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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

Initiative

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 11*th April,* 2023/*Chaitra* 21, 1945 (*Saka*)

The following Act of Parliament received the assent of the President on the 11th April, 2023 and is hereby published for general information:—

THE COMPETITION (AMENDMENT) ACT, 2023

NO. 9 OF 2023

[11*th April*, 2023.]

An Act further to amend the Competition Act, 2002.

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

1. (*1*) This Act may be called the Competition (Amendment) Act, 2023. Short title and commencement.

(*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.

Substitution of references to certain expressions by certain other expressions.

2. In the Competition Act, 2002 (hereinafter referred to as the principal Act),— 12 of 2003.

(*a*) for the words and figures "the Companies Act, 1956", wherever they occur, the words and figures "the Companies Act, 2013" shall be substituted; 1 of 1956. 18 of 2013.

(*b*) for the figures and word "1 of 1956", wherever they occur, the figures and word "18 of 2013" shall be substituted.

Amendment of section 2.

3. In section 2 of the principal Act,—

(*a*) after clause (*e*), the following clause shall be inserted, namely:—

'(*ea*) "commitment" means the commitment referred to in section 48B;';

(*b*) in clause (*h*), for the portion beginning with the words "a person or a department of the Government" and ending with the words "defence and space", the following words shall be substituted, namely:—

"a person or a department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space;";

(*c*) after clause (*k*), the following clause shall be inserted, namely:—

'(*ka*) "party" includes a consumer or an enterprise or a person or an information provider, or a consumer association or a trade association, or the Central Government or any State Government or any statutory authority, as the case may be, and shall include an enterprise or a person against whom any inquiry or proceeding is instituted; and any enterprise or person impleaded by the Commission to join the proceedings;';

(*d*) in clause (*l*), in sub-clause (*vi*), for the words and figures "section 617 of the Companies Act, 1956", the words, brackets and figures "clause (*45*) of section 2 of the Companies Act, 2013" shall be substituted; 1 of 1956. 18 of 2013.

(*e*) for clause (*p*), the following clause shall be substituted, namely:—

'(*p*) "public financial institution" means public financial institution as defined in clause (*72*) of section 2 of the Companies Act, 2013 and includes a State Financial Corporation, State Industrial Corporation or State Investment Corporation;'; 18 of 2013.

(*f*) for clause (*t*), the following clause shall be substituted, namely:—

'(*t*) "relevant product market" means a market comprising of all those products or services—

(*i*) which are regarded as inter-changeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use; or

(*ii*) the production or supply of, which are regarded as inter-changeable or substitutable by the supplier, by reason of the ease of switching production between such products and services and marketing them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices;';

(*g*) after clause (*u*), the following clause shall be inserted, namely:—

'(*ua*) "settlement" means the settlement referred to in section 48A;'.

Amendment of section 3.

4. In section 3 of the principal Act,—

(*a*) in sub-section (*3*), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that an enterprise or association of enterprises or a person or association of persons though not engaged in identical or similar trade shall also be presumed to be part of the agreement under this sub-section if it participates or intends to participate in the furtherance of such agreement.";

(*b*) in sub-section (*4*),—

(*i*) for the words "Any agreement amongst enterprises or persons", the words "Any other agreement amongst enterprises or persons including but not restricted to agreement amongst enterprises or persons" shall be substituted;

(*ii*) in clause (*b*), for the word "supply", the word "dealing" shall be substituted;

(*iii*) before the *Explanation,* the following proviso shall be inserted, namely:—

"Provided that nothing contained in this sub-section shall apply to an agreement entered into between an enterprise and an end consumer.";

(*iv*) in the *Explanation,*—

(*i*) for clauses (*a*) and (*b*), the following clauses shall be substituted, namely:—

'(*a*) "tie-in arrangement" includes any agreement requiring a purchaser of goods or services, as a condition of such purchase, to purchase some other distinct goods or services;

(*b*) "exclusive dealing agreement" includes any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be;';

(*ii*) in clause (*c*), after the word "goods", at both the places where it occurs, the words "or services" shall be inserted;

(*iii*) in clause (*d*), after the word "goods", at both the places where it occurs, the words "or services" shall be inserted;

(*iv*) in clause (*e*), for the words "includes any agreement to sell goods on condition", the words "includes, in case of any agreement to sell goods or provide services, any direct or indirect restriction" shall be substituted;

(*c*) in sub-section (*5*), in clause (*i*), after sub-clause (*f*), the following sub-clause shall be inserted, namely:—

"(*g*) any other law for the time being in force relating to the protection of other intellectual property rights.".

Amendment of section 4.

5. In section 4 of the principal Act, in sub-section (*2*), in clause (*a*), in the *Explanation,* for the words "discriminatory condition or price", the words "condition or price" shall be substituted.

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Amendment of section 5.

6. In section 5 of the principal Act,—

(*A*) in clause (*c*), in sub-clause (*ii*), in item (*B*), for the word "India.", the words "India; or" shall be substituted;

(*B*) after clause (*c*), the following clauses shall be inserted, namely:—

"(*d*) value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds rupees two thousand crore:

Provided that the enterprise which is being acquired, taken control of, merged or amalgamated has such substantial business operations in India as may be specified by regulations.

