

The Monopolies and Restrictive Trade Practices Act, 1969

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The Monopolies and Restrictive Trade Practices Act, 1969

(No. 54 of 1969)

[27th December 1969]

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

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

CHAPTER I PRELIMINARY

1. Short title, extent and commencement-

(1) This Act may be called the Monopolies and Restrictive Trade Practices Act, 1969.

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

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

1. 1-6-1970; vide Notification No. S.O. 1981, dated 30.5.1970.

2. Subs. by Act 30 of 1984, sec. 2, for certain words (w.e.f. 1.8.1984)

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

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

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

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

(d) 2[“dominant undertaking” means—

3[****]

4[(iii) An undertaking which, by itself or along with inter-connected undertakings produces, supplies, distributes or otherwise controls not less than one-fourth of the total goods that are produced, supplied or distributed in India or any substantial part thereof; or]

(iv) An undertaking which provides or otherwise controls not less than one-fourth of any services that are rendered in India or any substantial part thereof]

5[* * * *]

Explanation II- Where any goods 6[****] are the subject of different forms of production, supply, distribution or control, every reference in this Act to such goods shall be construed as reference to any of those forms of production, supply, distribution or control, whether taken separately or together or in such groups as may be prescribed.

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

8[Explanation IV- In determining, with reference to the features specified 9 [in sub-clause (iii) or sub-clause (iv)], as the case may be, the question as to whether an undertaking is or is not a dominant undertaking, regard shall be had to-

(i) The average annual production of the goods, or the average annual value of the services provided, by the undertaking during the relevant period; and

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

10 [Explanation V- In determining the question as to whether an undertaking is or is not a dominant

undertaking in relation to any goods supplied, distributed or controlled in India, regard shall be had to the average annual quantity of such goods supplied, distributed or controlled in India by the undertaking during the relevant period.

Explanation VI- For the purposes of this clause, “relevant period” means the period of three calendar years immediately preceding that calendar year which immediately precedes the calendar year in which the question arises as to whether an undertaking is or is not a dominant undertaking.
]

11[Explanation VII- Where goods 12[****] produced in India by an undertaking have been exported to a country outside India, then the goods so exported shall not be taken into account in computing for the purposes of this clause-

(i) The total goods 12[* * *] that are produced in India by that undertaking ;or in India or any substantial part thereof;]

(ii) The total goods 12 [* * **] that re produced, supplied or distributed in India or any substantial part thereof;]

13 [(da) “financial institution” means, –

(i) A public financial institution specified in or under section 4A of the Companies Act, 1956 (I of 1956);

(ii) A State Financial, Industrial or Investment Corporation;

(iii) The State Bank of India or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);

(iv) A nationalised bank, that is to say, a corresponding new bank as defined in section 2 of-

(i) The Banking Companies (Acquisition and Transfer Undertakings) Act, 1970 (5 of 1970); or

(ii) The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980);

(v) The General Insurance Corporation of India established in pursuance of the provisions of section 9 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);

(vi) The Industrial Reconstruction Corporation of India; or

(vii) Any other institution which the Central Government may, by notification, specify in this behalf;]

14[(e) “Goods” means goods as defined in the Sale of Goods Act, 1930 (8 of 1930), and includes,

–

(i) Products manufactured, processed or mined in India;

15[(ii) Shares and stocks including issue of shares before allotment;]

(iii) In relation to goods supplied, distributed or controlled in India, goods imported into India;]

16[* * *]

17[(ef), Group” means a group of-

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

(ii) Associated persons-

Explanation- For the purposes of this clause-

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

(II) “Associated persons”-

(a) In relation to a director of a body corporate, means–

(i) Relative of such director, and includes a firm in which such director or his relative is a partner;

(ii) Any trust of which any such director or his relative is a trustee;

(iii) Any company of which such director, whether independently or together with his relatives, constitutes one-fourth of its Board of directors;

(iv) Any other body corporate, at any general meeting of which not less than one-fourth of the total number of directors of such other body corporate are appointed or controlled by the director of the first mentioned body corporate or his relative, whether acting singly or jointly;

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

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

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

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

18 [***]

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

(i) If one owns or controls the other,

(ii) Where the undertakings are owned by firms, if such firms have one or more common partners,

