

**THE COMPETITION (AMENDMENT) BILL, 2020**

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**BILL**

*further to amend the Competition Act, 2002.*

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

	<b>1.</b> (1) This Act may be called the Competition (Amendment) Act, 2020.	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 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.	
12 of 2003.	<b>2.</b> In section 2 of the Competition Act, 2002 (hereinafter referred to as the principal Act),—	Amendment of section 2.
	(a) in clause (a), the following <i>Explanation</i> shall be inserted, namely: —  “ <i>Explanation.</i> - For the purposes of this section, 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 (18 of 2013) then as per the statutory auditor’s report, made 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, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout- design or similar other commercial rights, if any, referred to in sub-section (1) of section 4A..”.	

	<p>(b) for clause (c), the following clause shall be substituted, namely: —</p> <p>“(c) “cartel” includes an association of producers, buyers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit or control or attempt to limit or control the production, distribution, sale or price of, or, trade in goods or provision of services;”.</p>	
	<p>(c) for clause (f), the following clause shall be substituted, namely: —</p> <p>“(f) “consumer” means any person or, a department of the Government who buys, hires or avails of any goods or services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods or services other than the person who buys, hires or avails of such goods or services, respectively, for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase, hiring or availing of goods or services is for resale or for any commercial purpose or for personal use;”.</p>	
	<p>(d) In clause (h), for the portion beginning with ““enterprise” means a person or a department of the Government” and ending with “energy, currency, defence and space;” the following shall be substituted, namely: —</p> <p>“ “enterprise” means a person or a department of the Government or other entity regardless of its legal form or status, 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;”.</p>	
	<p>(e) after clause (i), the following clause shall be inserted, namely: —</p>	

	“(ia) “Governing Board” means the governing board constituted under sub-section (1A) of section 8;”.	
	(f) for clause (j), the following clause shall be substituted, namely: — “ “Member” means a Member of the Commission or the Governing Board appointed under sub-sections (1) or (1A) of section 8, respectively and includes the Chairperson;” .	
	(g) after clause (k), the following clauses shall be inserted, namely: —	
	“(ka) “Panel of Whole-time Members” means a panel comprising of three Whole-time Members of the Commission;	
	(kb) “Part-time Member” means a part-time Member appointed under clause (b) or clause (c) of sub-section (1A) of section 8;	
	(kc) “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 shall also include any enterprise or person impleaded by the Commission to join the proceedings;”.	
18 of 2013	(h) in sub-clause (vi) of clause (l), for the words “section 617 of the Companies Act, 1956 (1 of 1956)”, the words, brackets and figures “clause (45) of section 2 of the Companies Act, 2013 (18 of 2013)” shall be substituted.	
18 of 2013	(i) in clause (p), for the words “section 4A of the Companies Act, 1956 (1 of 1956)”, the words, brackets and figures “clause (72) of section 2 of the Companies Act, 2013 (18 of 2013)” shall be substituted.	
	(j) in clause (q), for the word “Commission” the words “Governing Board” shall be substituted.	
	(k) for clause (t), the following shall be substituted, namely: —  “(t). “relevant product market” means a market comprising all those products or services:  (i) which are regarded as interchangeable or substitutable by the consumer, by reason of	

	<p>characteristics of the products or services, their prices and intended use; or</p> <p>(ii) the production or supply of which are regarded as interchangeable 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;”.</p>	
	<p>(l) after clause (y), the following clause shall be inserted namely: —</p> <p>“(ya) “Whole-time Member” means a whole-time Member appointed under sub-section (1) of section 8 and includes the Chairperson;”.</p>	
18 of 2013	<p>(m) in clause (z), for the words “Companies Act, 1956 (1 of 1956)”, the words, brackets and figures “Companies Act, 2013 (18 of 2013)” shall be substituted.</p>	
	<p><b>3.</b> In section 3 of the principal Act, —</p>	Amendment of section 3.
	<p>(a) in sub-section (3), after the <i>proviso</i>, the following <i>proviso</i> shall be inserted, namely: —</p> <p>“Provided further that an enterprise or association of enterprises or person or association of persons though not engaged in identical or similar trade shall be presumed to be part of the agreement under this sub-section if it actively participates in the furtherance of such an agreement.”.</p>	
	<p>(b) in sub-section (4), for the words “Any agreement amongst enterprises or persons at different stages”, the following shall be substituted, namely: —</p> <p>“Any other agreement amongst enterprises or persons including but not restricted to agreements amongst enterprises or persons at different stages”.</p>	
	<p>(c) in clause (a) of the <i>Explanation</i>, after the word “goods”, at both places where it occurs, the words “or services” shall be inserted; and after the words “purchase some other”, the word “distinct” shall be inserted.</p>	
	<p>(d) for clause (b) of the <i>Explanation</i>, the following clause shall be substituted, namely: —</p>	

	“(b) “exclusive dealing agreement” includes any agreement restricting in any manner the purchaser or the seller, as the case maybe, 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;”.	
	(e) in clause (c) of the <i>Explanation</i> , after the word “goods”, at both places where it occurs, the words “or services” shall be inserted.	
	(f) in clause (d) of the <i>Explanation</i> , after the word “goods”, at both places where it occurs, the words “or services” shall be inserted.	
	(g) in clause (e) of the <i>Explanation</i> , 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.	
	(h) sub-section (5) shall be omitted.	
	<b>4.</b> In section 4 of the principal Act, in the <i>Explanation</i> to clause (a) of sub-section (2), the words “discriminatory condition or price”, shall be substituted with the words “conditions or prices”.	Amendment of section 4.
	<b>5.</b> After section 4 of the principal Act, the following section 4A shall be inserted, —  “4A. Nothing contained in section 3 or section 4 shall restrict the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his rights which have been or may be conferred under:  (a) the Copyright Act, 1957 (14 of 1957);  (b) the Patents Act, 1970 (39 of 1970);  (c) the Trade and Merchandise Marks Act, 1958 (43 of 1958) or the Trade Marks Act, 1999 (47 of 1999);  (d) the Geographical Indications of Goods (Registration and Protection) Act, 1999 (48 of 1999);  (e) the Designs Act, 2000 (16 of 2000);  (f) the Semi-conductor and Integrated Circuits Layout-Design Act, 2000 (37 of 2000);	Insertion of a new section 4A  Protection to holders of intellectual property rights, etc.
14 of 1957		
39 of 1970		
43 of 1958		
47 of 1999		
48 of 1999		
16 of 2000		