(*e*) notwithstanding anything contained in clause (*a*) or clause (*b*) or clause (*c*), where either the value of assets or turnover of the enterprise being acquired, taken control of, merged or amalgamated in India is not more than such value as may be prescribed, such acquisition, control, merger or amalgamation, shall not constitute a combination under section 5.";

(*C*) for the *Explanation,* the following *Explanation* shall be substituted, namely:—

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

(*a*) "control" means the ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions by—

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

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

(*b*) "group" means two or more enterprises where one enterprise is directly or indirectly, in a position to—

(*i*) exercise twenty-six per cent. or such other higher percentage as may be prescribed, of the voting rights in the other enterprise; or

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

(*iii*) control the management or affairs of the other enterprise;

(*c*) "turnover" means the turnover certified by the statutory auditor on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (*2*) or sub-section (*4*) of section 6 and such turnover in India shall be determined by excluding intra-group sales, indirect taxes, trade discounts and all amounts generated through assets or business from customers outside India, as certified by the statutory auditor on the basis of the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (*2*) or sub-section (*4*) of section 6;

(*d*) "value of transaction" includes every valuable consideration, whether direct or indirect, or deferred for any acquisition, merger or amalgamation;

(*e*) the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed combination falls and if such financial statement has not yet become due to be filed with the Registrar under the Companies Act, 2013 then as per the statutory auditor's report made on the basis of 18 of 2013.

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the last available audited accounts of the company in the financial year immediately preceding the financial year in which the notice is filed under sub-section (*2*) or sub-section (*4*) of section 6, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights under the laws provided in sub-section (*5*) of section 3;

(*f*) where a portion of an enterprise or division or business is being acquired, taken control of, merged or amalgamated with another enterprise, the value of assets or turnover or value of transaction as may be applicable, of the said portion or division or business or attributable to it, shall be the relevant assets or turnover or relevant value of transaction for the purpose of applicability of the thresholds under section 5.'.

Amendment of section 6.

7. In section 6 of the principal Act,—

(*a*) in sub-section (*2*),—

(*i*) for the words "within thirty days of", the words "after any of the following, but before consummation of the combination" shall be substituted;

(*ii*) in clause (*a*), after the word, brackets and letter "clause (*c*)", the words, brackets and letter "and clause (*d*)" shall be inserted;

(*iii*) in clause (*b*), after the word, brackets and letter "clause (*a*)", the words, brackets and letter "and clause (*d*)" shall be inserted;

(*iv*) the following *Explanation* shall be inserted, namely:—

'Explanation.—For the purposes of this sub-section, "other document" means any document, by whatever name called, conveying an agreement or decision to acquire control, shares, voting rights or assets or if the acquisition is without the consent of the enterprise being acquired, any document executed by the acquiring enterprise, by whatever name called, conveying a decision to acquire control, shares or voting rights or where a public announcement has been made in accordance with the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 made under the Securities and Exchange Board of India Act, 1992 for acquisition of shares, voting rights or control such public document.';

15 of 1992.

(*b*) in sub-section (*2A*), for the words "two hundred and ten days", the words "one hundred and fifty days" shall be substituted;

(*c*) in sub-section (*3*), for the words and figures "sections 29, 30 and 31", the words, figures and letter "sections 29, 29A, 30 and 31" shall be substituted;

(*d*) for sub-sections (*4*) and (*5*) and the *Explanation,* the following shall be substituted, namely:—

'(*4*) Notwithstanding anything contained in sub-sections (*2A*) and (*3*) and section 43A, if a combination fulfils such criteria as may be prescribed and is not otherwise exempted under this Act from the requirement to give notice to the Commission under sub-section (*2*), then notice for such combination may be given to the Commission in such form and on payment of such fee as may be specified by regulations, disclosing the details of the proposed combination and thereupon a separate notice under sub-section (*2*) shall not be required to be given for such combination.

(*5*) Upon filing of a notice under sub-section (*4*) and acknowledgement thereof by the Commission, the proposed combination shall be deemed to have been approved by the Commission under sub-section (*1*) of section 31 and no other approval shall be required under sub-section (*2*) or sub-section (*2A*).

(*6*) If within the period referred to in sub-section (*1*) of section 20, the Commission finds that the combination notified under sub-section (*4*) does not fulfil the requirements specified under that sub-section or the information or declarations provided are materially incorrect or incomplete, the approval under sub-section (*5*) shall be void *ab initio* and the Commission may pass such order as it may deem fit:

Provided that no such order shall be passed unless the parties to the combination have been given an opportunity of being heard.

(*7*) Notwithstanding anything contained in this section and section 43A, upon fulfilment of such criteria as may be prescribed, certain categories of combinations shall be exempted from the requirement to comply with sub-sections (*2*), (*2A*) and (*4*).

(*8*) Notwithstanding anything contained in sub-sections (*4*), (*5*), (*6*) and (*7*)—

(*i*) the rules and regulations made under this Act on the matters referred to in these sub-sections as they stood immediately before the commencement of the Competition (Amendment) Act, 2023 and in force at such commencement, shall continue to be in force, till such time as the rules or regulations, as the case may be, made under this Act; and

(*ii*) any order passed or any fee imposed or combination consummated or resolution passed or direction given or instrument executed or issued or thing done under or in pursuance of any rules and regulations made under this Act shall, if in force at the commencement of the Competition (Amendment) Act, 2023, continue to be in force, and shall have effect as if such order passed or such fee imposed or such combination consummated or such resolution passed or such direction given or such instrument executed or issued or done under or in pursuance of this Act.

