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Handbook on Competition Legislation

Note by the UNCTAD secretariat

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Chapter I

INTRODUCTION

The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (also known as the United Nations Set of Principles and Rules on Competition) provides in section F.6(c) for the compilation of a *Handbook on Restrictive Business Practices Legislation.*

The Fourth Conference to Review All Aspects of the Set, held in Geneva from 25 to 29 September 2000, as well as the Intergovernmental Group of Experts on Competition Law and Policy at its fifth session, held in Geneva from 2 to 4 July 2003, requested the UNCTAD secretariat to publish further issues of the *Handbook on Competition Legislation,* including the text of regional and international instruments complemented by a summary of the main provisions of these instruments on the basis of inputs to be submitted by member States. (See the resolution adopted by the Review Conference (TD/RBP/CONF.5/16) and the Agreed Conclusions of the Intergovernmental Group of Experts at its fifth session (TD/B/COM.2/CLP/L.9).)

Accordingly, the secretariat has prepared this note, which contains commentaries on and/or the texts of competition legislation of Bulgaria (new law), Estonia and India.[1]

To date, the UNCTAD secretariat has reproduced in its *Handbooks* competition legislation of 47 countries: Algeria, Belgium, Brazil, Bulgaria, Canada, Chile, Colombia, Côte d'Ivoire, Croatia, the Czech Republic, Denmark, Finland, France, Georgia, Germany, Hungary, Indonesia, Italy, Jamaica, Japan, Kenya, Lithuania, Malawi, Mexico, Morocco, New Zealand, Norway, Pakistan, Poland, Portugal, the Republic of Korea, Romania, Senegal, Slovakia, South Africa, Spain, Sri Lanka, Sweden, Thailand, Tunisia, Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Venezuela, Zambia and Zimbabwe.

The Secretary-General of UNCTAD, in his note of 8 March 1996, requested States that had so far not done so, or that had introduced new or amending competition legislation since their last communication to the UNCTAD secretariat, to provide the latter with their relevant legislation, court decisions and comments, using the indicated format (see following section). (However, the commentary may not necessarily follow the format.) To facilitate reproduction of the texts of legislation in more than one official language of the United Nations, States were invited to submit, if possible, the text of their legislation in one or more other languages of the United Nations.

The UNCTAD secretariat is grateful to the States that have contributed the requested material for this issue of the *Handbook,* and it once again requests States that have not yet done so to comply with the above-mentioned request of the Secretary-General of UNCTAD.

[1] The commentaries are reproduced in the language and form in which they were submitted to the secretariat.

FORMAT FOR CONTRIBUTIONS TO THE HANDBOOK

A. Description of the reasons for the introduction of the legislation

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation

C. Description of the practices, acts or behaviour subject to control, indicating for each:

(1) The type of control – for example, outright prohibition, prohibition in principle or examination on a case-by-case basis; and

(2) The extent to which the practices, acts or behaviour in section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection – for example, controls concerning misleading advertising.

D. Description of the scope of application of the legislation, indicating:

(1) Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;

(2) Whether it applies to all practices, acts or behaviour having effects on the country in question, irrespective of where they occur; and

(4) Whether it is dependent on the existence of an agreement, or on such agreement being put into effect.

E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements as well as the principal powers or body(-ies)

F. Description of any parallel or supplementary legislation, including treaties or undertakings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices

G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof

COMPETITION LEGISLATION

I. BULGARIA

COMMENTARY BY THE GOVERNMENT OF BULGARIA ON THE BULGARIAN LAW ON THE PROTECTION OF COMPETITION

A. Description of the reasons for the introduction of the legislation

The Constitution of Bulgaria, enforced in 1991, sets up the basis for development of competition. It provides that the Bulgarian economy is based on free economic initiative. Paragraph 2 of Article 19 establishes and guarantees to all citizens and legal persons equal legal conditions as regards economic activity, preventing abuse of monopolistic position, unfair competition, and consumer protection.

The previous Bulgarian competition act, the Law on Protection of Competition, was adopted by the Great National Assembly on 2 May 1991 and was enforced as of 21 May 1991. The premise for the enactment of the law was to guarantee conditions for free entrepreneurship in production, trade and services, for free price setting and for protection of consumers' interests.

The current Law on Protection of Competition (LPC) is in force as of April 29, 1998. The reasons for its introduction can be summarized as follows:

The Bulgarian legal model adopted in 1991 differed substantially from the legal systems of other countries with long practice and established rules in this field. The law had significant deficiencies, which resulted in inefficient market protection measures.
Changes in the Bulgarian economy (privatization, deregulation, liberalization)
Experience gained through enforcement of the previous competition law
Fulfilment of the obligation for approximation of Bulgarian legislation with the *acquis* under the Europe Agreement establishing an Association between the European Communities and their Member States, on the one hand, and the Republic of Bulgaria, on the other, is an important part of the preparations for membership in the European Union in the context of the accession negotiations.

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation

The current LPC declares in its Article 1 that it aims at "ensuring protection and conditions for the promotion of competition and free initiative in the sphere of the economy".

Protection of consumer interests is not mentioned in the LPC among the legislative objectives, as it was in the previous competition act. This is because a special law on consumer protection and trade rules was adopted. This law, which is in force as of July 3, 1999, attributes the functions related to consumer protection to the Ministry of Industry (Commission for Trade and Consumer Protection) and to the National Consumer Council, whose members are representatives of the Ministries and Consumer Associations sector.

Nevertheless, the LPC takes into consideration consumers' interests in the provisions concerning the control of dominant position and those related to unfair competition.

C. Description of practices, acts or behaviour subject to control, indicating for each:

(a) The type of control – for example, outright prohibition, prohibition in principle, or examination on a case-by-case basis;

(b) The extent to which practices, acts or behaviour in section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection – for example, controls concerning misleading advertising.

The LPC consists of three chapters providing for control of the practices mentioned in section D of the Set of Principles and Rules:

Chapter III prohibits all agreements between undertakings, decisions of connected or joint undertakings, and concerted practices of two or more undertakings that have as their object or effect the prevention, restriction or distortion of competition in the relevant market, and in particular those that:

Directly or indirectly fix prices or other trading conditions;
Share markets or sources of supply;
Limit or control production, trade, technical development or investments;
Apply different conditions to similar transactions with other trading parties, thereby placing them at a competitive disadvantage; or
Make the conclusion of contracts subject to acceptance by the other party of supplementary obligations or to the conclusion of supplementary contracts that, by their nature or commercial usage, have no connection with the subject of the original contract or with its performance.

The prohibited agreements are automatically void, and their nullity may be invoked before the court (LPC, Article 9(2)).

The provisions of the LPC do not, however, cover agreements, decisions or concerted practices with an insignificant effect on competition or decisions of associations of enterprises.

Restrictive agreements can be exempted on an individual basis provided they contribute to increasing or improving the production of goods and service procurement, promoting technical or economic progress, or increasing competitiveness in external markets, while allocating to consumers a fair share of the resulting benefits, and provided they do not:

Impose on the undertakings concerned restrictions that are not indispensable to the achievement of these objectives; or
Enable such undertakings to eliminate competition in a substantial part of the relevant market.