37 of 2000	<p>(g) any other law for the time being in force relating to the protection of other intellectual property rights.</p> <p>(2) Nothing contained in section 3 shall restrict the right of any person to export goods from India to the extent to which the agreement relates exclusively to the production, supply, distribution or control of goods or provision of services for such export.”.</p>	
	<p><b>6.</b> In section 5 of the principal Act, —</p>	<p>Amendment of section 5.</p>
	<p>(a) after clause (c), the following <i>provisos</i> shall be inserted, namely: —</p>	
	<p>“<b>Provided</b> that the Central Government may in public interest and in consultation with the Commission prescribe any criteria other than those prescribed in clauses (a), (b) and (c), the fulfilment of which shall cause any acquisition of control, shares, voting rights or assets, merger or amalgamation to be deemed to be a combination under this section and a notice for any acquisition of control, shares, voting rights or assets, merger or amalgamation fulfilling such criteria shall be given to the Commission under section 6.</p>	
	<p>“<b>Provided</b> further that, where either the value of assets or turnover or criteria prescribed under the first proviso in India of the enterprise being acquired, taken control of, merged or amalgamated is not more than such value as may be prescribed by the Central Government in consultation with the Commission from time to time, such acquisition, merger or amalgamation, notwithstanding anything contained in clauses (a), (b), (c) or the first proviso, shall not constitute a combination under section 5 of the Act.”.</p>	
	<p>(b) for clause (a) of the <i>Explanation</i>, the following clause shall be substituted, namely: —</p> <p>“(a) “control” means the ability to exercise material influence, in any manner whatsoever, over the management or affairs or strategic commercial decisions by—</p> <p>(i) one or more enterprises, either jointly or singly, over another enterprise or group; or</p> <p>(ii) one or more groups, either jointly or singly, over another group or enterprise;”.</p>	

	<p>(c) for clause (b) of the <i>Explanation</i>, the following clause shall be substituted, namely: —</p> <p>“(b) “group” means two or more enterprises where one enterprise is directly or indirectly, in a position to —</p> <p>(i) exercise at least twenty-six per cent or such other per cent as may be prescribed, of the voting rights in the other enterprise; or</p> <p>(ii) appoint more than fifty per cent of the members of the board of directors in the other enterprise; or</p> <p>(iii) control the management or affairs of the other enterprise;”.</p>	
	<p>(d) for clause (c) of the <i>Explanation</i>, the following clause shall be substituted, namely: —</p> <p>“the value of assets shall be determined in the same manner as provided in the <i>Explanation</i> to clause (a) of section 2.”</p>	
	<p>(e) after clause (c) to the <i>Explanation</i>, the following clauses shall be inserted, namely: —</p>	
	<p>“(d) “turnover” shall be 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. Turnover in India shall be determined by excluding intra-group sales, indirect taxes, trade discounts and all amounts generated through assets or business outside India 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;</p>	
	<p>(e) 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 other criteria prescribed under the first proviso of section 5, as may be applicable, of the said portion or division or business and/or attributable to it, shall be the relevant assets or turnover or other criteria to be taken into account for the purpose of applicability of the thresholds under section 5 of the Act.”.</p>	

	7. In section 6 of the principal Act, —	Amendment of section 6.
	(a) in sub-section (2), for the words “within [ <i>thirty</i> days] of” the words “following the” shall be substituted.	
	<p>(b) after sub-section (2), the following <i>Explanation</i> to sub-section (2) shall be inserted, namely: —</p> <p>“<i>Explanation.</i> – For the purposes of this sub-section, “other document” shall mean any binding document, by whatever name called, conveying an agreement or decision to acquire control, shares, voting rights or assets. 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 shall be the “other document”. Where a public announcement has been made in terms of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, for acquisition of shares, voting rights or control, such public announcement shall be deemed to be the “other document”.”.</p>	
	(c) in sub-section (2A), for the words “two hundred and ten”, the words “one hundred and fifty calendar” shall be substituted.	
	<p>(d) after sub-section (2A), the following <i>proviso</i> shall be inserted, namely: —</p> <p>“Provided that the Commission may by order extend the period under sub-section (2A) beyond one hundred and fifty calendar days by such further period as it thinks fit, but not exceeding thirty calendar days in case parties to the combination request for additional time to furnish relevant information or remove defects to the notice filed under sub-section (2) of section 6 as may be requested by the Commission.”.</p>	
	(e) in sub-section (3), after the words “section 29,”, the figures and letter, “29A,” shall be inserted.	
	<p>(f) for sub-sections (4) and (5) and the <i>Explanation</i>, the following shall be substituted, namely: —</p> <p>“(4) Notwithstanding anything to the contrary contained in sub-sections (2A) and (3) and section 43A, if a combination fulfils such criteria as may be prescribed in public interest by the Central Government in consultation with the Commission, and is not otherwise exempt under this Act from the requirement to give notice to the Commission</p>	



	<p>under sub-section (2) then notice for such combination may be given to the Commission in the form as may be specified under this sub-section and the fee which may be determined, 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.</p> <p>(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 of the Act and no other approval shall be required under sub-section (2) or (2A).</p> <p>(6) If within the period provided 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 such sub-section and/or the information or declarations provided are materially incorrect or incomplete, the approval under sub-section (5) shall be void ab initio and Commission may pass such order as it may deem fit:</p> <p>Provided that the Commission shall give the parties to the combination an opportunity of being heard before passing any such order.</p> <p>(7) Notwithstanding anything to the contrary contained in this section and section 43A, the Central Government may in consultation with the Commission prescribe certain criteria in public interest, fulfilment of which shall exempt certain categories of combinations from the requirement to comply with sub-sections (2), (2A) and (4).</p> <p>(8). Notwithstanding anything contained in sub-sections (4), (5), (6) and (7):</p> <ul style="list-style-type: none"><li>(i) regulations specified by the Commission and rules prescribed by the Central Government on the matters referred to in these sub-sections as they stood immediately before the commencement of the Competition (Amendment) Act, 2019 and in force at such commencement, shall continue to be in force, till such time as the relevant rules and regulations are made by the Central Government and the Commission, respectively; and</li><li>(ii) any order passed, fee imposed, combination consummated, resolution passed, direction given,</li></ul>	
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<p>15 of 1992</p> <p>15 of 1992</p>	<p>instrument executed or issued, or thing done under or in pursuance of any regulation specified by the Commission or rule prescribed by the Central Government shall, if in force at the commencement of the Competition (Amendment) Act, 2019, continue to be in force, and shall have effect as if passed, imposed, effected, given, taken, executed, issued or done under or in pursuance of this Act.</p> <p>(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 alternative investment fund Category I, pursuant to any covenant of a loan agreement or investment agreement.</p> <p><i>Explanation.</i> —For the purposes of this section, the expression—</p> <p>(a) “foreign portfolio investor” has the same meaning as assigned to it in the SEBI (Foreign Portfolio Investors) Regulations, 2014 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);</p> <p>(b) “alternate investment fund Category I” has the same meaning as assigned to Category I Alternate Investment Funds in the SEBI (Alternate Investment Funds) Regulations 2012 made under the Securities and Exchange Board of India Act, 1992 (15 of 1992).”.</p>	
	<p><b>8.</b> After section 6 of the principal Act, section 6A shall be inserted, namely: —</p> <p>“6A. Nothing contained in sub-sections (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:</p> <p>(a) the Commission is notified of the acquisition within such time and in such manner as maybe specified by the Commission; and</p> <p>(b) the shares or convertible securities, as may be applicable, are maintained in such manner as may be specified; and</p>	<p>Insertion of a new section 6A</p> <p>Open Offers, etc.</p>