(*9*) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign portfolio investor, bank or Category I alternative investment fund, pursuant to any covenant of a loan agreement or investment agreement.

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

(*a*) "Category I alternative investment fund" has the same meaning as assigned to it under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992; 15 of 1992.

(*b*) "foreign portfolio investor" has the same meaning as assigned to it under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 made under the Securities and Exchange Board of India Act,1992.'. 15 of 1992.

Insertion of a new section 6A.

8. After section 6 of the principal Act, the following section shall be inserted, namely:—

Open offers, etc.

'6A. Nothing contained in sub-section (*2A*) of section 6 and section 43A shall prevent the implementation of an open offer or an acquisition of shares or securities

convertible into other securities from various sellers, through a series of transactions on a regulated stock exchange from coming into effect, if—

(*a*) the notice of the acquisition is filed with the Commission within such time and in such manner as may be specified by regulations; and

(*b*) the acquirer does not exercise any ownership or beneficial rights or interest in such shares or convertible securities including voting rights and receipt of dividends or any other distributions, except as may be specified by regulations, till the Commission approves such acquisition in accordance with the provisions of sub-section (*2A*) of section 6 of the Act.

Explanation.—For the purposes of this section, "open offer" means an open offer made in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 made under the Securities and Exchange Board of India Act,1992.'.

15 of 1992.

9. In section 8 of the principal Act, in sub-section (*2*), after the word "industry,", the word "technology," shall be inserted. Amendment of section 8.

10. In section 9 of the principal Act, in sub-section (*1*), in clause (*d*), after the word "industry,", the word "technology," shall be inserted. Amendment of section 9.

11. For section 12 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 12.

"12. (*1*) The Chairperson and other Members shall, for a period of two years from the date on which they cease to hold office, not accept any employment in or advise as a consultant, retainer or in any other capacity whatsoever, or be connected with the management or administration of— Restriction on employment of Chairperson and other Members.

(*a*) any enterprise which is or has been a party to a proceeding before the Commission under this Act; or

(*b*) any person who appears or has appeared before the Commission under section 35.

(*2*) Notwithstanding anything contained in section 35, the Chairperson or any other Member after retirement or otherwise ceasing to be in service for any reason shall not represent for any person or enterprise before the Commission:

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 clause (*45*) of section 2 of the Companies Act, 2013.".

18 of 2013.

12. In section 16 of the principal Act, in sub-section (*1*), for the words "Central Government may, by notification", the words "Commission may, with the prior approval of the Central Government" shall be substituted. Amendment of section 16.

13. For section 18 of the principal Act, the following section shall be substituted, namely:— Substitution of new section for section 18.

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

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Provided that the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country:

Provided further that, the Commission may, for the purpose of discharging its duties or performing its functions under this Act, enter into any memorandum or arrangement with any statutory authority or department of Government.".

Amendment of section 19.

14. In section 19 of the principal Act,—

(*a*) in sub-section (*1*), the following provisos shall be inserted, namely:—

"Provided that the Commission shall not entertain an information or a reference unless it is filed within three years from the date on which the cause of action has arisen:

Provided further that an information or a reference may be entertained after the period specified in the first proviso if the Commission is satisfied that there had been sufficient cause for not filing the information or the reference within such period after recording its reasons for condoning such delay.";

(*b*) in sub-section (*3*),—

(*i*) in clause (*c*), the words "by hindering entry into the market" shall be omitted;

(*ii*) in clause (*d*), for the words "accrual of benefits", the words "benefits or harm" shall be substituted;

(*c*) in sub-section (*6*), after clause (*h*), the following clauses shall be inserted, namely:—

"(*i*) characteristics of goods or nature of services;

(*j*) costs associated with switching supply or demand to other areas.";

(*d*) in sub-section (*7*),—

(*i*) in clause (*a*), after the words "end-use of goods", the words "or the nature of services" shall be inserted;

(*ii*) after clause (*f*), the following clauses shall be inserted, namely:—

"(*g*) costs associated with switching demand or supply to other goods or services;

(*h*) categories of customers.".

Amendment of section 20.

15. In section 20 of the principal Act,—

(*a*) in sub-section (*1*), for the words, brackets and letter "clause (*c*) of that section", the words, brackets, letters and figure "clause (*c*) of section 5 or acquisition of any control, shares, voting right or assets of an enterprise, merger or amalgamation referred to in clause (*d*) of that section" shall be substituted;

(*b*) in sub-section (*3*), for the words "by notification, enhance or reduce, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, the value of assets or the value of turnover", the words "enhance or reduce by notification, or keep at the same level, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, or such factors that in its opinion are relevant in this matter, the value of assets or the value of turnover or value of transaction" shall be substituted;

(*c*) in sub-section (*4*), in clause (*c*), for the word "combination", the word "concentration" shall be substituted.

Amendment of section 21.

16. In section 21 of the principal Act, in sub-section (*1*), for the proviso, the following proviso shall be substituted, namely:—

"Provided that any statutory authority, may, *suo motu,* make a reference to the

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Commission on any issue that involves any provision of this Act or is related to promoting the objectives of this Act, as the case may be.".

Amendment of section 21A.