The Commission for the Protection of Competition (CPC) may also exempt from prohibition under Article 9 agreements, decisions and concerted practices of small and medium-sized enterprises

when these aim at enhancing the enterprises' competitiveness and when the market share does not exceed 5 per cent of the relevant market.

The LPC provides for the ***possibility of block exemptions.*** It states that the CPC, by adopting a decision, may declare the prohibition not applicable to certain categories of agreements when they meet the requirements of the LPC (Article 14). This is the legal basis for the first CPC Decision for block exemption from prohibition under Article 9 of the law of certain categories of agreements meeting the conditions laid down in Article 13 of the law. The decision is modelled on Commission Regulation 2790/1999 on the application of Article 81(3) of the European Communities Treaty to categories of vertical agreements and concerted practices.

Chapter IV of the LPC prohibits actions of undertakings enjoying a monopolistic or dominant position that have as their object or effect the prevention, restriction or distortion of competition, and in particular those that:

Directly or indirectly impose inequitable prices for purchase or sale or other unfair trading conditions;
Limit production, trade and technical development to the prejudice of consumers, along with the creation of goods shortages through their detention, destruction, damaging or unjustified directing to processing;
Apply different conditions to identical types of contracts with regard to certain partners, thereby placing them at a competitive disadvantage;
Subject the conclusion of contracts to acceptance by the other party of supplementary obligations or to the conclusion of supplementary contracts that, by their nature or commercial usage, do not have any link to the subject of the original contract or to its performance; or
Impose economic constraints resulting in transformation, merger, fusion, division, detachment or closure of other undertakings along with unjustified termination of long-established business relations.

No exemption, statutory or in practice, is provided from the general prohibition of abuse.

Chapter VI regulates the control of concentration of economic activity. The CPC authorizes concentration provided it does not result in the creation or strengthening of a dominant position that would significantly impede effective competition in the relevant market. Authorization may also be granted on the condition that certain requirements are met.

A concentration that creates or strengthens a dominant position can also be cleared, provided it aims to modernize production or the economy as a whole, improve market structures, attract investments, increase competitiveness in external markets, create new jobs and better satisfying consumer needs. When assessing a concentration, the CPC considers whether the advantages outweigh the negative impact on competition in the relevant market.

Chapter VII prohibits unfair competition, apart from the practices mentioned in Section D of the Set of Principles and Rules. The provisions of this chapter govern the infliction of damages on the reputation of competitors, misleading advertising, imitation, unfair attraction of customers, and disclosure of industrial or trade secrets.

D. Description of the scope of application of the legislation, indicating:

(a) Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;

(b) Whether it applies to all practices, acts or behaviour having effects on the country, irrespective of where they are generated;

(c) Whether it is dependent on the existence of an agreement, or on that agreement's being put into effect.

The scope of application of the LPC extends to every activity the results of which are designed for exchange on the market. The LPC covers all sectors of the Bulgarian economy and applies to all undertakings, including public ones and those entrusted with special or exclusive rights, public authorities and natural persons.

The LPC retains the alternative effects doctrine: the law applies to all undertakings that carry on their activities on Bulgaria's territory or outside if they prevent, restrict or distort (or might prevent, restrict or distort) competition in the country.

On the other hand, activities whose consequences restrict or might restrict competition in another State do not fall within the scope of the law. The LPC shall not apply to industrial property rights, copyright or related rights, in so far as they are not used to distort or restrict competition.

The application of the LPC does not depend on the existence of an agreement, or on that agreement's being put into effect. The provisions of the LPC provide that it is applicable to activities that expressly or tacitly prevent, restrict, distort, or *might* prevent, restrict or distort, competition in the country.

The LPC prohibits all agreements between undertakings, decisions of connected or joint undertakings, and concerted practices of two or more undertakings *that have as their object or effect* the prevention, restriction or distortion of competition in the relevant market.

E. Description of enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements, and principal powers of body (-ies)

The responsibility of competition supervision, as defined in the LPC, lies with the competence of the CPC.

The proceedings of the CPC are of an administrative nature (e.g. providing evidence, summoning of the parties to open hearings of the Commission) and are governed by the provisions of the LPC, the Law on the Administrative Proceedings and the Code of Civil Procedure.

The Competition Authority–Commission for the Protection of Competition (CPC) is an independent specialized State body financed by the State budget. The Commission consists of 11 members: a chairman, two deputy chairmen and eight members, who are distinguished lawyers and economists elected by the National Assembly for five-year terms. Upon the expiration of the period for which they have been elected, their mandates may be renewed. Proceedings before the CPC can be initiated by:

A written application from the persons whose interests are affected or threatened by a violation of the law (complaint);
Written requests to issue authorizations or allow harmonized general conditions or State aids (notification);

A decision of the Commission (ex officio); or
A request from the public prosecutor.

The CPC disposes of sufficient powers in implementing the LPC. The LPC empowers the Commission to conduct studies and determine the position of undertakings in the relevant market according to guidelines adopted by the CPC; to interact with other State authorities, with bodies of local self-government, and with non-governmental organizations through participation in the elaboration of draft legal instruments; to give opinions requested by the corresponding State and local authorities on projects for transformation and privatization of undertakings or of parts of them, where the law might be violated; and to carry out and coordinate the international cooperation of the Republic of Bulgaria with international organizations or with organizations from other countries in the field of protection of competition.

The decisions taken by the CPC can establish the violation committed and the offender and define the type and amount of the penalty provided for by the LPC; establish that no violation has been committed under the LPC; declare that no grounds exist to impose prohibition under Article 9; exempt certain agreements, decisions or concerted practices from the prohibition under Article 9; prohibit a given agreement, decision or concerted practice; allow or prohibit the unification of general conditions; allow or propose to the corresponding body or institution to cancel or modify the project for granting of State aid; and authorize or prohibit a concentration.

The LPC empowers the CPC to "order the termination of the violation and restoration of the initial situation". However, the CPC is not entitled to any specific powers (e.g. "contempt-type" actions) in case of non-compliance.

The CPC has sufficient fining powers for infringements. The LPC distinguishes between "pecuniary sanctions" (imposed on legal persons) and "fines" (imposed on natural persons).

The LPC stipulates several interim measures. The CPC is empowered to order termination of the violation and restoration of the initial situation. If it is found that the agreement, decision or concerted practice for which individual exemption is requested seriously affects or might affect the interests of the trading parties or consumers, the CPC may order immediate termination of the agreement, decision or concerted practice. This decision cannot be appealed.

Similar provisions exist for merger control. The LPC defines that when, in the course of the investigation, facts are established revealing that the concentration for which authorization is sought seriously affects or might affect the interests of trading parties or consumers, the Commission may order, by a decision, the immediate termination of actions relating to the concentration. This decision cannot be appealed.

Article 46 of the LPC states that no proceedings shall be initiated, and any proceedings initiated shall be discontinued, upon the expiry of five years after the violation has been committed.

