth momentum, contextually financial stability may assume greater importance in the months to come.

Agriculture

The recent upward trends in global prices of major food items have significant implications for the domestic agricultural sector and overall macroeconomic and financial stability. Increases in global food prices reflected a shortfall in global production and the rising demand for nonfood uses such as bio-fuels. Reflecting the sustained uptrend in major food prices, the food price index (compiled by the IMF) reached a 26-year high in June 2007 - the highest since early 1981. Against the backdrop of these hardening trends in global food prices, there is an urgent need to take measures to accelerate the growth in Indian agriculture, especially food crops.

Although the share of agriculture in overall GDP declined over the years from around 40 per cent in 1980-81 to below a fifth in 2006-07, it continues to play an important role in the Indian economy. Since the mid-1990s, however, the growth of the agricultural sector has been low as well as volatile; the growth decelerated from an annual average of 4.7 per cent per annum during the 1980s to 3.1 per cent during the 1990s and further to 2.2 per cent during the Tenth Plan period. Volatility in agricultural production has not only implications for overall growth but also, as the experience of 2006-07 amply demonstrated, for maintaining low and stable inflation. Enhanced growth of the agricultural sector is vital for ensuring food security, poverty alleviation, price stability, overall inclusive growth and sustainability of growth of the overall economy.

The reduction in agricultural growth since the mid-1990s could be attributed to stagnant/declining yields, which, in turn, reflect a variety of factors such as declining investment, lack of proper irrigation facilities, inadequate other infrastructural facilities, inadequate attention to R&D for developing high yielding varieties of seeds, absence of major technological breakthroughs, improper use of fertilisers/nutrients and institutional weaknesses. In view of stagnation in the production of major foodgrains, there may be a need to refocus production efforts in alternative potential areas with suitable agro-climatic conditions, rather than the traditional areas, particularly in the case of rice and wheat. As Indian agriculture continues to be heavily dependent on the monsoon, the need for enhancing the irrigation potential to meet the growing water requirements of farmers and to impart stability to agricultural production and yield assumes greater emphasis. More focus needs to be placed on agricultural research in the coming years as the success so far has been restricted to select crops. A growing disparity between the actual and the potential yields points to a crucial gap between research and extension. There is an urgent need to revive the extension system

so that it is able to respond to the emerging demands of renewed agricultural growth. In order to bring marketing reforms, there is a need to take forward the process of implementing Agricultural Produce Marketing Committee (APMC) Act in all the States. There is also a need to have an appropriate legislative framework that is conducive to participatory organisations. In view of significant weather and price risks, appropriate risk mitigation policies would need to be put in place to provide relief to distressed farmers as well as enhance efficiency of production. While agricultural growth is envisaged at four per cent per annum during the Eleventh Plan, the Planning Commission's projections suggest that the production of foodgrains needs to increase by 2-2.5 per cent per annum. The production of non-foodgrains will, thus, have to expand at a much higher rate to achieve the overall target of four per cent which will necessitate substantial development of activities such as horticulture, dairy, poultry, and fishery. This would require a revolution on the lines of the green revolution of the 1970s.

Inclusive growth calls for greater financial inclusion with, *inter alia*, enhanced and easy access to institutional credit. The programme for financial inclusion initiated by the Reserve Bank in collaboration with banks and several State Governments by adopting modern technology needs to be intensified and expanded urgently. In view of small and fragmented farm holdings, the population dependent upon agricultural activity and incomes will have to increasingly rely on non-farm sources of income in future. Thus, diversification towards activities such as poultry, food processing and other rural industries will be critical for the betterment of living standards in rural areas. While there has been rapid integration of the Indian economy with the global economy since the early 1990s, the pace of progress on intra-regional integration within the country needs to be quickened to enable the rural areas to reap the benefits of higher growth.

Industry and Infrastructure

The rebound in industrial production that started during 2002-03 continued during 2006-07 resulting from increased domestic and external demand. The sustained growth has led to high capacity utilisation and is contributing to increased investment activity. Modernisation of the capital stock, reduction/rationalisation of import tariffs and other taxes, increased openness of the economy, higher foreign direct investment inflows, greater competitive pressures, increased investment in information and communication technology and greater financial deepening are contributing to productivity gains in industry. The sustained growth in industry is vital to generate employment opportunities and to absorb the disguised labour force dependent upon the agricultural sector.

The manufacturing sector has recorded robust growth, despite several infrastructure deficiencies. It is imperative to augment the existing infrastructure facilities, particularly roads, ports and power, to provide the enabling environment for industry to prosper. There has been mixed progress in the infrastructure sector so far. The telecom sector has witnessed high growth as reflected in the accelerated spread of mobile telephony in the country. Railways and ports have also witnessed some improvement. However, progress remains less than adequate in other sectors such as power, coal, water, roads, urban infrastructure and rural infrastructure. Urban infrastructure is a vital element in the growth process. Studies show that increase in the size of urban agglomerations is associated with large productivity gains.