17. In section 21A of the principal Act, in sub-section (*1*),—

(*a*) for the words "this Act", the words "an Act" shall be substituted;

(*b*) for the proviso, the following proviso shall be substituted, namely:—

"Provided that the Commission, may, *suo motu*, make a reference to a statutory authority on any issue that involves provisions of an Act whose implementation is entrusted to that statutory authority.".

Amendment of section 22.

18. In section 22 of the principal Act, in sub-section (*3*), the words "and in the event of equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote" shall be omitted.

Amendment of section 26.

19. In section 26 of the principal Act,—

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

"(*2A*) The Commission may not inquire into agreement referred to in section 3 or conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information received under section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order.";

(*b*) after sub-section (*3*), the following sub-sections shall be inserted, namely:—

"(*3A*) If, after consideration of the report of the Director General referred to in sub-section (*3*), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter.

(*3B*) The Director General shall, on receipt of direction under sub-section (*3A*), investigate the matter and submit a supplementary report on his findings within such period as may be specified by the Commission.";

(*c*) in sub-section (*4*), for the word, brackets and figure "sub-section (*3*)", at both the places where they occur, the words, brackets, figures and letter "sub-sections (*3*) and (*3B*)" shall be substituted;

(*d*) in sub-section (*5*), for the word, brackets and figure "sub-section (*3*)", the words, brackets, figures and letter "sub-sections (*3*) and (*3B*)" shall be substituted;

(*e*) in sub-section (*8*), for the word, brackets and figure "sub-section (*3*)", the words, brackets, figures and letter "sub-sections (*3*) and (*3B*)" shall be substituted;

(*f*) after sub-section (*8*), the following sub-section shall be inserted, namely:—

"(*9*) Upon completion of the investigation or inquiry under sub-section (*7*) or sub-section (*8*), as the case may be, the Commission may pass an order closing the matter or pass an order under section 27, 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:

Provided that before passing such order, the Commission shall issue a show-cause notice indicating the contraventions alleged to have been committed and such other details as may be specified by regulations and give a reasonable opportunity of being heard to the parties concerned.".

Amendment of section 27.

20. In section 27 of the principal Act, for clause (*b*), the following clause shall be substituted, 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 or income, as the case may be, for the last three

preceding financial years, upon each of such person or enterprise which is a party to such agreement or has abused its dominant position:

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 or income, as the case may be, for each year of the continuance of such agreement, whichever is higher.

Explanation 1.—For the purposes of this clause, the expression "turnover" or "income", as the case may be, shall be determined in such manner as may be specified by regulations.

Explanation 2.—For the purposes of this clause, "turnover" means global turnover derived from all the products and services by a person or an enterprise.'.

Amendment of section 29.

21. In section 29 of the principal Act,—

(*a*) in sub-section (*1*), for the words "within thirty days", the words "within fifteen days" shall be substituted;

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

"(*1B*) The Commission shall, within thirty days of receipt of notice under sub-section (*2*) of section 6, form its *prima facie* opinion referred to in sub-section (*1*).";

(*c*) in sub-section (*2*),—

(*i*) for the words "within seven working days", the words "within seven days" shall be substituted;

(*ii*) for the words "within ten working days", the words "within seven days" shall be substituted;

(*d*) in sub-section (*3*), for the words "within fifteen working days", the words "within ten days" shall be substituted;

(*e*) in sub-section (*4*), for the words "within fifteen working days", the words "within seven days" shall be substituted;

(*f*) in sub-section (*5*), for the words "within fifteen days", the words "within ten days" shall be substituted;

(*g*) for sub-section (*6*), the following sub-sections shall be substituted, namely:—

"(*6*) After receipt of all information, the Commission shall proceed to deal with the case in accordance with the provisions contained in section 29A or section 31, as the case may be.

(*7*) Notwithstanding anything contained in this section, the Commission may accept appropriate modifications offered by the parties to the combination or *suo motu* propose modifications, as the case may be, before forming a *prima facie* opinion under sub-section (*1*).".

Insertion of new section 29A.

22. After section 29 of the principal Act, the following section shall be inserted, namely:—

Issue of statement of objections by Commission and proposal of modifications.

"29A. (*1*) Upon completion of the process under section 29, where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall issue a statement of objections to the parties identifying such appreciable adverse effect on competition and direct the parties to explain within twenty-five days of receipt of the statement of objections, why such combination should be allowed to take effect.

(*2*) Where the parties to the combination consider that such appreciable adverse effect on competition can be eliminated by suitable modification to such combination,

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they may submit an offer of appropriate modification to the combination along with their explanation to the statement of objections issued under sub-section (*1*) in such manner as may be specified by regulations.

(*3*) If the Commission does not accept the modification submitted by the parties under sub-section (*2*) it shall, within seven days from the date of receipt of the proposed modifications under that sub-section, communicate to the parties as to why the modification is not sufficient to eliminate the appreciable adverse effect on competition and call upon the parties to furnish, within twelve days of the receipt of the said communication, revised modification, if any, to eliminate the appreciable adverse effects on competition:

Provided that the Commission shall evaluate such proposal for modification within twelve days from receipt of such proposal:

Provided further that the Commission may *suo motu* propose appropriate modifications to the combination which may be considered by the parties to the combination.".

Amendment of section 31.