The decisions of the Commission are subject to appeal before the Supreme Administrative Court within 14 days of their notification to the parties in accordance with the Code of Civil Procedure, except for interim measures during the exemption procedure, declarations that the merger does not fall within the thresholds, or a decision to launch an in-depth ("phase 2") investigation; and for interim measures during the procedure for merger assessment.

The Supreme Administrative Court in its competition supervision proceedings may reach a decision to uphold the CPC's decision, to quash it or to quash it and send it back to the CPC.

The judicial procedure involves two stages. In the first stage, the Court is composed of three supreme administrative judges and the application is assessed on factual and legal grounds. A further appeal on legal grounds only is possible before a panel of five supreme administrative judges.

F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices

Parallel or supplementary legislation

The LPC is the basic act of the Bulgarian antitrust legislation, which ensures control of restrictive business practices. In order to ensure proper enforcement of this Law and to increase the awareness of economic operators in the area of competition legislation, the CPC has adopted a Methodology on Investigation and Definition of Market Position of Undertakings in the Relevant Market, and Rules of Organization and Procedures of the CPC.

In resolving cases concerning restrictive business practices, the CPC also takes into consideration the provisions of the Commercial Law as well as several sector-specific laws and secondary legislation.

In case of appeal before the Supreme Administrative Court, this judiciary body applies the Law on Administrative Proceeding and the Law on the Supreme Administrative Court.

Other supplementary legislation applied by the Commission is the Decision for block exemption from the prohibition under Article 9(1) of the LPC of certain categories of agreements. It was adopted at a CPC session of 10 April 2001 and was promulgated in State Gazette No. 44 of 8 May 2001. It has been in force since 1 June 2001.

Treaties or understandings with other countries

Bulgaria also applies the provisions of Article 64(1), (i) and (ii) of the Europe Agreement and Article 9(1), (i) and (ii) of Protocol No. 2 to that Agreement, concerning coal and steel products. These legal texts declare as incompatible with the proper functioning of the Agreement, insofar as they may affect trade between the European Communities and Bulgaria:

Agreements between undertakings that have as their object or effect the prevention, restriction or distortion of competition; and
Abuse of dominant position on the territory of the Community or of Bulgaria as a whole or in a substantial part thereof.

Article 64(2) of the Agreement and Article 9(2) of Protocol No. 2 state that any practices contrary to these provisions shall be assessed on the basis of the provisions of Articles 81 and 82 of the European Communities Treaty.

The Implementing rules for the application of the competition provisions referred to in Articles 64 (i) and (2) of the Europe Agreement was adopted on 7 October 1997 and promulgated in the OJ on 21 January 1998. The Rules provide for the legal framework for relations and cooperation between the European Commission and the CPC.

Cooperation is required when:

Cases pursuant to Article 64 of the Europe Agreement may affect both the Community and the Bulgarian market and may fall under the competence of both competition authorities;
Cases concern the activities that:

- Involve anticompetitive activities carried out in the other authority's territory;
- Are relevant to enforcement activities of the other competition authority;
- Involve remedies that would require or prohibit conduct in the other authority's territory.

The Implementing Rules contain procedural rules, namely rules regarding competence to deal with particular cases, procedures for notification of cases to the other party, consultations, positive comity and the exchange of information.

Whenever the European Commission or the CPC considers that anticompetitive activities carried out on the territory of the other authority are substantially affecting important interests of the respective Party, it may request consultation with the other authority, or it may request that the other Party's competition authority initiate any appropriate procedures with a view to taking remedial action under its legislation on anticompetitive activities. This is without prejudice to any action under the requesting Party's competition law and does not hamper the full freedom of ultimate decision of the authority so addressed.

The competition authority so addressed shall give full and sympathetic consideration to such views and factual materials as may be provided by the requesting authority and, in particular, to the nature of the anticompetitive activities in question, the enterprises involved and the alleged harmful effects on the important interests of the requesting Party.

Whenever the competition authority of a Party becomes aware of the fact that a case, falling also or only under the competence of the other authority, appears to affect important interests of the first Party, it may request information about this case from the proceeding authority.

The proceeding authority shall give sufficient information to the extent possible and at a stage of its proceedings far enough in advance of adoption.

Bulgaria has signed ***Free Trade Agreements*** involving provisions for cooperation in the area of restrictive business practices with:

CEFTA member states
The former Yugoslav Republic of Macedonia
The Republic of Turkey

The negotiations with Lithuania and the State of Israel are successfully completed and signatures are awaited. The draft agreements contain similar competition rules.

G. Description of major decisions taken by administrative and/or judicial bodies and the specific issues covered

CPC issued 416 decisions between the beginning of 1998 and the end of 2000. During the first five months of 2001, 64 additional decisions were adopted.

CPC also delivered opinions on some draft acts and regulations related to the competitive environment or regulating the behaviour of undertakings with special or exclusive rights.

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation or particular parts thereof

The Law on the Protection of Competition *www.cpc.bg*

The Rules of Organisation and Procedure of the CPC *www.cpc.bg*

The Methodology on Investigation and Definition of Market Position of Undertakings on the Relevant Market *www.cpc.bg*

The Implementing Rules for the application of the competition provisions referred to in Article 64(1) and (2) of the Europe Agreement (OJ 21 January 1998)

LAW ON THE PROTECTION OF COMPETITION

(Promulgated in State Gazette No. 52 of 8 May 1998)

Title One - GENERAL PART

Chapter One - GENERAL PROVISIONS

Subject matter

Article 1

1. This Law aims at ensuring protection and conditions for the promotion of competition and free initiative in the sphere of the economy.

2. For the purposes stated in paragraph 1 [it] shall provide protection against agreements, decisions and concerted practices, abuse of monopolistic and dominant position on the market, concentration of economic activities, unfair competition and other activities which might result in the prevention, restriction or distortion of competition.

Scope of application

Article 2

1. This Law shall apply to:

    - all undertakings which carry on their activities within or out of the territory of the Republic of Bulgaria, if they expressly or tacitly prevent, restrict, distort or might prevent, restrict or distort competition in the country;

    - the authorities of the executive branch and of local government, if they expressly or tacitly prevent, restrict, distort or might prevent, restrict or distort the competition in the country;

    - undertakings to which the State has assigned the provision of services of public interest, in so far as the observance of the law does not render the fulfillment of those tasks impossible and the competition in the country is not affected to a significant extent;

    - natural persons who contribute to the creation of dominant position or to the practicing of unfair competition.

2. This law shall not apply to:

    - the relations falling within the scope of the legislation relating to the protection of industrial property, copyright and related rights, in so far as they are not used to restrict or distort competition;

    - activities, the consequences of which restrict or might restrict the competition in another State, unless otherwise provided in an international treaty which has entered into force and to which the Republic of Bulgaria is a party.

Chapter Two - COMMISSION FOR THE PROTECTION OF COMPETITION

Status

Article 3

The Commission for the Protection of Competition, hereinafter referred to as "the Commission", shall be an independent specialised State body financed through the State budget. The Commission shall be a legal person having its seat in Sofia.

Composition

Article 4

1. The Commission shall consist of eleven members – a chairman, two deputy chairmen and eight members, seven of which should be lawyers and four – economists, elected and dismissed by the National Assembly for a five-year term of office. They may be re-elected for another five-year period.