19 [(iii) Where the undertakings are owned by bodies corporate, –

(a) If one body corporate manages the other body corporate,

(b) If one body corporate is subsidiary of the other body corporate, or

(c) If the bodies corporate are under the same management, or

(d) If one body corporate exercises control over the other body corporate in any other manner;]

(iv) Where one undertaking is owned by a body corporate and the other is owned by a firm, if one or more partners of the firm, –

(a) Hold, directly or indirectly, not less than fifty per cent of the shares, whether preference or equity, of the body corporate, or

(b) Exercise control, directly or indirectly, whether as director or otherwise, over the body corporate,

(v) If one is owned by a body corporate and other is owned by a firm having bodies corporate as its partners, if such bodies corporate are under the same management 20 [****]

(vi) If the undertakings are owned or controlled by the same person or 21 [by the same group],

(vii) If one is connected with the other either directly or through any number of undertakings which are interconnected undertakings within the meaning of one or more of the foregoing sub-clauses.

22 [Explanation I- For the purposes of this Act, 23 [two bodies corporate,] shall be deemed to be under the same management, –

- (i) If one such body corporate exercises control over the other or both are under the control of the same group; or any of the constituents of the same group; or
- (ii) If the managing director or manager of one such body corporate is the managing director or manager of the other; or
- (iii) If one such body corporate holds not less than 24[one-fourth] of the equity shares in the other or controls the composition of not less than 24 [one-fourth] of the total membership of the Board of Directors of the other; or
- (iv) If one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted 25 [whether independently or together with relatives of such directors or the employees of the first mentioned body corporate) one-fourth of the directors of the other; or]
- (v) If the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than 24[one-fourth] of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than 24[one-fourth] of the equity shares in the other; or
- (vi) If the 25 [same body corporate or bodies corporate belonging to a group, holding, whether independently or along with its or their subsidiary or subsidiaries, not less than one-fourth of the equity shares] in one body corporate, also hold not less than 24[one-fourth] of the equity shares in the other; or
- (vii) If not less than 24[one-fourth] of the total voting power 26 [in relation to] each of the two bodies corporate is exercised or controlled by the same individual (whether independently or together with his relatives) or the same body corporate (whether independently or together with its subsidiaries); or
- (viii) If not less than 24 [one-fourth of the total voting power 26 [in relation to] each of the two bodies corporate is exercised or controlled by the same individuals belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or
- (ix) If the directors of the one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an

individual, whether belonging to a group or not.

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

Explanation III- If two or more bodies corporate under the same management hold, in the aggregate, not less than 27 [one-fourth] equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first mentioned bodies corporate.

Explanation IV— In determining whether or not two or more bodies corporate are under the same management, the shares held by 28 [financial institutions] in such bodies corporate shall not be taken into account].

Illustration

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

29 [* * * *]

30[* * * *]

(h) “Member means a member of the Commission;

(i) “Monopolistic trade practice” means a trade practice which has, or is likely to have, the effect of,
—

(i) 31[maintaining the prices of goods or charges for the services] at an unreasonable level by limiting, reducing or otherwise controlling the production, supply or distribution of goods 32[***] or the supply of any services or in any other manner;

(ii) Unreasonably preventing or lessening competition in the production, supply or distribution of any goods or in the supply of any services;

(iii) Limiting technical development or capital investment to the common detriment or allowing the quality of any goods produced, supplied or distributed, or any service rendered, in India to deteriorate;

33 [(iv) Increasing unreasonably, –

(a) The cost of production of any goods; or

(b) Charges for the provision, or maintenance, of any services;

(v) Increasing unreasonably, –

(a) The prices at which goods are, or may be, sold or re-sold, or the charges at which the services are, or may be, provided; or

(b) The profits which are, or may be, derived by the production, supply or distribution (including the sale or purchase) of any goods or by the provision of any service s;

(vi) Preventing or lessening competition in the production, supply or distribution of any goods or in the provision or maintenance of any services by the adoption of unfair methods or unfair or

34 [(j) "Notification" means a notification published in the Official Gazette;

(ja) "Owner", in relation to an undertaking, means an individual, Hindu undivided family, body corporate or other association of individuals, whether incorporated or not, or trust (whether public or private or whether religious or charitable) who or which owns or controls, the whole or substantially the whole of such undertaking, and includes any associated person who is constituent of a group and who has the ultimate control over the affairs of such undertaking;]

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

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

35 [(II) "Produce" includes manufacture and all its grammatical variations and cognate expressions shall be construed accordingly;]

(m) "Register" means the register kept by the 36 [Director General under section 36;

37 [(n) "Registered consumers' association" means a voluntary association of persons registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force which is formed for the purpose of protecting the interests of consumers generally an Act is recognised by the Central Government as such association on an application made in this behalf in such form and such manner as may be prescribed.]