23. In section 31 of the principal Act,—

(*a*) in the marginal heading, the word "certain" shall be omitted;

(*b*) in sub-section (*1*), the words "including the combination" shall be omitted;

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

"Provided that if the Commission does not form a *prima facie* opinion as provided under sub-section (*1B*) of section 29, the combination shall be deemed to have been approved and no separate order shall be required to be passed.";

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(*d*) for sub-sections (*3*), (*4*), (*5*) and (*6*), the following sub-sections shall be substituted, namely:—

"(*3*) Where the Commission is of the opinion that any appreciable adverse effect on competition that the combination has, or is likely to have, can be eliminated by modification proposed by the parties or the Commission, as the case may be, under sub-section (*7*) of section 29 or sub-section (*2*) or sub-section (*3*) of section 29A, it may approve the combination subject to such modifications as it thinks fit.

(*4*) Where a combination is approved by the Commission under sub-section (*3*), the parties to the combination shall carry out such modification within such period as may be specified by the Commission.

(*5*) Where—

(*a*) the Commission has directed under sub-section (*2*) that the combination shall not take effect; or

(*b*) the parties to the combination, fail to carry out the modification within such period as may be specified by the Commission under sub-section (*4*); or

(*c*) the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition which cannot be eliminated by suitable modification to such combination,

then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that such combination shall not be given effect to, or be declared void, or frame a scheme to be implemented by the parties to address the appreciable adverse effect on competition, as the case may be.

(*6*) If no order is passed or direction issued by the Commission in accordance with the provisions of sub-section (*1*) or sub-section (*2*) or sub-section (*3*) or sub-section (*5*), as the case may be, within a period of one hundred and fifty days from the date of notice given to the Commission under sub-section (*2*) of section 6, the combination shall be deemed to have been approved by the Commission.";

(*e*) sub-sections (*7*), (*8*), (*9*), (*10*), (*11*) and (*12*) shall be omitted.

Amendment of section 32.

24. In section 32 of the principal Act, for the figures and word "29 and 30", the figures, letter and word "29, 29A and 30" shall be substituted.

Amendment of section 35.

25. Section 35 of the principal Act shall be numbered as sub-section (*1*) thereof,—

(*a*) in sub-section (*1*) as so numbered, for the words "A person or an enterprise", the words "A party" shall be substituted;

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

"(*2*) Without prejudice to sub-section (*1*), a party may call upon experts from the fields of economics, commerce, international trade or from any other discipline to provide an expert opinion in connection with any matter related to a case.".

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Amendment of section 41.

26. In section 41 of the principal Act,—

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

"(*3*) Without prejudice to sub-section (*2*), it shall be the duty of all officers, other employees and agents of a party which are under investigation—

(*a*) to preserve and to produce all information, books, papers, other documents and records of, or relating to, the party which are in their custody or power to the Director General or any person authorised by it in this behalf; and

(*b*) to give all assistance in connection with the investigation to the Director General.

(*4*) The Director General may require any person other than a party referred to in sub-section (*3*) to furnish such information or produce such books, papers, other documents or records before it or any person authorised by it in this behalf if furnishing of such information or the production of such books, papers, other documents or records is relevant or necessary for the purposes of its investigation.

(*5*) The Director General may keep in his custody any information, books, papers, other documents or records produced under sub-section (*3*) or sub-section (*4*) for a period of one hundred and eighty days and thereafter shall return the same to the person by whom or on whose behalf the information, books, papers, other documents or records were produced:

Provided that the information, books, papers, other documents or records may be called for by the Director General if they are needed again for a further period of one hundred and eighty days by an order in writing:

Provided further that the certified copies of the information, books, papers, other documents or records, as may be applicable, produced before the Director General may be provided to the party or person on whose behalf the information, books, papers, other documents or records are produced at their own cost.

(*6*) The Director General may examine on oath—

(*a*) any of the officers and other employees and agents of the party being investigated; and

(*b*) with the previous approval of the Commission, any other person,

in relation to the affairs of the party being investigated and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.

(*7*) The examination under sub-section (*6*) shall be recorded in writing and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against it.

(*8*) Where in the course of investigation, the Director General has reasonable grounds to believe that information, books, papers, other documents or records of, or relating to, any party or person, may be destroyed, mutilated, altered, falsified or secreted, the Director General may make an application to the Chief Metropolitan Magistrate, Delhi for an order for seizure of such information, books, papers, other documents or records.

(*9*) The Director General may make requisition of the services of any police officer or any officer of the Central Government to assist him for all or any of the purposes specified in sub-section (*10*) and it shall be the duty of every such officer to comply with such requisition.

(*10*) The Chief Metropolitan Magistrate, Delhi may, after considering the application and hearing from the Director General, by order, authorise the Director General—

(*a*) to enter, with such assistance, as may be required, the place or places where such information, books, papers, other documents or records are kept;

(*b*) to search that place or places in the manner specified in the order; and

(*c*) to seize information, books, papers, other documents or records as it considers necessary for the purpose of the investigation:

Provided that certified copies of the seized information, books, papers, other documents or records, as the case may be, may be provided to the party or person from whose place or places such documents have been seized at its cost.

(*11*) The Director General shall keep in his custody such information, books, papers, other documents or records seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the party or person from whose custody or power they were seized and inform the Chief Metropolitan Magistrate, of such return:

Provided that the Director General may, before returning such information, books, papers, other documents or records take copies of, or extracts thereof or place identification marks on them or any part thereof.

(*12*) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating to search or seizure made under that Code."; 2 of 1974.