2. The chairman of the Commission must be a qualified lawyer, with practical experience in his specialty of not less than ten years and who meets the requirements under paragraph 3.

3. The members of the Commission shall be Bulgarian nationals who have a university degree in law or economics and practical experience in their specialty of not less than five years, with high professional and moral standing not sentenced to imprisonment for intentional indictable crimes. They may not occupy any other paid positions, save for the exercise of scientific or teaching activities.

4. Within one month following the election of the chairman and on his proposal the National Assembly shall elect the two deputy chairmen and the members of the Commission.

5. The chairman, the deputy chairmen and the members of the Commission shall give an oath before the National Assembly in accordance with Article 76, paragraph 2 of the Constitution of the Republic of Bulgaria.

Termination of powers

Article 5

1. The powers of the chairman, the deputy chairmen and the members of the Commission shall be terminated by the National Assembly prior to the expiry of their term of office:

    - on their own application;

    - when they have been sentenced to imprisonment for an intentional crime prosecuted on indictment;

    - when it is impossible for them to perform their duties for more than six months;

    - in case of a grave breach of this law and of the oath.

2. Under the provisions of paragraph 1, items 2, 3 and 4, the chairman shall submit to the National Assembly a motivated proposal for dismissal.

3. In case of termination of powers under paragraph 1 the chairman shall submit, within one month, a proposal to the National Assembly for the election of a new member of the Commission for the remainder of the initial term of office.

Structure and activities

Article 6

1. The Commission shall adopt Implementing Rules for its structure and activities, which shall be published in the State Gazette.

2. In the performance of its activities, the Commission shall be assisted by an administration.

Competence

Article 7

1. The Commission on the Protection of Competition shall:

   - establish the offences and impose the penalties provided by the law;
   - issue the authorisations provided by the law;
   - submit proposals to the competent authorities of the executive branch and of local self-government to cancel secondary legislation, issued in violation of this law, or bring actions before the court for the reversal of individual administrative acts contravening to this law;
   - pronounce on other requests relating to this law;
   - order the termination of the offence and restoration of the initial situation;
   - declare void the agreements and decisions prohibited by this law. (*Repealed by Ruling No. 18/1998 of the Constitutional Court)*

2. In the performance of its activities, the Commission shall:

   - conduct studies and determine the position of undertakings on the relevant market according to guidelines adopted by the Commission;
   - interact with other State authorities and institutions, with the bodies of local self-government, and with non-governmental organisations by means of participation in the elaboration of draft legal instruments, exchange of information and other forms of co-operation;
   - give opinions, requested by the corresponding State and local authorities, about the projects for transformation and privatisation of undertakings or of parts of them, where this law might be violated;

- carry out and coordinate the international cooperation of the Republic of Bulgaria with international organisations or with organisations from other countries in the field of protection of competition;
- keep a register of the authorisations given;
- publish a periodic information bulletin.

Chairman of the Commission

Article 8

1. The chairman of the Commission shall:
   - propose to the National Assembly to elect the deputy chairmen and the members of the Commission;
   - represent the Commission or authorize persons who shall represent it;
   - organize and manage the activities of the Commission;
   - schedule and chair the sittings of the Commission;
   - conclude, modify and terminate the employment relations with the employees from the administration;
   - organize and enforce the decisions of the Commission which have come into effect;
   - execute the budget;
   - inform the public about the Commission's activities, through the media.
2. In the performance of his functions, the chairman shall be assisted by the deputy chairmen. He shall nominate the deputy chairman of the Commission who shall replace him in his absence.

Title Two - RESTRICTION OF COMPETITION

Chapter Three - PROHIBITED AGREEMENTS, DECISIONS AND CONCERTED PRACTICES

General prohibition

Article 9

1. The following shall be prohibited: all agreements between undertakings, decisions of connected or united undertakings, as well as concerted practices of two or more undertakings that have as their object or effect the prevention, restriction or distortion of competition within the relevant market, and in particular those which:
   - directly or indirectly fix prices or other trading conditions;
   - share markets or sources of supply;

- limit or control production, trade, technical development or investments;

- apply different conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

- make the conclusion of contracts subject to acceptance by the other party of supplementary obligations or to the conclusion of supplementary contracts which, by their nature or according to commercial usage, have no connection with the subject of the main contract or with its performance.

2. Any agreements and decisions prohibited pursuant to paragraph 1 of this article shall be void. Their nullity may be invoked by any authority or person concerned even if it is not declared in accordance with Article 7, item 6.

Agreements with negligible effect

Article 10

1. The prohibition under Article 9, paragraph 1 shall not apply to agreements, decisions or concerted practices which have a negligible effect on competition.

2. The effect shall be insignificant when the aggregate share of the undertakings participating on the market for goods or services, forming the subject of the agreement, decision or concerted practice, does not exceed five per cent of the relevant market.

Obligation to notify

Article 11

1. Agreements, decisions or concerted practices of the kind described in Article 9, paragraph 1 which are in existence shall be notified to the Commission within thirty days following the day of their conclusion, adoption or application.

2. The notification under paragraph 1 should contain information about:

   - the participating undertakings;

   - the legal form of the agreement or decision, or the type of concerted practice;

   - the overall share of the participating undertakings on the relevant market.

3. The notification under paragraph 1 may also contain a request for exemption from the prohibition in accordance with Article 13.

Appraisal of agreements, decisions or concerted practices

Article 12

Within two months after the receipt of the notification, the Commission shall issue a decision whereby it shall declare:

- that no ground exists for the application of the prohibition under Article 9;

- a prohibition of the agreement, decision or concerted practice.

Exemption from prohibition

Article 13

1. The prohibition under Article 9, p. 1, may, however, with the authorisation of the Commission, be declared inapplicable in the case of agreements, decisions or concerted practices, which contribute to increasing or improving the production of goods and the provision of services, to promoting technical or economic progress or to increasing the competitiveness on external markets, while allowing consumers a fair share of the resulting benefits, and which do not:

    - impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

    - afford such undertakings the possibility of eliminating competition in respect of a substantial part of the relevant market.

2. The Commission may exempt from the prohibition under Article 9 agreements, decisions and concerted practices of small and medium-size enterprises, when they lead to enhancing their competitiveness.

3. The authorisations under paragraph 1 shall be issued in two months following the submission of the request under Article 11, paragraph 3. The authorisations may contain certain conditions with which the undertakings shall comply.

4. The Commission shall exercise control over the observance of the conditions under paragraph 3. It may revoke or amend its authorisation, as well as prohibit the agreement, decision or concerted practice, where:

    - there has been a change in any of the facts which were basic to the giving of the authorisation;

    - the parties commit a breach of any obligation attached to the authorisation;

    - the authorization is based on incorrect information and facts supplied by the undertaking.

5. In case that in the process of investigation information indicating that the agreement, decision or concerted practice for which exemption is requested, seriously affects or might affect the interests of the trading parties or consumers, was found, the Commission may order by means of a decision an immediate termination or modification (*Repealed by Ruling No. 18/1998 of the Constitutional Court)* of the agreement, decision or concerted practice. That decision shall not be subject to appeal.