(o) “Restrictive trade practice” means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular, –

(i) Which tends to obstruct the flow of capital or resources into the stream of production, or

(ii) Which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions;

(p) “Retailer”, in relation to the sale of any goods, includes every person, other than a wholesaler, who sells the goods to any other person; and in respect of the sale of goods by a wholesaler, to any person for any purpose other than re-sale, includes that wholesaler;

38 [* * *]

(r) “Service” means service 39 [****] which is made available to potential users and includes the provision of facilities in connection with 40 [banking, financing, insurance 41 [chit fund, real estate], transport processing], supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

42 [Explanation-. For the removal of doubts, it is hereby declared that any dealings in real estate shall be included and shall be deemed always to have been included within the definition of “service”:]

(s) “Trade” means any trade, business, industry, profession or occupation relating to the production, supply, distribution or control of goods and includes the provision of any services;

(t) “Trade association” means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or of persons represented by the members;

(u) “Trade practice,” means any practice relating to the carrying on of any trade, and includes-

(i) Anything done by an), person which controls or affects the price charge of by, or the method of trading of, any trader or any class of traders,

(ii) A single or isolated action of any person in relation to any trade;

43 [(v) “undertaking” means an enterprise which is, or has been, or is proposed to be, engaged in the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, either directly or through one or more of its units or divisions,

whether such unit or division is located at the same place where the undertaking is located or at a different place or at different places.

Explanation I- In this clause, –

(a) “Article” includes a new article and “service” includes a new service;

(b) “Unit” or “division”, in relation to an undertaking includes, –

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

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

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

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

44 [****]

(x) “Wholesaler”, in relation to the sale of any goods, means a person who 45[sells the goods, either in bulk or in large quantities, to any person for the purposes of re-sale, whether in bulk or in the same or smaller quantities];

(y) Words and expressions used but not defined in this Act and defined in the Companies Act, 1956 (1 of 1956), have the meanings respectively assigned to them in that Act.

1. Subs by Act 30 of 1984, sec. 3, for cl. (c) (w.e.f. 1.8.1984).

2. Subs. by Act 30 of 1982, sec. 2, for certain words (w.e.f. 18.8.1982).

3. Clauses (i) and (ii) omitted by Act 58 of 1991, sec. 2(a)(i) (w.e.f. 27.9.1991)

4. Subs. by Act 58 of 1991, sec. 2(b) (ii) for sub-clause (iii) (w.e.f. 27.9.1991).

5. Proviso and Explanation I omitted by Act 58 of 1991, sec. 2(b) (iii) (w.e.f. 27.9.1991).

6. Words “of any description” omitted by Act 58 of 1991, sec. 2(a) (w.e.f. 27.9.1991).

7. Subs. by Act 30 of 1982, w. 2 for Explanation III (w.e.f. 18.8.1982).
8. Subs. by Act 30 of 1984, sec. 3, for Explanation IV (w.e.f. 1.8.1984).
9. Subs. by Act 58 of 1991, sec. 2(b) (iv) for “in sub-clause (i), (iii) or (iv)” (w.e.f. 27.9.1991).
10. Subs. by Act 30 of 1984, sec. 3, for Explanations V and VI (w.e.f. 1.8.1984).
11. Ins. by Act 60 of 1980, sec. 2 (w.e.f. 13.10.1980).
12. Words “of any description” omitted by Act 58 of 1991, sec. 2(a) (w.e.f. 27.9.1991).
13. Ins. by Act 30 of 1984, sec. 3 (w.e.f. 1.8.1984).
14. Subs. by Act 30 of 1984, sec. 3, for cl. (e) (w.e.f. 1.8.1984).
15. Subs. by Act 58 of 1991, sec. 2(c) for sub-clause (ii) (w.e.f. 27.9.1991).
16. Clause (ee) omitted by Act 58 of 1991, sec. 2(d).
17. Ins. by Act 30 of 1984, sec. 3 (w.e.f. 1.8.1984).
18. Clauses (ff) and (fff) omitted by Act 58 of 1991, sec. 2(d) (w.e.f. 27.9.1991).
19. Subs. by Act 30 of 1984, sec. 3, for sub-clause (iii) (w.e.f. 1.8.1984).
20. The words “within the meaning of the said section 370” omitted by Act 41 of 1974, sec. 43 (w.e.f. 1.2.1975).
21. Subs. by Act 30 of 1984, sec. 3, for “group of persons” (w.e.f. 1.8.1984).
22. Ins. by Act 41 of 1974, sec. 43 (w.e.f. 1.2.1975).
23. Subs. by Act 30 of 1984, sec. 3, for certain words (w.e.f. 1.8.1984).
24. Subs. by Act 30 of 1984, sec. 3, for “one-third” (w.e.f. 1.8.1984).
25. Subs. by Act 30 of 1984, sec. 3, for certain words (w.e.f. 1.8.1984).
26. Subs. by Act 30 of 1984, sec. 3, for “with respect to any matter reading to” (w.e.f. 1.8.1984).
27. Subs. by Act 30 of 1984, sec. 3, for “one-third” (w.e.f. 1.8.1984).