(*b*) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

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

(*a*) "agent", in relation to any person, means any one acting or purporting to act for or on behalf of such person, and includes the bankers, and persons employed as auditors and legal advisors, by such person;

(*b*) "officers", in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate;

(*c*) any reference to officers and other employees or agents shall be construed as a reference to past as well as present officers and other employees or agents, as the case may be.'.

Amendment of section 42.

27. In section 42 of the principal Act,—

(*a*) in sub-section (*2*), for the words, figures and letters "sections 27, 28, 31, 32, 33, 42A and 43A of the Act, he shall be punishable with fine", the words, figures and letters "sections 6, 27, 28, 31, 32, 33, 42A, 43, 43A, 44 and 45 of the Act, he shall be liable to a penalty" shall be substituted;

(*b*) in sub-section (*3*), for the words, brackets and figure "pay the fine imposed under sub-section (*2*)", the words, brackets and figure "pay the penalty imposed under sub-section (*2*)" shall be substituted.

India Code

Amendment of section 42A.

28. In section 42A of the principal Act, for the words and figures "under sections 27", the words and figures "under sections 6, 27" shall be substituted.

Amendment of section 43.

29. In section 43 of the principal Act, for the words "shall be punishable with fine", the words "shall be liable to a penalty" shall be substituted.

Substitution of new section for section 43A.

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

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

"43A. If any person or enterprise fails to give notice to the Commission under sub-section (*2*) or sub-section (*4*) of section 6 or contravenes sub-section (*2A*) of section 6 or submit information pursuant to an inquiry under sub-section (*1*) of section 20, the Commission may impose on such person or enterprise, a penalty which may extend to one per cent., of the total turnover or assets or the value of transaction referred to in clause (*d*) of section 5, whichever is higher, of such a combination:

Provided that in case any person or enterprise has given a notice under sub-section (*4*) of section 6 and such notice is found to be void *ab initio* under sub-section (*6*) of section 6, then a notice under sub-section (*2*) of section 6 may be given by the acquirer or parties to the combination, as may be applicable, within a period of thirty days of the order of the Commission under sub-section (*6*) of that section and no action under this section shall be taken by the Commission till the expiry of such period of thirty days.".

Amendment of section 44.

31. In section 44 of the principal Act, for the words "rupees one crore", the words "rupees five crore" shall be substituted.

Amendment of section 45.

32. In section 45 of the principal Act,—

(*a*) in the marginal heading, for the word "offences", the word "contraventions" shall be substituted;

(*b*) in sub-section (*1*),—

(*i*) after the words "Without prejudice to the provisions of", the words, brackets and figures "sub-section (*6*) of section 6 and" shall be inserted;

(*ii*) for the words "punishable with fine", the words "liable to a penalty" shall be substituted.

Substitution of new section for section 46.

33. For section 46 of the principal Act, the following section shall be substituted, namely:—

Power to impose lesser penalty.

"46. (*1*) 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 may be specified by regulations, than leviable under this Act or the rules or the regulations made under this Act:

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:

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 has made the full, true and vital disclosures under this section:

Provided also 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:

Provided also that the Commission may, if it is 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 contravention 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.

(*2*) The Commission may allow a producer, seller, distributor, trader or service provider included in the cartel, to withdraw its application for lesser penalty under this section, in such manner and within such time as may be specified by regulations.

(*3*) Notwithstanding anything contained in sub-section (*2*), the Director General and the Commission shall be entitled to use for the purposes of this Act, any evidence submitted by a producer, seller, distributor, trader or service provider in its application for lesser penalty, except its admission.

(*4*) Where during the course of the investigation, a producer, seller, distributor, trader or service provider who has disclosed a cartel under sub-section (*1*), makes a full, true and vital disclosure under sub-section (*1*) with respect to another cartel in which it is alleged to have violated section 3, which enables the Commission to form a *prima facie* opinion under sub-section (*1*) of section 26 that there exists another cartel, then the Commission may impose upon such producer, seller, distributor, trader or

service provider a lesser penalty as may be specified by regulations, in respect of the cartel already being investigated, without prejudice to the producer, seller, distributor, trader or service provider obtaining lesser penalty under sub-section (*1*) regarding the newly disclosed cartel.".

Amendment of section 47.

34. In section 47 of the principal Act, after the word "penalties", the words "and recovery of legal costs by the Commission" shall be inserted.

Substitution of new sections for section 48.

35. For section 48 of the principal Act, the following sections shall be substituted, namely:—

Contravention by companies.

'48. (*1*) Where a person committing contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be in contravention of this Act and unless otherwise provided in this Act, the Commission may impose such penalty on such persons, as it may deem fit which shall not be more than ten per cent. of the average of the income for the last three preceding financial years:

Provided that in case any agreement referred to in sub-section (*3*) of section 3 has been entered into by a cartel, the Commission may unless otherwise provided in this Act, impose upon such persons referred to in sub-section (*1*), a penalty of up to ten per cent. of the income for each year of the continuance of such agreement.

(*2*) Nothing contained in sub-section (*1*) shall render any such person liable to any penalty if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.