Block exemption from prohibition

Article 14

1. The Commission may adopt a decision that the prohibition under Article 9, paragraph 1 shall not apply to a certain type of contracts when they satisfy the requirements under Article 13, paragraph 1.

2. The decision under paragraph 1 shall enter into force after its publication in the State Gazette.

3. In its decision for block exemption from the prohibition under Article 9, paragraph 1 the Commission shall determine the clauses which the contracts may contain and those whose application is inadmissible.

4. The decision under paragraph 1 above may provide that the prohibition under Article 9, paragraph 1 shall not apply to contracts concluded prior to its entry into force in case that within 3 months they are brought in conformity with the requirements contained in the Commission's decision and the Commission is immediately notified of the modifications made.

Unification of general conditions

Article 15

1. Undertakings which offer the conclusion of identical contracts, containing general conditions, may unify those general conditions in advance provided that they do not restrict the free negotiation of prices and do not affect the interests of consumers.

2. The unification of general conditions is permitted only with an authorization of the Commission, which shall be given within two months following the submission of the request of the undertakings under paragraph 1.

Chapter Four - MONOPOLISTIC AND DOMINANT POSITION

Monopolistic position

Article 16

1. The position of an undertaking which has, by virtue of law, the exclusive right to carry on a certain type of economic activity shall be monopolistic.

2. A monopolistic position may only be granted by law where such a position is given to the State in accordance with Article 18, paragraph 4 of the Constitution of the Republic of Bulgaria.

3. Any other means of conferring of a monopolistic position shall be void.

Dominant position

Article 17

1. The position of an undertaking which, in view of its market share, financial resources, possibilities for access to the market, level of technology and economic relations with other undertakings may hinder competition in the relevant market, since it is independent of its competitors, suppliers or purchasers shall be dominant.

2. An undertaking shall be considered to have a dominant position if it has a market share higher than 35 per cent of the relevant market, unless the conditions under paragraph 1 are satisfied.

Prohibition against abuse of monopolistic or dominant position

Article 18

The following actions or undertakings, having a monopolistic or dominant position that have as their object or effect the prevention, restriction or distortion of competition shall be prohibited, and in particular those which:

- impose directly or indirectly inequitable prices for purchase or sale or other unfair trading conditions;

- limit production, trade and technical development to the prejudice of consumers, along with the creation of goods shortage through their detention, destruction, damaging or unjustified directing to processing;

- apply different conditions to identical type of contracts with regard to certain partners, thereby placing them at a competitive disadvantage;

- subject the conclusion of contracts to acceptance by the other party of supplementary obligations or to the conclusion of supplementary contracts which, by their nature or according to commercial usage, are not connected with the subject of the main contract or with its performance;

- use economic constraint, resulting into the transformation, merger, fusion, division, detachment and closure of other undertakings along with the inequitable termination of long-established business relations.

Chapter Five - STATE INTERVENTION

Compulsory pricing

Article 19

Provided that the prohibition under Article 18, paragraph 1 is violated by undertakings, having a monopolistic position, the Council of Ministers may, on a proposal from the Commission, establish minimum, fixed or ceiling prices for a given time that shall be compulsory on the infringing undertaking.

State aids

Article 20

1. State aid shall be the aid granted by the State either through State resources in any form whatsoever which distorts or might distort competition by putting in a more favourable position certain undertakings or the production of certain goods, or the provision of certain services.

2. State authorities and institutions which grant State aid and thereby affect or might affect the trade relations between the Republic of Bulgaria and the countries with which it has a State aid regime established by virtue of a treaty, shall be obliged to notify the Commission of the respective State aid project in advance, on the admissibility of which the Commission shall pronounce.

3. The obligation for notification under paragraph 2 shall not apply to aids:

    - being social by their nature and granted to individual consumers regardless of the origin of the goods or services;

- for the repair of damages caused by natural calamities or other exceptional circumstances.

4. The Commission may deem admissible the aids:

   - designed to accelerate the economic development of areas with low standard of living or with unemployment rate exceeding the average level for the country;

   - designed to foster the economic development of certain economic activities or of certain areas, in as much as the conditions of trade are not changed contrary to the common interest of the parties;

   - which foster the execution of a project, being of a significant economic interest to the parties or the overcoming of serious difficulties in the economy of the Republic of Bulgaria;

   - which foster the preservation of the cultural and historic heritage, provided that those aids do not affect trading conditions and competition to an extent that runs contrary to the mutual interests of the parties;

   - determined with the consent of the countries with which the Republic of Bulgaria has established a State aid-monitoring regime.

5. Where the Commission establishes that the project or the State aid granted are incompatible with the conditions under paragraphs 2 to 4 above and fall outside the scope of admissible exceptions, it shall propose to the corresponding authority or institution to cancel the project within a prescribed time-limit or demand that the aid be reimbursed. In that case the Commission may also propose that only the amounts or the conditions for granting the aid be modified to prevent the restriction and to restore effective competition.

Chapter Six - CONCENTRATION OF ECONOMIC ACTIVITIES

Definition

Article 21

1. There shall be a concentration of economic activities:

   - in case of merger or fusion of two or more independent undertakings, or

   - where one or several persons already controlling one or more undertakings acquire by purchase of securities, stakes or property, by contract or by any other means, direct or indirect control over one or more undertakings or parts of them.

2. For the purposes of paragraph 1, item 2 **control** stands for any acquisition of rights, conclusion of contracts or other means which, separately or jointly, and with regard to the existing factual circumstances and the applicable law, confer a possibility for the exercise of a decisive influence on an undertaking through:

- the acquisition of ownership or right to use the entirety or part of the assets of the undertaking;

- the acquisition of rights, including under contract, which provide a possibility for a decisive influence on the composition, voting or decisions of the organs of the undertaking.

Joint venture

Article 22

The creation of a joint venture that performs on a lasting basis all the functions of an autonomous economic entity, where this does not lead to co-ordination of the competitive behaviour of the participating undertakings between themselves or between them and the joint venture, shall also constitute a concentration within the meaning of Article 21.

Exceptions

Article 23

The cases where:

credit institutions or other financial institutions or insurance companies, whose activities include transactions in securities for their own account or for the account of others, hold on a temporary basis securities of a given undertaking with the view to reselling them, but only provided that:

(a) they do not exercise the voting rights in respect of those securities in order to influence the competitive behaviour of the undertaking, or

(b) they exercise their voting rights only in order to prepare the disposal of the securities, which should be done in one year's term following their acquisition;

control is acquired by a person which, according to the legislation in force, performs certain functions related to the liquidation of the undertaking or to its bankruptcy procedure;
the operations under Article 21, paragraph 2 are carried out by financial holding companies provided however that the control in respect of the holding, is exercised solely to maintain the full value of the invested capital and not to determine directly or indirectly the competitive behaviour of the undertakings in which they have holdings, shall not be considered for concentrations.

Obligation for prior notification

Article 24

1. The undertakings shall notify the Commission prior to their intention to carry out the concentration under Article 21, when:

   - the aggregate market share of the goods or services, to which the concentration relates, exceeds 20 per cent;

   - the aggregate turnover of the participants in the concentration for the previous year exceeds 15 billion Levs.