28. Subs. by Act 30 of 1984, sec. 3 for public financial installations,” (w.e.f. 1.8.1984).
 29. Explanation omitted by Act 30 of 1984, sec. 3 (w.e.f. 1.8.1984).
 30. Clause (gg) omitted by Act 58 of 1991, sec. 2(d) (w.e.f. 27.9.1991).
 31. Subs. by Act 30 of 1984, sec. 3, for “maintaining prices” (w.e.f. 1.8.1984).
 32. Words “of any description” omitted by Act, 58 of 1991, sec. 2(a) (w.e.f. 27.9.1991),
 33. Ins. by Act 30 of 1984, sec. 3 (w.e.f. 1.8.1984).
 34. Subs. by Act 30 of 1984, sec. 3, for cl. (j) and Explanations thereto (w.e.f. 1.8.1984).
 35. Ins. by Act 30 of 1982, sec. 2 (w.e.f. 18.8.1982).
 - 36 Subs. by Act 30 of 1984, sec. 2, for “Registrar” (w.e.f. 1.8.1984).
 37. Ins. by Act 74 of 1986, sec. 2 (w.e.f. 1.6.1987), clause (n) was previously omitted by Act 30 of 1984, sec. 3 (w.e.f. 1.8.1984).
 38. Clause (q) omitted by Act 58 of 1991, sec. 2(d) (w.e.f. 27.9.1991).
 39. Words “of any description” omitted by Act 58 of 1991, sec. 2(a) (w.e.f. 27.9.1991).
 40. Subs. by Act 30 of 1984, sec. 3, for “banking, insurance, transport” (w.e.f. 1.8.1984).
 41. Ins. by Act 58 of 1991, sec. 2(e)(i) (w.e.f. 27.9.1991).
 - 42 Ins. by Act 58 of 1991, sec. 2(e)(ii) (w.e.f. 27.9.1991).
 43. Subs. by Act 30 of 1984, Sec. 3, for cl. (v) (w.e.f. 1.8.1984).
 44. Clauses (vv) and (w) omitted by Act 58 of 1991, sec. 2(o) (w.e.f. 27.9.1991).
 45. Subs. by Act 30 of 1984, sec. 3, for certain words (w.e.f. 1.8.1984).
- 1[2A. Power of Central Government to decide certain matters- If any question arises as to whether,
—
- (a) Two or more individuals, trustees, associations of individuals, firms or bodies corporate ‘or any combination thereof, constitute, or fall within, a group, or

- (b) Two or more undertakings are inter-connected undertakings within the meaning of this Act, or
- (c) Two or more bodies corporate are under the same management,

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

1. Ins. by Act 30 of 1984, sec. 4 (w.e. f. 1.8-1984).

3. Act not to apply in certain cases- Unless the Central Government, 1[by notification, otherwise directs, this Act shall not apply to-

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

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

1. Subs. by Act 30 of 1984, sec. 2, for certain words (w.e.f. 1.8.1984).

2. Ins. by Act 30 of 1984, sec. 5 (w.e.f. 1.8.1984).

4. Application of other laws not barred-

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

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

(i) Reserve Bank of India Act, 1934 (2 of 1934), or the Banking Regulation Act, 1949 (10 of 1949), or

(ii) State Bank of India Act, 1955 (23 of 1955), or the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), or