(*3*) Notwithstanding anything contained in sub-section (*1*), where a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officers of the company, such director, manager, secretary or other officers shall also be deemed to be in contravention of the provisions of this Act and unless otherwise provided in this Act, the Commission may impose such penalty on such persons, as it may deem fit which shall not be more than ten per cent. of the average of the income for the last three preceding financial years:

Provided that in case any agreement referred to in sub-section (*3*) of section 3 has been entered into by a cartel, the Commission may, unless otherwise provided under this Act, impose upon such person a penalty as it may deem fit which shall not exceed ten per cent. of the income for each year of the continuance of such agreement.

Explanation.—For the purposes of this section,—

(*a*) "company" means a body corporate and includes a firm or other association of individuals;

(*b*) "director", in relation to a firm, means a partner in the firm;

(*c*) "income", in relation to a person, shall be determined in such manner as may be specified by regulations.

Settlement.

48A. (*1*) Any enterprise, against whom any inquiry has been initiated under sub-section (*1*) of section 26 for contravention of sub-section (*4*) of section 3 or section 4, may, for settlement of the proceeding initiated for the alleged contraventions, submit an application in writing to the Commission in such form and upon payment of such fee as may be specified by regulations.

(*2*) An application under sub-section (*1*) may be submitted at any time after the receipt of the report of the Director General under sub-section (*4*) of section 26 but prior to such time before the passing of an order under section 27 or section 28 as may be specified by regulations.

(*3*) The Commission may, after taking into consideration the nature, gravity and impact of the contraventions, agree to the proposal for settlement, on payment of such amount by the applicant or on such other terms and manner of implementation of settlement and monitoring as may be specified by regulations.

(*4*) While considering the proposal for settlement, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.

(*5*) If the Commission is of the opinion that the settlement offered under sub-section (*1*) is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the settlement within such time as may be specified by regulations, it shall, by order, reject the settlement application and proceed with its inquiry under section 26.

(*6*) The procedure for conducting the settlement proceedings under this section shall be such as may be specified by regulations.

(*7*) No appeal shall lie under section 53B against any order passed by the Commission under this section.

(*8*) All settlement amounts, realised under this Act shall be credited to the Consolidated Fund of India.

Commitment.

48B. (*1*) Any enterprise, against whom any inquiry has been initiated under sub-section (*1*) of section 26 for contravention of sub-section (*4*) of section 3 or section 4, as the case may be, may submit an application in writing to the Commission, in such form and on payment of such fee as may be specified by regulations, offering commitments in respect of the alleged contraventions stated in the Commission's order under sub-section (*1*) of section 26.

(*2*) An offer for commitments under sub-section (*1*) may be submitted at any time after an order under sub-section (*1*) of section 26 has been passed by the Commission but within such time prior to the receipt by the party of the report of the Director General under sub-section (*4*) of section 26 as may be specified by regulations.

(*3*) The Commission may, after taking into consideration the nature, gravity and impact of the alleged contraventions and effectiveness of the proposed commitments, accept the commitments offered on such terms and the manner of implementation and monitoring as may be specified by regulations.

(*4*) While considering the proposal for commitment, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.

(*5*) If the Commission is of the opinion that the commitment offered under sub-section (*1*) is not appropriate in the circumstances or if the Commission and the party concerned do not reach an agreement on the terms of the commitment, it shall pass an order rejecting the commitment application and proceed with its inquiry under section 26 of the Act.

(*6*) The procedure for commitments offered under this section shall be such as may be specified by regulations.

(*7*) No appeal shall lie under section 53B against any order passed by the Commission under this section.

Revocation of the settlement or commitment order and penalty.

48C. If an applicant fails to comply with the order passed under section 48A or section 48B or it comes to the notice of the Commission that the applicant has not made full and true disclosure or there has been a material change in the facts, the order passed under section 48A or section 48B, as the case may be, shall stand revoked and withdrawn and such enterprise shall be liable to pay legal costs incurred by the Commission which may extend to rupees one crore and the Commission may restore or initiate the inquiry in respect of which the order under section 48A or section 48B was passed.'.

Amendment of section 49.

36. In section 49 of the principal Act, in sub-section (*3*), after the words "competition advocacy", the words "or culture" shall be inserted.

Amendment of section 51.

37. In section 51 of the principal Act, in sub-section (*1*), after clause (*d*), the following clause shall be inserted, namely:—

"(*e*) all sums received by the Commission from such other sources as may be decided upon by the Government.".

Amendment of section 53A.

38. In section 53A of the principal Act, in sub-section (*1*), in clause (*a*), for the words, brackets and figures "sub-sections (*2*) and (*6*) of section 26", the words, brackets, figures and letter "sub-section (*6*) of section 6, sub-sections (*2*), (*2A*), (*6*) and (*9*) of section 26" shall be substituted.

Amendment of section 53B.

39. In section 53B, in sub-section (*2*), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the Commission, shall be entertained by the Appellate Tribunal unless the appellant has deposited twenty-five per cent. of that amount in the manner as directed by the Appellate Tribunal.".

Amendment of section 53N.

40. In section 53N of the principal Act,—

(*a*) in sub-section (*1*), for the words, brackets, figures and letter "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 enterprise", the words, brackets, figures and letters "under sub-section (*2*) of section 53Q or the orders of the Supreme Court in an appeal against the findings of the Appellate Tribunal under section 53T or an order for settlement passed under section 48A, 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 enterprise or as a result of order of settlement passed by the Commission" shall be substituted;

(*b*) in sub-section (*2*), after the words "findings of the Commission", the words "or Appellate Tribunal or the Supreme Court, or an order for settlement" shall be inserted;

(*c*) in the *Explanation*,—

(*i*) in clause (*a*), after the words, brackets, figures and letter "sub-section (*1*) of section 53A", the words, figures and letter "or the Supreme Court on appeal under section 53T" shall be inserted;

(*ii*) in clause (*b*), after the words "or the Appellate Tribunal", the words "or the Supreme Court," shall be inserted.