	(c) 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, till the Commission approves such acquisition.”.	
	<b>9.</b> In section 8 of the principal Act, —	Amendment of section 8.
	(a) in the title, after the words, “Composition of”, the word “the”, shall be inserted; and after the word “Commission,” the words “ and its Governing Board”, shall be inserted.	
	(b) for sub-section (1), the following shall be substituted, namely: —  “(1) The Commission shall consist of a Chairperson and six other Whole-time Members to be appointed by the Central Government.”	
	(c) after sub-section (1), the following sub-section shall be inserted, namely: —  “(1A) The Commission shall have a Governing Board which shall consist of the following Members:  (a) the Members of the Commission;  (b) Secretary of the Department of Economic Affairs, Ministry of Finance or his nominee, not below the rank of Joint Secretary and the Secretary of the Ministry of Corporate Affairs or his nominee, not below the rank of Joint Secretary, <i>ex-officio</i> ;  (c) four other Part-time Members to be appointed by the Central Government.”	
	(d) in sub-section (2), after the words, “management, industry,”, the words, “technology, administration,” shall be inserted.	
	(e) sub-section (3) shall be omitted.	
	<b>10.</b> In section 9 of the principal Act, —	Amendment of section 9.

	(a) in the title, after the words, “Chairperson and”, the word “Whole-time” shall be inserted, and after the words “Members of”, the word “the”, shall be inserted.	
	(b) in sub-section (1), after the words “The Chairperson and other”, the word “Whole-time”, shall be inserted	
	<b>11.</b> In section 10 of the principal Act, —	Amendment of section 10.
	(a) in sub-section (1), after the words “The Chairperson and every other”, the word “Whole-time”, shall be inserted.	
	(b) in the <i>proviso</i> to sub-section (1), after the words “Chairperson or other”, the word “Whole-time” shall be inserted.	
	(c) after sub-section (1), the following sub-section shall be inserted namely: —  “(1A) A Part-time Member (other than an ex officio Member) shall hold office as such for a term not exceeding three years from the date on which he is appointed.”.	
	(d) in sub-section (2), after the words “or any other”, the word “Whole-time” shall be inserted.	
	(e) after sub-section (2), the following sub-section shall be inserted, namely: —  “(2A) A vacancy caused by the resignation or removal of any Part-time Member under section 11 or by death or otherwise shall be filled by fresh appointment by the Central Government.”.	
	(f) in sub-section (4), after the words “the senior-most”, the word “Whole-time” shall be inserted.	
	(g) in sub-section (5), after the words “the senior-most”, the word “Whole-time” shall be inserted.	
	<b>12.</b> In section 11 of the principal Act, —	Amendment of section 11.
	(a) in sub-section (2), after the words “or any other”, the word “Whole-time” shall be inserted, and, after the words “such Chairperson or”, the word “Whole-time” shall be inserted.	

	(b) in sub-section (3), after the words “in sub-section (2), no”, the word “Whole-time” shall be inserted, and, after the words “reported that the”, the word “Whole-time” shall be inserted.	
	(c) after sub-section (3), the following sub-section shall be inserted, namely: —  “(4) The Central Government shall have the right to terminate the services of any Part-time Member appointed under clause (c) of sub-section (1A) of section 8, at any time before the expiry of the period specified under sub-section (1A) of section 10:  Provided that no Part-time Member shall be removed under this sub-section unless he has been given a reasonable opportunity of being heard in the matter.”.	
	<b>13.</b> In section 12 of the principle Act, —	Amendment of section 12.
	(a) in the title, after the words, “Chairperson and”, the word “Whole-time” shall be inserted.	
18 of 2013	(b) for the portion beginning with “(1) The Chairperson and other Members shall not” and ending with “section 617 of the Companies Act, 1956 (1 of 1956)” the following shall be substituted, namely: —  “(1) The Chairperson and other Whole-time Members shall not, for a period of two years from the date on which they cease to hold office, 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-  (a) any enterprise which is or has been a party to a proceeding before the Commission under this Act; or  (b) any person which appears or has appeared before the Commission under section 35.  (2) Notwithstanding anything contained in section 35, the Chairperson and Whole-time Members after retirement or otherwise ceasing to be in service for any reasons shall not represent 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).”.	
	<p><b>14.</b> After section 13, the following section shall be inserted to the principal Act, namely: —</p> <p><b>“13A. Delegation</b></p> <p>(1) The Commission may, by general or special order in writing delegate to any Member of the Commission or officer of the Commission subject to such conditions, if any, as may be specified in the order, such of the powers and functions of the Commission under this Act, except the powers and functions under sub-section (4) of section 22, as it may deem necessary.</p> <p>(2) The Governing Board may, by general or special order in writing delegate to any Member or officer of the Governing Board subject to such conditions, if any, as may be specified in the order, such of the powers and functions of the Governing Board under this Act, except the powers and functions under section 64, as it may deem necessary.”.</p>	<p>Insertion of a new section 13A</p> <p>Delegation</p>
	<p><b>15.</b> In section 14 of the principal Act, in sub-section (1), after the words “Chairperson and other Members”, the words and characters “(other than the <i>ex-officio</i> Members)” shall be inserted.</p>	Amendment of section 14.
	<p><b>16.</b> For section 15 of the principal Act, the following shall be substituted, namely: —</p> <p><b>“15. Vacancy, etc. not to invalidate certain acts or proceedings</b></p> <p>No act of the Governing Board or act or proceeding of the Commission shall be invalid merely by reason of—</p> <p>(a) any vacancy in, or any defect in the constitution of, the Commission or the Governing Board; or</p> <p>(b) any defect in the appointment of a person acting as a Chairperson or as a Member; or</p> <p>(c) any irregularity in the procedure of the Commission not affecting the merits of the case.”</p>	Amendment of section 15.
	<p><b>17.</b> In section 16 of the principal Act, for the words “Central Government”, the word “Commission” shall be substituted.</p>	Amendment of section 16
	<p><b>18.</b> For section 17 of the principal Act, the following shall be substituted, namely: —</p>	Amendment of section 17