These gains emanate from the proximity to the product as well as labour markets, which provide savings in trade and transport costs on the one hand and the availability of skilled labour on the other. Efficient functioning of cities of all sizes is essential for improving the overall efficiency. Improvements in the provision of water, transport, sanitation, health and education facilities in urban areas are also essential for the welfare of the poor. The High Level Committee on Infrastructure headed by the Prime Minister has estimated that an investment of Rs.14,50,000 crore during the Eleventh Plan would be required to develop world class infrastructure. This would require a substantial increase in spending on infrastructure by both the public and privates sectors from the current levels of 4.6 per cent of GDP to almost 8 per cent of GDP every year.

Services

The sustained strength of manufacturing activity, strong growth in tourism, improvements in the telecommunications, buoyancy in IT and BPO sectors, robust growth of the construction sector, acceleration in deposit and credit growth and opening up of the insurance sector have buoyed the services sector in recent years. The impressive performance of the services sector was attributable largely to the availability of skilled and cheap labour. However, the sustained acceleration in the services and the manufacturing activities is leading to incipient pressures on the supply of good quality skilled labour. While its demographic profile places the country favourably in terms of manpower availability, there are reports of emerging talent supply shortages. In order to reap the benefits of the demographic dividend, substantial expansion and reforms in the education sector would be needed on an urgent basis.

Fiscal Policy

The process of fiscal consolidation in Central Government finances under the rule-based framework of the FRBM has been characterised by front-loaded reduction in deficit indicators in 2004-05, pause in 2005-06 and resumption of the process in 2006-07. The fiscal correction process is budgeted to continue during 2007-08. With the gross fiscal deficit budgeted at 3.3 per cent of GDP in 2007-08, the FRBM target of 3.0 per cent by 2008-09 appears feasible.

The revenue deficit is budgeted at 1.5 per cent of GDP for 2007-08; the FRBM path envisages elimination of revenue deficit in 2008-09. Adherence to the FRBM target would require a reduction of 1.5 per cent in the revenue deficit/GDP ratio during 2008-09.

The fiscal consolidation strategy has been underpinned by revenue-led correction and reprioritisation of expenditures with a focus on outcomes, reflecting improved quality of adjustment. Maintaining the current buoyancy in tax revenues over a higher base needs to be continued with sustained effort in the light of high income growth. The scope for deepening fiscal empowerment further through improved tax revenues lies in maintaining a moderate structure of tax rates and broadening the base without affecting the growth momentum of the economy. The Government's policy of reprioritising expenditure has led to higher outlays for the social sector. The shares of public expenditure on education and health in India are, however, still low by international standards. Reprioritisation of expenditures towards social sectors along with higher capital outlays would promote fiscal discipline without restricting operational efficiency of the

Government. Higher public spending on social services would improve the social infrastructure and provide productivity gains.

External Sector

India's linkages with the global economy are getting stronger, underpinned by the growing openness of the economy and the two way movement in financial flows. The ratio of merchandise exports to GDP has been rising since the early 1990s reflecting growing international competitiveness. At the same time, import intensity has been rising steadily as domestic entities have expanded access to internationally available raw material and intermediate goods as well as quality inputs for providing the cutting edge to domestic production and export capabilities. Structural shifts in services exports, led by software and other business services, and remittances have imparted stability and strength to India's balance of payments. The net invisible surplus has offset a significant part of the expanding trade deficit and helped to contain the current account deficit to an average of one per cent of GDP since the early 1990s. Capital flows (net) have remained substantially above the current account deficit and have implications for the conduct of monetary policy and macroeconomic and financial stability.

Like India, several other countries are facing a similar situation of excess foreign exchange inflows which is affecting monetary management in these countries as well. However, monetary management at the current juncture in India is more complex than in other EMEs for several reasons. First, domestic interest rates are higher than the return on foreign exchange reserves, which leads to quasi-fiscal costs. Second, although the fiscal deficit and public debt have declined in recent years in India, by international standards, they still remain high. This restricts the flexibility available to fiscal policy to keep inflation relatively low. Third, in India, the real sector has been liberalised over the years which constrains the ability to take administrative measures with regard to supply management. At the same time, several policy rigidities persist, inhibiting the rapid and flexible adjustments that are needed by the demands of a well-functioning market economy. Further, in India, the banking system has been gradually deregulated and the conduct of monetary policy is largely through the use of market-based instruments. This restricts the ability to use administrative instruments such as prescribing deposit and lending rates, which some other countries may be able to use.

Moreover, some countries are managing capital account more actively than before. Finally, it is also necessary to recognise that India is one of the few emerging market economies (EMEs) to record current account deficits, along with a significantly high trade deficit.