2. When the concentration leads to the acquisition of control over parts of one or more undertakings, irrespectively whether those parts form autonomous legal entities, the turnover, related to the part that is the subject of control shall be considered.

3. In case of concentration of credit institutions and other financial institutions the assets on their balance sheet shall be taken into consideration, and for insurance undertakings – the value of gross premiums written.

Obligation of State or local authorities to notify

Article 25

Provided that the authorities of the central executive power or of the local self- government consolidate their undertakings, in the cases under Article 24, paragraph 1, those authorities shall submit a notification before the Commission before the issuance of the respective act.

Contents of the notification

Article 26

1. The notification under Article 24 shall contain information about

    - the undertakings participating in the concentration;
    - the nature and the legal form of the concentration;
    - the type of goods and services covered by the notification;
    - the undertakings over which the participants in the concentration exercise control with respect to Article 21, paragraph 2;
    - the aggregate market share and the aggregate turnover of the undertakings participating in the concentration;
    - the main competitors, suppliers and purchasers.

2. The notification of the undertakings under paragraph 1 shall also contain a request to the Commission to authorize the concentration.

Appraisal of concentration

Article 27

1. Within one month after the receipt of the notification the Commission shall make an appraisal of the concentration, taking into consideration contingencies such as: the position of the undertakings on the relevant market before and after the concentration, their economic and financial power, access to supply of and markets for the respective goods and services, the legal or other barriers to entry to the markets.

2. On the basis of the assessment the Commission shall render a decision whereby it:

    - declares that the concentration does not fall within the scope of Article 24;
    - authorises the concentration;
    - starts an investigation under Article 29.

3. Where, during the investigation, facts, revealing that the concentration for which authorisation is sought seriously affects or might affect the interests of trading parties

or consumers, are established, the Commission may order by a decision the immediate termination or modification (*Repealed by Ruling No. 18/1998 of the Constitutional Court)* of the actions relating to the concentration. The decision shall not be subject to appeal.

Authorisation for concentration

Article 28

1. The Commission shall authorize the concentration provided that the latter does not result in the creation or strengthening of a dominant position that would significantly impede effective competition on the relevant market. Authorisation may also be given under the condition that certain requirements should be met.

2. The Commission may authorize a concentration which, besides creating or strengthening a dominant position, aims at modernisation of production or of the economy as a whole, improvement of the market structures, attraction of investments, increasing the competitiveness on external markets, creation of new jobs, better satisfying of the interests of the consumers, and on the whole outweighs the negative impact on competition on the relevant market.

3. In the authorisation under paragraphs 1 and 2 the Commission may also impose additional requirements which guarantee the preservation of effective competition or the overall positive impact on the market.

Decision for investigation

Article 29

1. The Commission decides to initiate an investigation provided that the concentration falls within the scope of Article 21 and rises serious doubts that its carrying out would result in the creation or strengthening of an existing dominant position, and that effective competition in the relevant market would be prevented, restricted or distorted.

2. The decision under paragraph 1 shall be published in the State Gazette.

3. Within three months after the publication the Commission shall complete the investigation and issue a decision.

4. Until the issuing of the Commission's decision under Article 54 all operations relating to the envisaged concentration shall be prohibited.

Chapter Seven - UNFAIR COMPETITION

Definition

Article 30

1. Unfair competition shall be any action or inaction in the course of the performance of economic activities which contravenes to good-faith commercial usage and impairs or might impair the interests of competitors in their mutual relations or in their relations with consumers.

2. Unfair competition shall be prohibited.

Article 31. Damaging the reputation of competitors

1. The damaging of the reputation of and confidence in competitors, and of the goods and services offered by them by stating or disseminating untrue information, or by misrepresenting facts shall be prohibited.

2. It shall be prohibited to ascribe, by means of advertising or in any other manner, non-existing qualities to goods or services in comparison to the goods or services of competitors, and to ascribe non-existing defects to the goods or services of competitors.

Misleading

Article 32

1. It shall be prohibited to conceal or disguise material defects or dangerous characteristics of the goods or services offered.

2. It shall be prohibited to mislead in relation to essential characteristics or to the way of utilisation of the goods by means of making untrue statements or by the misrepresentation of facts.

3. The advertisement of goods or services which are not available to satisfy consumers' demand or which are of insufficient quantity shall be prohibited.

4. The use of misleading announcements of prices, price reductions or other trading conditions shall be prohibited when offering goods or services.

Imitation

Article 33

1. The offering or advertisement of goods or services with an appearance, packaging, marking, name or other characteristics which mislead or might mislead as to the origin, producer, seller, the way and place of production, the source and way of acquisition or utilisation, the quantity, quality, nature, consumer characteristics and other essential features of the good or service shall be prohibited.

2. The use of a firm, a trademark or an emblem identical or similar to those of other persons in a way which might result in impairing the interests of competitors and/or consumers shall be prohibited.

Unfair attracting of clients

Article 34

1. The carrying out of unfair competition aimed at attracting clients as a result of which contracts concluded with competitors are terminated or violated shall be prohibited.

2. The use of duress or other unlawful means to exert influence over the sellers, so that they would not sell goods or would refuse services to certain persons shall be prohibited.

3. The use of duress or other illegal means to influence the clients with the intent to make them purchase, refrain from purchasing or use a particular type of product or service shall be prohibited.

4. The announcement of sales in installments or similar legal transactions where the seller fails to clearly declare his firm, or to give accurate information about the number and amount of the separate installments, the interest rate due on the arrears and the total selling price shall be prohibited.

5. The offering or giving of supplements to the product or service sold free of charge or against a fictitious price for another good or service, with the exception of: advertising objects of insignificant value and bearing a clear indication of the advertiser; objects or services which, according to commercial usage, constitute accessories to the sold product or the service provided; goods or services as a rebate for the sale of bigger quantities, as well as printed matter in case of sale of or subscription to periodicals shall be prohibited.

6. The making of a sale where, together with it, something is offered or promised depending on: resolving problems, puzzles, questions, riddles; collection of series of coupons, etc.; gambling in games of fortune with cash or object prizes the value of which considerably exceeds the value of the product or of the service sold shall be prohibited.

7. The sales of significant quantities of goods on the domestic market for long periods of time at prices lower than the production and marketing costs for the purpose to attract clients unfairly shall be prohibited.

Prohibition to disclose industrial or trade secrets

Article 35

1. The learning, the use or disclosure of an industrial or trade secret in contravention to good-faith commercial usage shall be prohibited.

2. The learning of a industrial or trade secret runs contrary to good-faith commercial usage where it has been effected through tapping, penetration into a premise, opening of correspondence, photographing without the consent of the holder of documents or chattels safe-guarded in a way which restricts the access to them, and also by means of deceit or offering a benefit to persons who have access to the secret as a result of their official or contractual relations.

3. The use or disclosure of a industrial or trade secret where it has been learned or made known on condition that it should not to be used or disclosed shall also be prohibited.