	<p><b>“17. Appointment of Secretary, experts, professionals and officers and other employees of Commission and the Governing Board</b></p> <p>(1) The Commission and the Governing Board may appoint a Secretary and such officers and other employees as they consider necessary for the efficient performance of their functions under this Act.</p> <p>(2) The salaries and allowances payable to and other terms and conditions of service of the Secretary and officers and other employees under sub-section (1), and the number of such officers and other employees shall be such as may be prescribed.</p> <p>(3) The Commission and the Governing Board may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as they deem necessary to assist the Commission or the Governing Board, as the case may be, in the discharge of their functions under this Act.”</p>	
	<p><b>19.</b> After section 18 of the principal Act, the following section shall be inserted, namely: —</p> <p>“18A. (1) Subject to the provisions of this Act, the general superintendence, direction and management of the affairs of the Commission shall vest in the Governing Board.</p> <p>(2) Without prejudice to the generality of the foregoing provision, the Governing Board shall perform the following functions:</p> <p>(a) make regulations on matters relating to competition and the administration of the affairs of the Commission as may be required under this Act;</p> <p>(b) enter into, vary, carry out and cancel, memorandums, arrangements and contracts on behalf of the Commission with any statutory authority or department of Government for the purposes of this Act;</p> <p>(c) take measures to promote competition advocacy, create awareness and impart training in competition issues;</p>	<p>Insertion of a new section 18A</p> <p>Functions and meetings of the Governing Board</p>

	<p>(d) assist the Central Government in developing a National Competition Policy, its periodic review and implementation;</p> <p>(d) perform such other functions as may be prescribed by the Central Government.</p> <p>(3) The Governing Board shall meet at such times and places, and shall observe such rules and procedure in regard to the transaction of business at its meetings as may be provided by regulations:</p> <p><b>Provided</b> that there shall be at least four meetings of the Governing Board in a year and at least one meeting in each quarter.</p> <p>(4) The Chairperson, if for any reason, is unable to attend a meeting of the Governing Board, any other Member so chosen by the Members present at the meeting, shall preside at the meeting of the Governing Board.</p> <p>(5) All questions which come up before any meeting of the Governing Board shall be decided by a majority of the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote.</p> <p>(6) The quorum for meetings of the Governing Board shall be two-thirds of the Members of the Governing Board of which at least two of the Members present should be Part-time Members.”.</p>	
	<p><b>20.</b> After section 18A of the principal Act, as so inserted, the following section shall be inserted, namely: —</p> <p>“18B. Any Part-time Member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Governing Board, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Governing Board, and the Part-time Member shall not take any part in any deliberation or decision of the Governing Board with respect to that matter.”.</p>	<p>Insertion of a new section 18B</p> <p>Part-time Member not to participate in meetings in certain cases</p>
	<p><b>21.</b> In section 19 of the principal Act, —</p>	<p>Amendment of section 19.</p>



	(a) in sub-section (3), in clause (c), the words “by hindering entry into the market” shall be omitted.	
	(b) in sub-section (3), in clause (d), for the words “accrual of benefits” the words “benefits or harm” shall be substituted.	
	(c) in sub-section (3), in clause (e), after the words “provision of services;” the word “or” shall be omitted.	
	(d) in sub-section (3), in clause (f), after the words “provision of services” the word “;or” shall be inserted.	
	(e) in sub-section (3), after clause (f), the following clause shall be inserted, namely: —  “(g) any other factor as may be specified by regulations.”.	
	(f) 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/demand to other areas;	
	(k) any other factor as may be specified by regulations.”.	
	(g) in sub-section (7), in clause (a), after the words “end- use of goods”, the words “or the nature of services” shall be inserted.	
	(h) in sub-section (7), after clause (f), the following clauses shall be inserted namely: —	
	“(g) costs associated with switching demand/supply to other goods or services;	
	(h) categories of customers;	
	(i) any other factor as may be specified by regulations.”.	
	<b>22.</b> In section 20 of the principal Act, —	Amendment of section 20
	(a) in sub-section (1), after the words “referred to in clause (c) of”, the words “section 5 or acquisition of control, shares, voting rights or assets, merger or amalgamation referred to in the first proviso of” shall be inserted.	
	(b) in sub-section (1), after the <i>proviso</i> , the following <i>Explanation</i> shall be inserted, namely: —	

	<p>“<i>Explanation.</i> – For the purposes of this sub-section, the value of assets shall be determined in the same manner as provided in the <i>Explanation</i> to clause (a) of section 2.”.</p>	
	<p>(c) for sub-section (3), the following sub-section shall be substituted, namely: —</p> <p>“(3) Notwithstanding anything contained in section 5, the Central Government may in consultation with the Commission, by notification, enhance or reduce the value of assets or turnover or of any other criteria prescribed under the first proviso of section 5, for the purposes of that section.”.</p>	
	<p>(d) in sub-section (4), in clause (c), for the word “combination”, the word “concentration” shall be substituted.</p>	
	<p><b>23.</b> In section 21 of the principal Act, —</p>	Amendment of section 21
	<p>(a) in sub-section (1), for the <i>proviso</i>, the following shall be substituted, namely: —</p> <p>“Provided that any statutory authority, may, <i>suo motu</i>, make a reference to the Commission on any issue that involves any provision of this Act or is related to promoting the objectives of this Act.”.</p>	
	<p>(b) in sub-section (2), after the words “recording reasons”, the words “or give its observations”, shall be inserted.</p>	
	<p><b>24.</b> In section 21A of the principal Act, —</p>	Amendment of section 21A.
	<p>(a) in sub-section (1), for the <i>proviso</i>, the following shall be substituted, namely: —</p> <p>“Provided that the Commission, may, <i>suo motu</i>, make a reference to a statutory authority on any issue that involves provisions of an Act whose implementation is entrusted to that statutory authority.”.</p>	
	<p>(b) in sub-section (2), after the words “recording reasons”, the words “or give its observations”, shall be inserted.</p>	
	<p><b>25.</b> In section 22 of the principal Act, —</p>	Amendment of section 22
	<p>(a) in the title, after the words, “Meetings of”, the word “the”, shall be inserted.</p>	
	<p>(b) in sub-section (2), after the word “senior-most”, the word “Whole-time” shall be inserted.</p>	

	<p>(c) for sub-section (3), the following sub-section shall be substituted, namely: —</p> <p>“(3) All questions which come up before any meeting of the Commission shall be decided by a majority of the Whole-time Members present and voting”.</p>	
	<p>(d) after sub-section (3), the following sub-section shall be inserted: —</p> <p>“(4) The Chairperson may appoint Panels of Whole-time Members for the purposes of adjudging under this Act.”.</p>	
	<b>26.</b> In section 26 of the Principal Act, —	Amendment of section 26
	<p>(a) after sub-section (2), the following sub-section shall be inserted, namely: —</p> <p>“(2A) The Commission may not inquire into agreements referred to in section 3 or into conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information or reference from Central Government or a State Government or a statutory authority has already been decided by the Commission in previous orders.”.</p>	
	<p>(b) after sub-section (3), the following sub-section shall be inserted, namely: —</p> <p>“(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 further investigate into the matter and the Director General shall, on receipt of such direction submit a supplementary report on his findings within such period as maybe specified by the Commission.”.</p>	
	<p>(c) in sub-section (4), after the words “sub-section (3)”, at both places where it occurs, the words, letters and brackets “and (3A)” shall be inserted.</p>	
	<p>(d) in sub-section (5), after the words “sub-section (3)”, the words “or the report of the Director General referred to in sub-section (3A) or both, as the case may be,” shall be inserted.</p>	
	<p>(e) in sub-section (8), for the words “sub-section (3) recommends”, the words, letters and brackets “sub-section (3) or the report of the Director General referred to in sub-section (3A) or both, recommend(s)”, shall be substituted.</p>	

