

# DUTIES, POWERS AND FUNCTIONS OF COMMISSION.

S.18. DUTIES OF COMMISSION: 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 market in India:

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.

Section 19: Inquiry into certain agreements and dominant position of enterprise: (1) The commission may inquire into any alleged contravention of the provisions contained in sub-section (1) of section 3 or sub-section (1) of section 4 either on its own motion or on—

a) receipt of any information, in such manner and accompanied by such fee

as may be determined by the regulations,  
from any person, consumer or their  
association or trade association; or  
b) a reference made to it by the central  
government or a state government or a  
statutory authority.

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

- (3) The commission shall, while determining whether an agreement has an appreciable adverse effect on competition under section 3, have due regard to all or any of the following factors, namely—
- (a) creation of barriers to new entrants in the market;
  - b) driving existing competitors out of the market;

- C) foreclosure of competition by hindering entry into the market;
- D) accrual of benefits to consumers;
- E) improvements in production or distribution of goods or provisions of services;
- F) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.
- (4) The commission shall, while inquiring whether an enterprise enjoys a dominant position or not under section 4, have due regard to all or any of the following factors, namely:
  - A) market share of the enterprise;
  - B) size and resources of the enterprises;

- C) size and importance of the competitors;
- D) economic power of the enterprise including commercial advantages over competitors;
- E) vertical integration of the enterprises or sale or service network of such enterprises;
- F) dependence of consumers on the enterprise;
- G) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a government company or a public sector undertaking or otherwise;
- H) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;

- i) countervailing buying power;
- J) market structure and size of market;
- K) social obligations and social costs;
- L) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have appreciable adverse effect on competition;
- M) any other factor which the commission may consider relevant for the inquiry.
- (5) For determining whether a market constitutes a “relevant market” for the purposes of this Act, the commission shall have due regard to the “relevant geographic market” and “relevant product market”.



- (6) The commission shall, while determining the “relevant geographic market” have due regard to all or any of the following factors, namely:-
  - A) regulatory trade barriers;
  - B) local specification requirements;
  - C) national procurement policies;
  - D) adequate distribution facilities;
  - E) transport costs;
  - F) language;
  - G) consumer preferences;
  - H) need for secure or regular supplies or rapid after-sales services;

- (7) The commission shall, while determining the “relevant product market”, have due regard to all or any of the following factors, namely:-
  - A) physical characteristics or end-use of goods;
  - B) price of goods or service;
  - C) consumer preferences;
  - D) exclusion of in-house production;
  - E) existence of specialized producers;
  - F) classification of industrial products;
- S. 20. Inquiry into combination by commission:- (1)  
The commission may, upon its own knowledge or information relating to acquisition referred to in

- Clause (a) of section 5 or acquiring of control referred to in clause (b) of section 5 or merger or amalgamation referred in clause © of that section, inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India.
- Provided that the commission shall not initiate any inquiry under this sub-section after the expiry of one year from the date on which such combination has taken effect.
- (2) The commission shall, on receipt of a notice under sub-section (2) of section 6, inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.

- (3) Notwithstanding anything contained in section 5, the central government shall, on the expiry of a period of two years from the date of commencement of this Act and thereafter every two years, in consultation with the commission, by notification, enhance or reduce, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, the value of turnover, for the purposes of that section.
- (4) For the purposes of determining whether a combination would have the effect of or is likely to have appreciable adverse effect on competition in the relevant market, the commission shall have due regard to all or any of the following factors, namely;-

- A) actual and potential level of competition through imports in the market;
- B) extent of barriers to entry into the market;
- C) level of combination in the market;
- D) degree of countervailing power in the market;
- E) likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins;
- F) extent of effective competition likely to sustain in a market;
- G) extent to which substitutes are available or are likely to be available in the market;

- H) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination;
- i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market;
- J) nature and extent of vertical integration in the market;
- K) possibility of a failing business;
- L) nature and extent of innovation;
- M) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition;

- N) whether the benefits of the combination outweigh the adverse impact of the combination, if any.
- S. 21. Reference by statutory Authority:
- (1) Where in the course of the proceeding before any statutory authority an issue is raised by any party that any decision which such statutory authority has taken or proposes to take, is or would be, contrary to any of the provisions of this Act, then such statutory authority may make a reference in respect of such issue to the commission:
- Provided that any statutory authority, suo motu, make such reference to the commission.

- (2) On receipt of a reference under sub-section (1), the commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the commission and thereafter give its findings recording reasons therefor on the issues referred to in the said opinion.
- S.21A: Reference by commission: (1) Where in the course of a proceedings before the commission an issue is raised by any party that any decision which the commission, has taken during such proceeding or proposes to take, is or would be contrary to any provision of this Act whose implementation is entrusted to a statutory authority, then the commission may make a reference in respect of such issue to the



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

(2) On receipt of a reference under  
sub-section (1), the statutory authority  
shall give its opinion, within sixty days  
of receipt of such reference, to the  
commission which shall consider the  
opinion of the statutory authority,

and thereafter give its findings recording reasons therefor on the issues referred to in the said opinion.

S.22. Meetings of Commission.

S.23. Distribution of business of commission amongst Benches. (repealed)

S.24. Procedure for deciding a case where members of a bench differ in opinion.  
(repealed)

S.25. Jurisdiction of Bench-(repealed).

s.26. Procedure for inquiry under section 19:

S.27. Orders by commission after inquiry into agreements or abuse of dominant position.

S.28. Division of enterprise enjoying dominant position.

S.29. Procedure for investigation of combination.

s.30. Procedure in case of notice under sub-section (2) of section 6.

s.31. Orders of commission on certain combinations.

S.32. Acts taking place outside India but having an effect on competition in India.

S.33. Power to issue interim orders.

S.34. Power to award compensation:  
Repealed.

s. 35. Appearance before commission.

s.36. Power of commission to regulate  
its own procedure.

S.37. Review of order of commission:  
Repealed.

38. Rectification of orders.

S.39. Execution of orders of  
commission imposing monetary  
penalty.

S.40. Appeal: Repealed.

## Chapter V

### Duties of Director-General.

S. 41. Director general to investigate contraventions.

## Chapter VI

### Penalties.

S. 42. Contravention of orders of commission.

S. 43. Penalty for failure to comply with directions of commission and DG.

s. 43A. Power to impose penalty for non-furnishing of information on combinations.

S. 44. Penalty for making false statement or omission to furnish material information.

S. 45. Penalty for offences in relation to furnishing of information.

S.46. Power to impose lesser penalty.

S.47. Crediting sums realised by way of penalties to Consolidated Fund of India.

S. 48. Contravention by companies.

## Chapter VII

### Competition Advocacy.

S. 49. Competition Advocacy.

## Chapter VIII

### Finance, Accounts and Audit.

S. 50. Grants by Central Government.

S. 51. Constitution of Fund.

S. 52. Accounts and Audit.

S. 53. Furnishing of returns, etc., to  
Central Government.