Title Three - PROCEEDINGS

Chapter Eight - GENERAL PROVISIONS

Grounds to initiate proceedings

Article 36

1. Proceedings before the Commission shall be initiated following:

- a written application from the persons whose interests are affected or threatened by a violation of this law;
- written requests to issue authorisations or allow harmonised general conditions or State aids;
- a decision of the Commission;
- a request from the public prosecutor.

2. Actions to compensate the persons affected by violations under this law shall be brought in accordance with the Code of Civil Procedure. The decision of the Commission, whereby the violation is established, shall be binding on the civil court. (*Repealed by Ruling No. 18/1998 of the Constitutional Court)*

Sittings of the Commission

Article 37

1. The sittings of the Commission shall be open or held *in camera*.

2. The parties may avail themselves of counsel defense.

Quorum and majority

Article 38

1. The sittings shall be regular where at least seven members of the Commission are present.

2. The Commission shall take its decisions by open vote and a majority of six votes.

Grounds for self-challenging

Article 39

1. A member of the Commission shall be obliged to challenge himself on one of the following grounds:
   - in case that he/she has been a representative of one of the parties;
   - in case that he has had an employment or civil law relationship with one of the parties;
   - in case that, due to other circumstances, that member might be considered biased or directly or indirectly interested in the outcome of the proceedings.

2. In cases under paragraph 1 the parties may challenge a member of the Commission.

Securing of evidence

Article 40

1. In case of a threat for a proof to be lost or for its collection to be rendered difficult, the chairman of the Commission shall order its collection prior to the initiation of the proceedings.

2. The provisions of the Code of Civil Procedure shall apply accordingly to the securing of evidence.

Obligation for assistance

Article 41

1. The officials shall be obliged to assist the Commission in the fulfillment of the duties assigned thereto by the law, by providing access to premises, oral and written explanations, along with provision of documents and other information supports.

2. In case of refusal to access or failure to provide information the Commission shall seek the assistance of the bodies of public prosecution and of the Ministry of the Interior.

3. Where the Commission conducts an investigation or study the officials may not rely on official, industrial or trade secrets.

4. The National Statistics Institute shall collect, process and provide upon request information to the Commission on issues within the scope of its competence.

Use of documentation

Article 42

Any documentation and information received by the Commission in the course of an investigation may be used solely for the purposes of that investigation.

Appeals

Article 43

The decisions of the Commission shall be subject to appeal before the Supreme Administrative Court within fourteen days of their notification in accordance with the Code of Civil Procedure, except for those under Article 13, paragraph 5 and Article 27, paragraphs 2 and 3.

Entry of decisions into force

Article 44

The decisions of the Commission shall enter into force when:

- they are not subject to appeal;
- they have not been appealed against within the time limit under Article 43;
- the appeal lodged has not been granted.

Enforcement

Article 45

The pecuniary sanctions and fines imposed by decisions of the Commission which have come into force shall be subject to collection in accordance with the Law on the Collection of State Claims.

Statutory limitation

Article 46

No proceedings shall be initiated or the proceedings initiated shall be discontinued after the expiry of five years after the offence has been committed.

Article 47. Fees and costs

1. For the proceedings under this law State fees and costs shall be due. The State fees shall be approved by the Council of Ministers.

2. The State institutions shall be exempt from fees but not from costs for the proceedings.

Chapter Nine - PROCEEDINGS FOR INVESTIGATION OF OFFENCES AND ISSUING OF AUTHORISATIONS

Initiation of proceedings

Article 48

1. Proceedings before the Commission shall be initiated on an application from the parties concerned, on a request to issue an authorisation or to allow harmonisation of general conditions or of State aids or *ex officio*.

2. No proceedings shall be initiated and the proceedings initiated shall be discontinued, following a decision of the Commission, when:

    - the applicant – natural person – has deceased or the legal person has been wound up;
    - the time limits prescribed for the lapse of liability under this law have expired;
    - the Commission is not competent to pronounce.

Contents of application

Article 49

1. The application under Article 36, paragraph 1, item 1 must be written in Bulgarian and must contain:

    - the name unified civic number and information about the court registration of the applicant and of the person against which the complaint is brought;
    - address (residence and address of management) of the applicant;
    - justification of the request and a presentation of the circumstances on which the application is grounded;
    - evidence in support of the application;
    - signature of the person who submits the application, or of his or her representative;
    - the State fees paid, if due.

2. The requests under Article 36, paragraph 1, item 2 shall contain accordingly the data listed in Article 11, paragraph 2 and in Article 26, paragraph 1.

3. The requests for State aids to be allowed shall be accompanied by enclosed evidence about the existence of the circumstances under Article 20, paragraph 4.

4. The Commission shall not examine applications which are not signed or which are anonymous.

5. Provided that the application fails to satisfy the requirements under paragraphs 1 to 3, a notice to remove the irregularities within seven days shall be sent to the applicant.

6. Provided that the applicant fails to remove the irregularities within the time limit under paragraph 5, the application shall not be examined by the Commission.

Article 50

The chairman shall open a file for the application received, the request for an authorisation or decision of the Commission under Article 36, paragraph 1, item 3, and shall assign it to a member of the Commission – rapporteur.

Investigation and study

Article 51

1. The rapporteur shall conduct an investigation or study of the circumstances concerning the file, by:

    - requesting written or oral explanations from the applicant; from the person against which the complaint for violation of the law is brought from undertakings, and from State and local authorities. The written explanations shall be recorded and signed by the person who has given the explanations;

    - requesting copies of private and official documents;

    - requesting written opinions from State and local authorities.

2. During the conduct of the investigation or study, the rapporteur shall be assisted by the administration, as well as by external experts and specialists.

3. All facts and circumstances collected during the investigation or study shall be confidential, if they constitute a business or other protected secret of the parties.

4. The investigation shall be conducted within 60 days. In cases which raise complex points of fact and law the above time limit may be extended to no more than thirty days, by an order of the chairman of the Commission.

5. After the completion of the investigation or study the parties shall be given an opportunity to get acquainted with the materials collected in the file.

Drafting of conclusion

Article 52

1. The rapporteur shall draft a conclusion and present the file to the chairman.

2. Within two weeks the chairman shall schedule an open sitting.

3. The summoning of the parties and the notification of the persons concerned for the sitting shall be made in accordance with the Code of Civil Procedure.

4. The person against whom the complaint is brought or his or her representative, the person who suffered damages as a result of the offence or his or her representative, the applicant, representatives of State or local authorities, as well as other persons concerned shall be summoned for the sitting.

Evidence

Article 53

1. Written evidence shall be admitted and the explanations of the parties shall be heard at the sittings of the Commission

2. The chairman may order that a party appear in person in order to give explanations.

Proceedings for conducting the sitting

Article 54

1. The sitting of the Commission shall start with deciding on the preliminary issues of the file concerning the regularity of the proceedings.

2. The parties to the file may be asked questions following a procedure determined by the chairman.

3. Where he considers that the circumstances of the file are clarified, the chairman shall give the parties an opportunity for opinions.

4. After the dispute is clarified from the factual and legal point of view, the chairman shall close the sitting and announce the day on which the Commission shall pronounce, and the parties present shall be considered notified.