	<p>(f) after sub-section (8), the following sub-section shall be inserted, namely: —</p> <p>“(9) Upon completion of the investigation or inquiry under sub-sections (7) or (8), as may be applicable, the Commission may pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be:</p> <p>Provided that before passing such orders, the Commission shall issue a show-cause notice indicating the contraventions alleged to have been committed and such other details as may be specified and give a reasonable opportunity of being heard to the concerned parties.”.</p>	
	<b>27.</b> In section 27 of the principal Act, —	Amendment of section 27
	<p>(a) for clause (b), for the portion beginning with “impose such penalty” and ending with “agreements or abuse”, the following words shall be substituted, namely: —</p> <p>“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 maybe, 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:”.</p>	
	<p>(b) in clause (b), in the <i>proviso</i>, after the words “seller, distributor”, the words “buyer” shall be inserted, and, after the words “of its turnover”, the words “or income, as the case maybe,” shall be inserted.</p>	
	<p>(c) after the <i>proviso</i> to clause (b), the following <i>proviso</i> shall be inserted, namely: —</p> <p>“<b>Provided</b> further that, for the purposes of this sub-section, the turnover or income, as the case maybe, shall be determined in such manner as maybe prescribed.”</p>	
	<b>28.</b> In section 29 of the Principal Act, —	Amendment of section 29.

	(a) in sub-section (1), for the word “thirty”, the words “fifteen calendar” shall be substituted.	
	(b) section (1A) occurring after section (1) shall be numbered as section (1B).	
	(c) before sub-section (1B), so numbered, the following sub-section shall be inserted, namely: —  “ (1A) The Commission shall form its <i>prima facie</i> opinion under sub-section (1) as to whether the combination is likely to cause or has caused an appreciable adverse effect on competition within the relevant market in India, within twenty calendar days of receipt of notice filed under sub-section (2) of section 6.”.	
	(d) for sub-section (2), the following sub-section shall be substituted, namely: —  “ (2) The Commission, if it continues to be of the <i>prima facie</i> opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven calendar days from the date of receipt of the response of the parties to the combination, or the receipt of the report from Director General called under sub-section (1B), whichever is later, direct the parties to the said combination to publish details of the combination within seven calendar days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.”.	
	(e) in sub-section (3), for the words “fifteen working”, the words “ten calendar” shall be substituted.	
	(f) in sub-section (4), for the words “fifteen working”, the words “seven calendar” shall be substituted.	
	(g) in sub-section (5), for the words “fifteen”, the words “ten calendar” shall be substituted.	
	(h) for sub-section (6), the following sub-section 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.”.	
	(i) after sub-section (6), the following sub-section shall be inserted, namely: —	

	<p>“ (7) Notwithstanding anything to the contrary in this section, the Commission may accept appropriate modifications offered by the parties to the combination or <i>suo-moto</i> propose modifications or re-modifications, as the case may be, before the Commission has formed a <i>prima facie</i> opinion under sub-section (1) of section 29”.</p>	
	<p><b>29.</b> After section 29 of the principal Act, the following section shall be inserted, namely: —</p> <p>“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 calendar days of receipt of the statement of objections, why such combination should be allowed to take effect.</p> <p>(2) Where the parties to the combination consider that such appreciable adverse effect on competition can be eliminated by suitable modification to such combination, they may offer appropriate modification to the combination along with their response to the statement of objections issued under sub-section (1), in such manner as may be specified.</p> <p>(3) If the Commission does not accept the modification submitted by the parties under sub-section (2) it shall, within seven calendar days from the date of receipt of the proposed modifications under sub-section (2), 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 calendar days of the receipt of the said communication, revised modification(s) to eliminate the appreciable adverse effects on competition:</p> <p>Provided that the Commission shall evaluate such proposal for modification within twelve calendar days from receipt of such proposal for modification:</p> <p>Provided further that the Commission may <i>suo-moto</i> propose appropriate modifications and re-modifications, as the case may be, to the combination which may be considered by the parties to the combination.”.</p>	<p>Insertion of a new section 29A</p> <p>Issue of statement of objections by the Commission and proposal of modifications</p>

	<b>30.</b> In section 31 of the Principal Act, —	Amendment of section 31
	(a) in the title, after the words, “Commission on”, the word “certain” shall be omitted.	
	(b) in sub-section (1), the words “including the combination” shall be omitted.	
	<p>(c) for sub-section (3), the following sub-section shall be substituted, namely: —</p> <p>“(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-sections (2) or (3) of section 29A, the Commission may approve the combination subject to such modifications”.</p>	
	<p>(d) for sub-section (4), the following sub-section shall be substituted, namely: —</p> <p>“(4) Where a combination is approved under sub-section (3), the parties shall carry out such modification within the period specified by the Commission in its order under sub-section (3).”.</p>	
	<p>(e) for sub-section (5), the following sub-section shall be substituted, namely: —</p> <p>“(5) Where –</p> <p>(a) the Commission has directed under sub-section (2) that the combination shall not take effect; or</p> <p>(b) the parties to the combination, fail to carry out the modification in such form and within such period as may be specified by the Commission in its order under sub-section (3); or</p> <p>(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,</p> <p>without prejudice to any penalty which may be imposed or any prosecution which may be initiated under the Act, the Commission may order that such combination shall not be given effect to, or be declared void, or frame a scheme to</p>	

	be implemented by the parties to address the appreciable adverse effect on competition, as the case may be.”.	
	<p>(f) for sub-section (6), the following sub-section shall be substituted, namely: —</p> <p>“(6) If the Commission does not, on the expiry of a period of one hundred and fifty calendar days from the date of notice given to the Commission under sub-section (2) of section 6, pass an order in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), the combination shall be deemed to have been approved by the Commission:</p> <p>Provided that the Commission may by order extend the period under sub-section (6) beyond one hundred and fifty calendar days by such further period as it thinks fit, but not exceeding thirty calendar days in case parties to the combination request for additional time to furnish relevant information or remove defects to the notice filed under sub-section (2) of section 6 as may be requested by the Commission.”.</p>	
	(g) sub-sections (7), (8), (9), (10), (11) and (12) shall be omitted.	
	(h) sub-section (13) shall be numbered as sub-section (7).	
	(i) sub-section (14) shall be numbered as sub-section (8).	
	<b>31.</b> In section 32 of the principal Act, after the words “in sections 19, 20, 26, 29” the numbers and letter “, 29A,” shall be inserted.	Amendment of section 32
	<p><b>32.</b> In section 35 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely: —</p> <p>“(2) Without prejudice to sub-section (1), a person or an enterprise or the Director General 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.”.</p>	Amendment of section 35
	<b>33.</b> In section 36 of the principal Act, in sub-section 2, for the words “this Act”, the words “sub-section (4) of section 22” shall be substituted.	Amendment of section 36
	<b>34.</b> In section 41 of the principal Act, —	Amendment of section 41