(iii) Insurance Act, 1938 (4 of 1938),

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

CHAPTER II

MONOPOLIES AND RESTRICTIVE TRADE PRACTICES COMMISSION

5. Establishment and constitution of the Commission-

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

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

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

1. Subs. by Act 30 of 1984, sec. 2 for certain words (w.e.f. 1.8.1984).

6. Terms of office, conditions of service, etc., of members-

(1) Every member shall hold office for such period, not exceeding five years, as may be specified by

the Central Government in the notification made under sub-section (1) of section 5, but shall be eligible for re-appointment:

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

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

(a) By writing under his hand and addressed to the Central Government resign his office at any time;

(b) Be removed from his office in accordance with the provisions of section 7.

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

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

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

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

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

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

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

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

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

1. Ins. by Act 30 of 1984, sec. 6 (w.e.f. 1.8.1984).
2. Subs. by Act 30 of 1984, sec. 6, for “every member” (w.e.f. 1.8.1984).
3. Subs. by Act 30 of 1984, sec. 6, for “any member” (w.e.f. 1.8.1984).
7. Removal of members from office in certain circumstances-

(1) The Central Government may remove from office any member, who-

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

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

1[8. Appointment of Director General, etc., and staff of the Commission. –

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

(2) The Director General may, by written order, authorise one of the Additional, Joint, Deputy or

Assistant Directors General to function as the Registrar of Agreements subject to registration under this Act.

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

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

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

1. Subs. by Act 30 of 1984, sec. 7, for sec. 8 (w.e.f. 1.8.1984).

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

Jurisdiction, Powers and Procedure of the Commission

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

(a) Any restrictive trade practice-

(i) Upon receiving a complaint of facts which constitute such practice 1[from any trade association or from any consumer or a registered consumer association, whether such consumer is a member of that consumers' association or not], or

(ii) Upon a reference made to it by the Central Government or a State Government, or

(iii) Upon an application made to it by the 2[director General], or

(iv) Upon its own knowledge or information,

(b) Any monopolistic trade practice, upon a reference made to it by the Central Government 3[or upon an application made to it by the Director General] or upon its own knowledge or information.

1. Subs. by Act 74 of 1986, sec 3, for certain words (w.e.f. 1.6.1987).

2. Subs. by Act 30 of 1984, sec. 2, for 'Registrar" (w.e.f. 1.8.1984).

3. Ins. by Act 58 of 1991, sec. 3 (w.e.f. 27.9.1991).

1[11. Investigation by Director General before issue of process in certain cases-

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

(2) The Director General may, upon his own knowledge or information or on a complaint made to him, make, or cause to be made, a preliminary investigation in such manner as he may think fit to enable him to satisfy himself as to whether or not an application should be made by him to the Commission under 3[* * *] section 10.

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

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

1. Subs. by Act 30 of 1984, sec. 8, for sec. 11 (w.e.f. 1.8.1984).

2. Subs. by Act 58 of 1991, sec. 4 (a) for sub-section (1) (w.e.f. 27.9.1991).

3. Words "sub-clause (iii) of clause (a) of" omitted by Act 58 of 1991, sec. 4(b) (w.e.f. 27.9.1991).

12. Powers of the Commission-

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

- (a) The summoning and enforcing the attendance of any witness and examining him on oath;
- (b) The discovery and production of any document or other material object producible as evidence;
- (c) The reception of evidence on affidavits;
- (d) The requisitioning of any public record from any court or office;
- (e) The issuing of any commission for the examination of witnesses;
- 1[(f) The appearance of parties and consequence of non-appearance].

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

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

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

(b) To furnish to an officer so specified such information as respects the trade practice as may be required for the purposes of this Act or such other information as may be in his possession in relation to the trade carried on by any other person.

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

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

1. Ins. By Act 58 of 1991, sec. 5 (a) (w.e.f 27.9.1991).

2. Subs. By Act 58 of 1991, sec. 5(b) for “and Chapter XXV of the Code of Criminal Procedure, 1898 (5 of 1898)”

3. Ins. by Act 30 of 1984, sec. 9 (w.e.f. 1.8.1984).

1[12A. Power of the Commission to grant temporary injunctions-

(1) Where, during an inquiry before the Commission, it is proved, whether by the complainant, Director General, any trader or class of traders or any other person, by affidavit or otherwise, that any undertaking or any person is carrying on, or is about to carry on, any monopolistic or any restrictive, or unfair, trade practice and such monopolistic or restrictive, or unfair trade practice is likely to affect prejudicially the public interest or the interest of any trader, class of traders or traders generally or of any consumer or consumers generally, the Commission may, for the purposes of staying or preventing the undertaking or, as the case may be, such person from causing such prejudicial effect, by order, grant a temporary injunction restraining such undertaking or person from carrying on any monopolistic or restrictive, or unfair, trade practice until the conclusion of such inquiry or until further orders.