Amendment of section 53Q.

41. In section 53Q of the principal Act, for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*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 contempt proceeding under section 53U.".

Insertion of new section 59A.

42. After section 59 of the principal Act, the following section shall be inserted, namely:—

Compounding of certain offences.

2 of 1974.

"59A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with imprisonment only or imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by the Appellate Tribunal or a court before which such proceeding is pending.".

Amendment of section 63.

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

(*i*) clause (*a*) shall be re-lettered as clause (*ae*) thereof, and before clause (*ae*) as so re-lettered, the following clauses shall be inserted, namely:—

"(*a*) the value of the assets or turnover of the enterprise acquired, taken control of, merged or amalgamated in India under clause (*e*) of section 5;

(*ab*) the percentage of voting rights higher than twenty-six per cent. under sub-clause (*i*) of clause (*b*) of the *Explanation* to section 5;

(*ac*) the criteria of combinations under sub-section (*4*) of section 6;

(*ad*) the criteria under sub-section (*7*) of section 6;";

(*ii*) after clause (*mf*), the following clause shall be inserted, namely:—

"(*mg*) the form of the publication of guidelines under sub-section (*5*) of section 64B;".

Amendment of section 64.

44. In section 64 of the principal Act, in sub-section (*2*),—

(*i*) for clause (*c*), the following clauses shall be substituted, namely:—

"(*c*) the manner of determination of substantial business operations in India under clause (*d*) of section 5;

(*ca*) the form and fee for notice for combination under sub-section (*4*) of section 6;

(*cb*) the time and manner for filing notice of acquisition under clause (*a*) of section 6A;

(*cc*) the manner and circumstance in which the acquirer may exercise the ownership or beneficial right or interest in shares or convertible securities including voting right and receipt of dividends or any other distributions as an exception under clause (*b*) of section 6A;";

(*ii*) after clause (*f*), the following clauses shall be inserted, namely:—

"(*fa*) other details to be indicated in the show-cause notice under sub-section (*9*) of section 26;

(*fb*) the manner of determining turnover or income under the *Explanation* to clause (*b*) of section 27;

(*fc*) the manner in which modification may be proposed by parties to the combination to the Commission under sub-section (*2*) of section 29A;";

(*iii*) after clause (*g*), the following clauses shall be inserted, namely:—

"(*ga*) the lesser penalty to be imposed on producer, seller, distributor, trader or service provider under sub-section (*1*) of section 46;

(*gb*) the manner and time for withdrawal of application for lesser penalty under sub-section (*2*) of section 46;

(*gc*) the lesser penalty to be imposed on producer, seller, distributor, trader or service provider under sub-section (*4*) of section 46;

(*gd*) the manner of determining income under clause (*c*) of *Explanation* to section 48;

(*ge*) the form of application and fee under sub-section (*1*), the time under sub-section (*2*), the terms and manner of implementations and monitoring under sub-section (*3*) and the procedure for conducting settlement proceedings under sub-section (*6*) of section 48A;

(*gf*) the form of application and fee under sub-section (*1*), the time under sub-section (*2*), the terms and manner of implementations and monitoring under sub-section (*3*) and the procedure for commitments offered under sub-section (*6*) of section 48B;

(*gg*) the other details to be published along with draft regulations and the period for inviting public comments under clause (*a*) of section 64A;".

Insertion of new sections 64A and 64B.

45. After section 64 of the principal Act, the following sections shall be inserted, namely:—

Process of issuing regulations.

"64A. The Commission shall ensure transparency while making regulations under section 64, by—

(*a*) publishing draft regulations along with such other details as may be specified on its website and inviting public comments for a specified period prior to issuing regulations;

(*b*) publishing a general statement of its response to the public comments, not later than the date of notification of the regulations;

(*c*) periodically reviewing such regulations:

Provided that if the Commission is of the opinion that certain regulations are required to be made or existing regulations are required to be amended urgently in public interest or the subject matter of the regulation relates solely to the internal functioning of the Commission, it may make regulations or amend the existing regulations, as the case may be, without following the provisions stated in this section recording the reason, for doing so.

Commission to issue guidelines.

64B. (*1*) The Commission may publish guidelines on the provisions of this Act or the rules and regulations made thereunder either on a request made by a person or on its own motion.

(*2*) Guidelines issued under sub-section (*1*) shall not be construed as determination of any question of fact or law by the Commission, its Members or officers and shall not be binding on the Commission, its Members or officers.

(*3*) Without prejudice to anything contained in sub-section (*1*), the Commission shall publish guidelines as to the appropriate amount of any penalty for any contravention of provision of this Act.

(*4*) While imposing penalty under clause (*b*) of section 27 or under section 43A or section 48 for any contravention of provision of this Act, the Commission shall consider the guidelines under sub-section (*3*) and provide reasons in case of any divergence from such guidelines.

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(*5*) The guidelines under sub-sections (*1*) and (*3*) shall be published in such form as may be prescribed.".

———

DR. REETA VASISHTA,
Secretary to the Govt. of India.

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