	(a) sub-section (3) and the <i>Explanation</i> occurring thereafter shall be omitted.	
	(b) after sub-section (2), the following sub-sections shall be inserted, namely: —	
	<p>“(3) Without prejudice to sub-section (2), it shall be the duty of all officers and other employees and agents of a party which is under investigation –</p> <p>(a) to preserve and to produce to the Director General or any person authorised by it in this behalf, all books, papers, other documents, records and information of, or relating to, the party which are in their custody or power; and</p> <p>(b) otherwise to give to the Director General all assistance in connection with the investigation which they are reasonably able to give.</p>	
	(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 the 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.	
	<p>(5) The Director General may keep in his custody any books, papers, other documents, records or information produced under sub-section (3) or sub-section (4) for up to one hundred and eighty calendar days and thereafter shall return the same to the person by whom or on whose behalf the books, papers, other documents, records or information were produced:</p> <p>Provided that the books, papers, other documents, records or information may be called for by the Director General if they are needed again for a further period of one hundred and eighty calendar days by an order in writing:</p> <p>Provided further that certified copies of the books, papers, other documents, records or information, as may be applicable, produced before the Director General may be provided to the party or person on whose behalf the books, papers, other documents, or records are produced at its cost.</p>	
	(6) A Director General may examine on oath –	

	<p>(a) any of the officers and other employees and agents of the party being investigated; and</p> <p>(b) with the previous approval of the Commission, any other person</p> <p>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.</p>	
	<p>(7) Notes of any examination under sub-section (6) shall be taken down 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.</p>	
	<p>(8) If any person fails without reasonable cause or refuses –</p> <p>(a) to produce to the Director General or any person authorised by it in this behalf any book, paper, other document, record or information which it is his duty under sub-section (3) or sub-section (4) to produce; or</p> <p>(b) to appear before the Director General personally when required to do so under sub-section (6) or to answer any question which is put to it by the Director General in pursuance of that sub-section; or</p> <p>(c) to sign the notes of any examination referred to in sub-section (7)</p> <p>he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.</p>	
	<p>(9) In this section –</p> <p>(a) the expression “officers”, in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate;</p> <p>(b) the expression “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</p>	

	<p>legal advisers of, and persons employed as auditors by, such person; and</p> <p>(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.</p>	
	<p>(10) Where in the course of investigation, the Director General has reasonable grounds to believe that the books, papers, other documents, records or information 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, book, paper, other document, record or information.</p>	
	<p>(11) The Director General may requisition the services of any police officer or any officer of the Central Government, or of both, 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.</p>	
	<p>(12) After considering the application and hearing the Director General, the Chief Metropolitan Magistrate may by order authorise the Director General-</p> <p>(a) to enter, with such assistance, as may be required, the place or places where such books, papers, other documents, records or information are kept;</p> <p>(b) to search that place or those places in the manner specified in the order; and</p> <p>(c) to seize the books, papers, documents, records or information it considers necessary for the purpose of the investigation:</p> <p>Provided that certified copies of the seized books, papers, other documents, records or information, as may be applicable, may be provided to the party or person from whose place such documents have been seized at its cost.</p>	
	<p>(13) The Director General shall keep in his custody such books, papers, other documents, records or information 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</p>	

	<p>from whose custody or power they were seized and inform the Chief Metropolitan Magistrate, of such return:</p> <p>Provided that the Director General may, before returning such books, papers, other documents, records or information as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof.</p>	
5 of 1898	(14) 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, 1898, (5 of 1898), relating to searches or seizures made under that Code.”.	
	<b>35.</b> In section 42 of the principal Act, —	Amendment of section 42
	(a) in sub-section 2, for the words “sections 27, 28, 31, 32, 33, 42A, and 43A of the Act, he shall be punishable with fine”, the words “sections 6, 27, 28, 31, 32, 33, 42A,43, 43A, 44 and 45 of the Act, he shall be punishable with a penalty” shall be substituted.	
	(b) in sub-section 3, for the words “pay the fine”, the words “pay the penalty” shall be substituted.	
	<b>36.</b> In section 42A of the principal Act, after the words “under sections”, the number “6”, shall be inserted.	Amendment of section 42A
	<b>37.</b> In section 43 of the principal Act, in clause (b), for the word “fine”, the word “a penalty”, shall be substituted.	Amendment of section 43
	<b>38.</b> For section 43A of the principal Act, the following section shall be substituted, namely —	Substitution of section 43A
	<p>“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 submits 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 percent, of the total turnover or the assets or other criteria prescribed under the first proviso of section 5, whichever is higher, of such a combination:</p> <p>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 <i>ab initio</i> 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 thirty calendar days of the order of the</p>	

	<p>Commission under sub-section (6) and no action under this section shall be taken by the Commission till the expiry of such thirty day period.</p> <p><i>Explanation.</i> – For the purposes of this section, the value of assets shall be determined in the same manner as provided in the <i>Explanation</i> to clause (a) of section 2.”.</p>	
	<b>39.</b> In section 44 of the principal Act, in clause (b), for the words “one crore”, the words “five crores”, shall be substituted.	Amendment of section 44
	<b>40.</b> In section 45 of the principal Act, —	Amendment of section 45
	(a) in the title, for the word, “offences”, the word “contraventions”, shall be substituted.	
	(b) in sub-section (1), after the words “Without prejudice to the provisions of”, the words “sub-section (6) of section 6 and”, shall be inserted.	
	(c) in sub-section (1), for the word “fine”, the words “a penalty” shall be substituted.	
	<b>41.</b> In section 46 of the principal Act, —	Amendment of section 46
	(a) In sub-section (1) , after the word “trader”, at both places where it occurs, the word “, buyer” shall be inserted; and for the words “it may deem fit”, the words “may be specified in regulations” shall be substituted.	
	(b) In the second <i>proviso</i> to sub-section (1), after the word “trader”, the word “, buyer” shall be inserted.	
	(c) In the fourth <i>proviso</i> to sub-section (1), after the word “trader”, in both places where it occurs, the word “, buyer” shall be inserted, and, for the word “offence”, the word “contravention” shall be substituted.	
	(d) after sub-section (1) of the principal Act, the following sub-sections shall be inserted namely: —	
	“(2) The Commission may allow a producer, seller, distributor, trader, buyer or service provider included in the cartel, to withdraw its application for lesser penalty under this section, in such manner and prior to such time as may be specified:	
	Provided that notwithstanding the withdrawal, 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, buyer or service provider in its	