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

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

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

1. Ins. by Act 30 of 1984, sec. 10 (w.e.f. 1.8.1984).

2. Ins. by Act 58 of 1991, sec. 6 (w.e.f. 27.9.1991).

12B. Power of the Commission to award compensation-

(1) Where, as a result of the monopolistic or restrictive, or unfair trade practice, carried on by any undertaking or any person, any loss or damage is caused to the Central Government, or any State Government or any trader or class of traders or any consumer, such Government or as the case may be, trader or class of traders or consumer may, without prejudice to the right of such

Government, trader or class of traders or consumer to institute a suit for the recovery of any compensation for the loss or damage so caused, make an application to the Commission for an order for the recovery from that undertaking or owner thereof or, as the case may be, from such person, of such amount as the Commission may determine, as compensation for the loss or damage so caused.

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

(3) The Commission may, after an inquiry made into the allegations made in the application filed under sub-section (1), make an order directing the owner of the undertaking or other person to make payment to the applicant, of the amount determined by it as realisable from the undertaking or the owner thereof, or, as the case may be, from the other person, as compensation for the loss or damage caused to the applicant by reason of any monopolistic or restrictive or unfair trade practice carried on by such undertaking or other person.

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

12C. Enforcement of the order made by the Commission under section 12A or 12B- Every order made by the Commission under section 12A granting a temporary injunction or under section 12B directing the owner of an undertaking or other person to make payment of any amount, may be enforced by the Commission in the same manner as if it were a decree or order made by a court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the court within the local limits of whose jurisdiction,-

(a) In the case of an order against a company, the registered office of the company is situated, or

(b) In the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated.

And thereupon the court to which the order is so sent shall execute the order as if it were a decree

or order sent to it for execution.]

13. Orders of Commission may be subject to conditions, etc.-

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

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

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

1[13A. Power of the Commission to cause investigation to find out whether or not orders made by it have been complied with-

(1) The Commission may, if it has any reasonable cause to believe that any person has omitted or failed to comply with any order made by it under this Act or any obligation imposed on him by or under any order made by the Commission under this Act, authorise the Director General or any officer of the Commission to make an investigation into the matter and the Director General, or the officer so authorised, may, for the purpose of making such investigation, exercise all or any of the powers conferred on the Director General by Section 11.

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

1. Ins. by Act 30 of 1984, sec. 11 (w.e.f. 1.8.1984).

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

(a) The reference therein to a High Court shall be construed as including a reference to the Commission;

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

Gazette, specify in this behalf.]

1. Ins. by Act 58 of 1991, sec. 7 (w.e.f. 27.9.1991).

14. Orders where party concerned does not carry on business in India – Where any practice substantially falls within 1[monopolistic, restrictive or unfair, trade practice, relating to the production, storage, supply,] distribution or control of goods of any description or the provision of any services and any party to such practice does not carry on business in India, an order may be made under this Act with respect to that part of the practices which is carried on in India.

1. Subs. by Act 30 of 1984, sec. 12, for certain words (w.e.f. 1.8.1984).

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

(a) The right of any person to restrain any infringement of a patent granted in India, or

(b) Any person as to the condition which he attaches to a licence to do anything, the doing of which but for the licence would be an infringement of a patent granted in India, or

(c) The right of any person to export goods from India, to the extent to which the monopolistic or restrictive trade practice relates exclusively to the production, supply, distribution or control of goods for such export.

16. Sittings of the Commission-

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

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

17. Hearing to be in public except in special circumstances-

(1) Subject to the provisions of sub-section (2), the hearing of proceedings before the Commission shall be in public.

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

(a) Hear the proceeding or any part thereof in private;

(b) Give directions as to the persons who may be present thereat;

(c) Prohibit or restrict the publication of evidence given before the Commission (whether in public or in private) or of matters contained in documents filed before the Commission.

18. Procedure of the Commission-