There has been a significant liberalisation of the policy framework with regard to capital outflows over the past few years. The policy regime for capital outflows is designed keeping the specific country context in view, especially characteristics of the real sector, and not merely the contextual level of inflows and extant absorptive capacity of the economy. First, the current regime of outflows in India is characterised by liberal but not incentivised framework for corporates to invest in the real economy outside India, including through the acquisition route. The regime has served the country well since Indian corporates are increasingly able to establish synergies with overseas units; to make up for lack of scale that has been a legacy problem in India, and to quickly acquire domain knowledge

through acquisition. Second, significant liberalisation of outflows by individual households has been implemented following recommendation of the Committee on Fuller Capital Account Convertibility (Chairman: Shri S. S. Tarapore, 2006). However, the international experience shows that resident individuals often precede overseas investors in initiating outflows when the perceptions in regard to domestic economy's performance or stability appear to turn adverse. Further, more favourable tax treatment, if any, on investments from foreign destinations relative to domestic investments provides a compelling incentive for round tripping. Third, as regards the regime for outflows through financial intermediaries, the approach is characterised by caution and quantitative stipulations whereby both prudential considerations and compulsions of management of capital account are relevant.

Financial Sector

During 2006-07, the Reserve Bank continued to fine tune the regulatory and supervisory initiatives. In order to ensure asset quality, prudential measures were further tightened through increases in the provisioning requirements and risk weights in respect of specific sectors. The focus of the various prudential and supervisory measures was on anchoring financial stability while providing flexibility to the financial system. In order to further strengthen the domestic banking sector and to conform the banking sector with international best practices, commercial banks will migrate to Basel II norms in a phased manner from the year ending March 2008. Although implementation of Basel II poses a significant challenge to both banks and the regulators, it also offers two major opportunities to banks, viz., refinement of risk management systems and improvement in capital efficiency.

Monetary Policy

In view of the incipient inflationary pressures, the stance of monetary policy progressively shifted from an equal emphasis on price stability along with growth (October 2004/April 2005) to one of reinforcing price stability with immediate monetary measures and to take recourse to all possible measures promptly in response to evolving circumstances (January 2007).

Concomitantly, the Reserve Bank has taken pre-emptive monetary measures beginning mid-2004 to contain inflation and inflationary expectations. The major policy challenge for monetary policy during the recent period has been to manage the transition to a higher growth path while containing inflationary pressures so that potential output and productivity are firmly entrenched to sustain growth. Monetary measures, supported by supply side and fiscal measures, have helped in containing inflation and anchoring inflation expectations while supporting the growth momentum.

The Reserve Bank's self-imposed medium-term ceiling on inflation at 5.0 per cent has had a salutary effect on inflation expectations and the socially tolerable rate of inflation has come down. In recognition of India's evolving integration with the global economy and societal preferences in this regard, the resolve, going forward, would be to condition policy and expectations for inflation in the range of 4.0–4.5 per cent. This would help in maintaining selfaccelerating growth over the medium-term, keeping in view the desirability of inflation at around 3 per cent to ensure India's smooth global integration.

The conduct of monetary policy has turned out to be more complex in recent years for a variety of reasons. Globalisation has brought in its train considerable fuzziness in reading underlying macroeconomic and financial developments, obscuring signals from financial prices and clouding the monetary authority's gauge of the performance of the real economy.

There is considerable difficulty faced by monetary authorities across the world in detecting and measuring inflation, especially inflation expectations. The operation of monetary policy in India is also constrained by some uncertainties in the transmission of policy signals to the economy.

Monetary policy in India has also to contend with the burden of challenges emanating from other sectors. First, fiscal imbalances remain large by international standards and have to be managed in a non-disruptive manner.

Second, the enduring strength of foreign exchange inflows complicates the conduct of monetary policy. Third, in India, levels of livelihood of a large section of the population are inadequate to withstand sharp financial fluctuations which impact real activity. Accordingly, monetary policy has also to take into account the effect on these segments of the economy of volatility in financial markets, often related to sudden shifts in capital flows. Fourth, limitations on the elasticity of aggregate supply domestically impose an additional burden on monetary policy, particularly in the short term. While open trade has expanded the supply potential of several economies, it does not seem to have had any significant short-term salutary effect on supply elasticities. Persisting supply shocks to prices of commodities and services to which headline inflation is sensitive can exert a lasting impact on inflation expectations. Faced with longer term structural bottlenecks also in supply, with less than adequate assurance of timely, convincing and demonstrated resolution, monetary policy has to respond appropriately. The burden and the dilemmas, in fact, are greater in the event of a structural supply problem on account of its persistent effects on inflation. Managing structural change, while keeping inflation low and stable, without dampening the growth momentum is the quintessential challenge to monetary policy in the period ahead.

Alpana Killawala
Chief General Manager

Press Release : 2007-2008/30

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