	application for lesser penalty, save and except its admission.	
	(3) Where during the course of the investigation, a producer, seller, distributor, trader, buyer 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 <i>prima facie</i> opinion under sub-section (1) of section 26 that there exists another cartel, then the Commission may impose upon such producer, seller, distributor, trader, buyer or service provider a lesser penalty as may be specified in regulations, in respect of the cartel already being investigated, without prejudice to the producer, seller, distributor, trader, buyer or service provider obtaining lesser penalty under sub-section (1) regarding the newly disclosed cartel.”.	
	<b>42.</b> In section 48 of the Principal Act, —	Amendment of section 48
	(a) in sub-section (1), for the words “be guilty of the contravention and shall be liable to be proceeded against and punished accordingly” the words “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 percent of the average of the income for the last three preceding financial years”, shall be substituted.	
	(b) after sub-section (1), the following <i>proviso</i> shall be inserted, namely: —  “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 persons referred to in sub-section (1), a penalty of up to ten percent of the income for each year of the continuance of such agreement:”.	
	(c) in sub-section (1), in the second <i>proviso</i> , after the word “Provided”, the word “further”, shall be inserted, and, for the word “punishment”, the word “penalty” shall be substituted.	
	(d) in sub-section (2), for the words “guilty of that contravention and shall be liable to be proceeded against and punished accordingly”, the words “ in contravention of this Act and the Commission may, unless otherwise provided under this Act, impose such penalty, as it may deem fit,	

	which shall not exceed ten percent of the average income for the last three preceding financial years:” shall be substituted.	
	(e) after sub-section (2), the following <i>proviso</i> shall be inserted, namely: —  “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 percent of the income for each year of the continuance of such agreement.” .	
	(f) in the <i>Explanation</i> , in clause (a), the word “and” occurring after the word “individuals;” shall be omitted.	
	(g) in the <i>Explanation</i> , in clause (b), after the words “partner in the firm”, the word and character “; and” shall be inserted.	
	(h) in the <i>Explanation</i> , after clause (b), the following clause shall be inserted, namely: —  “(c) “income”, in relation to a person, shall be determined in such manner as maybe prescribed.	
	<b>43.</b> After section 48 of the principal Act, the following section shall be inserted, namely: —  “48A. (1) Any person, 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 submit an application in writing to the Commission, in such form as may be specified by the Commission, proposing for settlement of the proceeding initiated for the alleged contraventions.  (2) An application for settlement 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 in regulations made under this Act.  (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 sum by the applicant and/or on such other terms as may be determined by the Commission in accordance with the	Insertion of a new section 48A  Settlement

	<p>regulations made under this Act and specify the manner in which the settlement terms will be implemented and monitored in accordance with the regulations made under this Act.</p> <p>(4) 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 or parties concerned do not reach an agreement on the terms of the settlement within the time specified by regulations, it shall pass an order rejecting the settlement application and proceed with its inquiry under section 26 of the Act.</p> <p>(5) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.</p> <p>(6) No appeal shall lie under section 53B against any order passed by the Commission under this section.</p> <p>(7) All settlement amounts, excluding the legal costs, realised under this Act shall be credited to the Consolidated Fund of India.”.</p>	
	<p><b>44.</b> After section 48A of the principal Act, as so inserted, the following section shall be inserted, namely: —</p> <p>“ 48B. (1) Any person, 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 submit an application in writing to the Commission, in such form as may be specified by the Commission, offering commitments in respect of the alleged contraventions stated in the Commission’s order under sub-section (1) of section 26.</p> <p>(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 in regulations made under this Act.</p> <p>(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 and specify the manner in which the commitments will be implemented and monitored along with any other terms as may be</p>	<p>Insertion of a new section 48B</p> <p>Commitment</p>



	<p>determined by the Commission in accordance with the regulations made under this Act.</p> <p>(4) 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 or parties concerned do not reach an agreement on the terms of the commitment within the time specified by regulations, it shall pass an order rejecting the commitment application and proceed with its inquiry under section 26 of the Act.</p> <p>(5) The commitments offered under this section shall be governed in accordance with the procedure specified in the regulations made under this Act.</p> <p>(6) No appeal shall lie under section 53B against any order passed by the Commission under this section.”.</p>	
	<p><b>45.</b> After section 48B, as so inserted, the following section shall be inserted, namely: —</p> <p>“48C. If an applicant fails to comply with the order passed under section 48A or 48B at any time after it is passed 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 48B, as may be applicable, shall stand revoked and withdrawn and such person may be liable to pay appropriate legal costs incurred by the Commission which may extend to rupees one crore and the Commission may restore or initiate the inquiry with respect to which the order under section 48A or 48B was passed.”.</p>	<p>Insertion of a new section 48C</p> <p>Revocation of the settlement or commitment order and penalty</p>
	<p><b>46.</b> In section 49 of the principal Act, —</p>	<p>Amendment of section 49.</p>
	<p>(a) for sub-section (1), the following sub-section shall be substituted, namely: —</p> <p>“(1) The Central Government or a State Government may, in formulating a policy including review of laws having an impact or likely to have an impact on competition or any other matter, as the case may be, make a reference to the Commission for its opinion on the possible effect of such policy on competition and on the receipt of such a reference, the Commission shall, within sixty calendar days of making such reference, give its opinion to the Central Government, or the State Government, as the case may be, which may thereafter take further action as it deems fit.”.</p>	

	<p>(b) for sub-section (3), the following sub-section shall be substituted, namely: —</p> <p>“(3) The Governing Board of the Commission shall take suitable measures for the promotion of competition advocacy and culture, creating awareness and imparting training about competition issues.”</p>	
	<b>47.</b> In section 51 of the principal Act,	Amendment of section 51.
	<p>(a) in sub-section (1), after clause (d), the following clause shall be inserted, namely: —</p> <p>“(e) all sums received by the Commission from such other sources as may be decided upon by the Government.”.</p>	
	<p>(b) in sub-section (2), after the word “Commission”, in both places where it occurs, the words “and the Governing Board”, shall be inserted.</p>	
	<b>48.</b> In section 53A of the principal Act, in sub-section (1), in clause (a), for the words “sub-sections (2), (6) of section 26”, the words “sub-section (6) of section 6, sub-sections (2), (2A), (6) and (9) of section 26”, shall be substituted.	Amendment of section 53A
	<b>49.</b> In section 53B, in sub-section (2), after the <i>proviso</i> , the following <i>proviso</i> shall be inserted, namely: —	Amendment of section 53B
	<p>“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 or such other lower amount as may be prescribed and in such manner as may be prescribed.”.</p>	
	<b>50.</b> In section 53N of the principal Act, —	Amendment of section 53N
	<p>(a) in sub-section (1), after the words “under sub-section (2) of section 53Q”, the words “or the orders of the Supreme Court in an appeal against the findings of the Appellate Tribunal under section 53T”, shall be inserted.</p>	
	<p>(b) in sub-section (2), after the words “findings of the Commission” the words “or Appellate Tribunal or the Supreme Court”, shall be inserted.</p>	

	(c) in the <i>Explanation</i> , in clause (a), after the words “sub-section (1) of section 53A”, the words “or the Supreme Court on appeal under section 53T” shall be inserted.	
	(d) In the <i>Explanation</i> , in clause (b), after the words “or the Appellate Tribunal”, the words “or the Supreme Court,” shall be inserted.	
	<b>51.</b> In section 53Q of the principal Act, in sub-section (1), for the words “penalty of”, the word “fine” shall be substituted.	Amendment of section 53Q
	<b>52.</b> In section 55 of the principal Act, in sub-section (1), after the words “Commission” in both the places where it occurs, the words “and the Governing Board”, shall be inserted, and; for word “its”, in both places where it occurs, the word “their”, shall be substituted.	Amendment of section 55
	<b>53.</b> In section 58 of the principal Act, after the words “Commission”, the words and character“ and the Governing Board,” shall be inserted.	Amendment of section 58
	<b>54.</b> In section 59 of the principal Act, after the word “Commission” in both places where it occurs, the words and characters “or the Governing Board,” shall be inserted. .	Amendment of section 59
2 of 1974	<b>55.</b> After section 59 of the principal Act, the following section shall be inserted, namely: —  “59A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with 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 proceedings are pending.”.	Insertion of a new section 59A  Composition of offences
	<b>56.</b> In section 63 of the principal Act, —	Amendment of section 63
	(a) in sub-section (2), after the words “rules may”, the word “inter alia” shall be inserted.	
	(b) in sub-section (2), clause (a) of shall be numbered as clause (ae).	
	(c) before clause (ae) of sub-section (2), as so numbered, the following clauses shall be inserted, namely: —	
	“(a) the criteria under the first proviso of section 5, fulfilment of which shall cause any acquisition of control, shares, voting rights or assets, merger or amalgamation to be deemed to be a combination under section 5;	

	(aa) the minimum value under the second proviso of section 5 of assets or turnover or criteria prescribed under the first proviso of section 5 in India of the enterprise being acquired, taken control of, merged or amalgamated under section 5;	
	(ab) the percentage of voting rights under clause (i) of <i>Explanation</i> (b) of section 5;	
	(ac) the criteria for eligibility to file a notice under sub-section (4) of section 6;	
	(ad) the criteria under sub-section (7) of section 6, fulfilment of which shall exempt certain categories of combinations from the requirement to comply with sub-sections (2), (2A) and (4) of section 6;”.	
	(d) after clause (g) of sub-section (2), the following clause shall be inserted, namely: —  “(ga) any additional functions that may be performed by the Governing Board under sub-section (2) of section 18A;	
	(gb) the manner of determining turnover under the second proviso to clause (b) of section 27;	
	(gc) the manner of determining income under the second proviso to clause (b) of section 27;	
	(gd) the manner of determining income under <i>Explanation</i> (c) to section 48;”.	
	(e) in clause (ma) of sub-section (2), after the words “Appellate Tribunal”, the words “, the amount that shall be deposited and the manner of depositing the amount before filing appeal” shall be inserted.	
	(f) after clause (mf) of sub-section (2), the following clause shall be inserted, namely: —  “(mg) the manner in which guidance issued under section 64B may be published;”.	
	<b>57.</b> In section 64 of the principal Act, —	Amendment of section 64
	(a) in sub-section (1), for the words “The Commission” the words “The Governing Board of the Commission” shall be substituted.	
	(b) for clause (c) of sub-section (2), the following clause shall be substituted, namely: —	

	“(c) the form of notice as may be specified and the fee which may be determined under sub-section (4) of section 6;”.	
	(c) after clause (c) of sub-section (2), as so substituted, the following clause shall be inserted, namely: —  “(ca) the time and manner to file a notice under section 6A and the manner in which the shares or convertible securities are to be maintained under section 6A;”.	
	(d) after clause (d) of sub-section (2), as so substituted, the following clause shall be inserted, namely: —  “(da) the time, place and rules of procedure in regard to the transaction of business at the meetings of the Governing Board of the Commission under sub-section (3) of section 18A;”.	
	(e) after clause (e) of sub-section (2), the following clauses shall be inserted, namely: —	
	“(ea) the additional factors under clause (g) of sub-section (3) of section 19;	
	(eb) the additional factors under clause (k) of sub-section (6) of section 19;	
	(ec) the additional factors under clause (i) of sub-section (7) of section 19;”.	
	(f) for clause (f) of sub-section (2), the following clause shall be substituted, namely: —  “(f) the time, place and rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 22;”.	
	(g) after clause (f) of sub-section (2), as so substituted, the following clauses shall be inserted, namely: —	
	“(fa) the other details to be included in the show-cause notice under sub-section (9) of section 26;	
	(fb) the manner in which modifications may be proposed by parties to the combination to the Commission under sub-section (2) of section 29A;”.	

	(h) after clause (g) of sub-section (2) the following clauses shall be inserted, namely: —	
	“(ga) the manner of computing the lesser penalty under sub-sections (1) and (3) and the manner in which and time up to which an application for withdrawal of a lesser penalty application can be made under sub-section (2) of section 46;	
	(gb) the form in which an application for settlement may be submitted under sub-section (1), the time up to which an application for settlement may be submitted under sub-section (2), the terms of the settlement and manner in which the settlement terms shall be implemented and monitored under sub-section (3) and the procedure for conducting settlement proceedings under sub-section (5) of section 48A;	
	(gc) the form in which an application for offering commitments may be submitted under sub-section (1), the time up to which an application for offering commitments may be submitted under sub-section (2), the manner in which commitment shall be implemented and monitored under sub-section (3) and the procedure for conducting commitment proceedings under sub-section (5) of section 48B;	
	(gd) the other details to be published along with draft regulations and the period for inviting public comments under clause (a) of section 64A;”.	
	<p><b>58.</b> After section 64 of the principal Act, the following section shall be inserted, namely: —</p> <p>“64A. The Governing Board of the Commission shall ensure transparency while exercising its powers to issue regulations under section 64, by —</p> <p>(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;</p> <p>(b) publishing a general statement of its response(s) to the public comments, not later than the date of notification of the regulations;</p> <p>(c) periodically reviewing such regulations:</p>	<p>Insertion of a new section 64A</p> <p>Process of issuing regulations</p>

	<p>Provided that if the Governing Board is of the opinion that certain regulations are required to be issued 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 and record the reason for doing so in writing.”.</p>	
	<p><b>59.</b> After section 64A of the principal Act, as so inserted, the following section shall be inserted, namely: —</p> <p>“64B. (1) The Commission may publish guidance 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.</p> <p>(2) Guidance 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.</p> <p>(3) Without prejudice to anything contained in sub-section (1), the Commission shall publish guidance as to the appropriate amount of any penalty for any contravention under this Act.</p> <p>(4) While imposing penalty under clause (b) of section 27 or under section 43A or section 48 for any contravention of this Act, the Commission and the Appellate Tribunal shall consider the guidance under sub-section (3) and provide reasons in case of any divergence from such guidance.</p> <p>(5) The guidance under sub-sections (1) and (3) shall be published in such form as may be prescribed.”.</p>	<p>Insertion of a new section 64B</p> <p>Commission to issue guidance</p>

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