Decision of the Commission

Article 55

1. The Commission shall pronounce, in a sitting *in camera*, a decision whereby it shall:

    - establish the offence committed and the offender, and define the type and amount of the penalty provided in the law;

    - establish that the offence committed under the law has served as a ground to issue a vicious court judgement, and empower the chairman to bring an action under the Code of Civil Procedure for its reversal; *(Repealed by Ruling No. 18/1998 of the Constitutional Court)*

    - establish that no offence has been committed under the law or that the time limit under Article 45 has expired, and dismiss the application;

    - declare that no grounds exist to impose the prohibition under Article 9;

    - exempt certain agreements, decisions or concerted practices from the prohibition under Article 9;

    - prohibit a given agreement, decision or concerted practice;

    - allow or prohibit the unification of general conditions;

- allow or propose to the corresponding body or institution to cancel or modify the project for granting of State aid;

- authorize or prohibit a concentration.

2. The decision shall be motivated and signed by the members of the Commission who have voted during the sitting *in camera*.

Dissenting opinion

Article 56

1. A member of the Commission who dissents with the decision shall sign it with a dissenting opinion.

2. The dissenting opinion shall be attached to the decision.

Contents of decision

Article 57

The decision of the Commission shall be written and shall indicate:

- the name of the authority which has issued it;

- the grounds of fact and law for its issuance;

- a disposition where the rights and obligations shall be determined, as well as the type and amount of the penalty where such is imposed;

- the body before which and the time limit in which the decision may be appealed against.

Title Four - LIABILITY AND PENALTIES

Chapter Ten - LIABILITY

Administrative liability

Article 58

1. In case of violation of the prohibitions and restrictions under this law, where the act does not constitute a crime, administrative liability shall be borne.

2. No acts for establishing the offences shall be drafted and the pecuniary sanctions and fines under the law shall be imposed by a decision of the Commission which shall be subject to appeal before the Supreme Administrative Court.

Chapter Eleven - PENALTIES

Pecuniary sanctions

Article 59

1. For offences under Article 9, Article 18, Article 30 to Article 35, as well as for

    - carrying on operations under Article 11, paragraph 1, Article 15, paragraph 2, Article 20, paragraph 2 and Article 24, paragraph 1 without authorisation, the Commission shall impose a pecuniary sanction on the undertaking, in favour of the State, to the amount of 5,000,000 to 300,000,000 Levs.

2. In case of a repeated offence the Commission may impose a pecuniary sanction on the undertaking to the amount of 100,000,000 to 500,000,000 Levs.

3. In case of failure to perform a decision of the Commission the latter may impose a pecuniary sanction on the undertaking, to the amount of 100,000,000 to 500,000,000 Levs.

Fines

Article 60

1. The natural persons who have committed or admitted the committing of offences under this law, where the act does not constitute a crime, shall be liable to a fine of 1,000,000 to 10,000,000 Levs.

2. Persons who fail to submit on time the evidence requested or accurate information, or fail to appear in person to give explanations before the Commission, shall be liable to a fine of 500,000 to 2,500,000 Levs.

3. In case of a repeated offence under paragraphs 1 and 2 the guilty person shall be liable to a fine of 2,000,000 to 20,000,000 Levs.

4. In case of minor offences the Commission may impose a fine below the established minimum threshold.

ADDITIONAL PROVISION

§1. For the purposes of this law:

- “Undertaking” means any natural or legal person, or association under civil law thereof which carries on economic activities in the relevant market, regardless of its legal and organisational form.

- “Connected undertakings” are those undertakings one of which has such a participation in the other which enables it to exercise effective control on its management or activities.

- “Associated undertakings” are those which carry on joint economic activities on the grounds of a contract or on the basis of associations of commercial companies, in accordance with the Commercial Code.

- "Concerted practices" consist in the coordinated acts or inaction of two or more undertakings.

- "Relevant market" consists of:

  a) Product market including all goods or services which could be accepted by consumers as substitutable in respect of their characteristics, intended use and price;
  b) Geographical market including a specific territory on which the corresponding substitutable goods or services are offered and on which the conditions of competition are the same, while differing from those in neighbouring areas.

- "Good-faith commercial usage" is the rules defining the market behaviour, which stem from the laws and normal trading relations, and which do not violate good morale.

- "Industrial or trade secret" is facts, information, decisions and data relating to the economic activities whose keeping in secret is in the interest of the right-holders and for which they have taken the necessary measures.

- "Repeated offence" is the offence committed within one year after the entry into force of the decision whereby the offender has been punished for the same type of offence.

- "Economic activities" are the activities of undertakings the results of which are designed for exchange on the market.

TRANSITIONAL AND FINAL PROVISIONS

§2. The chairman, the deputy chairmen and the members of the Commission elected by the National Assembly shall preserve their rights until the expiry of their term of office under this law.

§ 3. The agreements, decisions and concerted practices under Article 9 of this law which exist as at the date of its entry into force shall be brought in conformity with the requirements of this law within three months. Failing this, they shall be void.

§ 4.

1. The proceedings pending at the moment of entry into force of this law, initiated under files of the Commission which have not been completed, shall be completed in accordance with the rules laid down in this law.

2. The pending court cases brought in accordance with this law shall be completed in accordance with the rules in force at the moment of their initiation.

§ 5. In the Commercial Code (published, State Gazette, issue 48 of 1991, amended, issue 25 of 1992, amended and supplemented, issues 61 and 103 of 1993, issue 63 of 1994, amended, issue 63 of 1995, amended and supplemented, issue 42, amended, issue 59 of 1996, amended and supplemented, issue 83 of 1996, amended, issue 86 and 104 of 1996, issue 58 of 1997, amended and supplemented, issues 100 and 124 of 1997), an article 262a is inserted:

"S. 262a. The issuance of an authorisation for merger or fusion of companies shall be made in accordance with conditions and proceedings laid down in a separate law. The

court shall enter the merger or fusion in the commercial register after the authorisation granted is submitted to the court, where the grant of such authorisation is compulsory."

§ 6. The Law on Banks (published, State Gazette, issue 52 of 1997, amended, issue 15 of 1998, amended, issue 21 of 1998) is amended and supplemented as follows:

- In Article 19, paragraph 5, a second sentence is inserted:

"In cases under paragraph 2, item 3 the Central Bank shall examine the request if an authorisation for the merger or fusion has been granted by the Commission for the Protection of Competition, where the grant of such authorisation is compulsory."

- In Article 20, after the words "the Central Bank", a comma is inserted and the following words are added: "and in cases under item 3 – also the authorisation of the Commission for the Protection of Competition, where the grant of such authorisation is compulsory".

- In Article 75, paragraph 1, after the words "the Central Bank", the following words are added: "after submission of an authorisation from the Commission for the Protection of Competition, where the grant of such authorisation is compulsory".

- In Article 78, a new paragraph 6 is inserted:

"(6) An authorisation for fusion under paragraph 5 shall be granted upon submission of an authorisation from the Commission for the Protection of Competition, where the grant of such authorisation is compulsory".

§ 7. The Law on Insurance (published, State Gazette, issue 86 of 1996, supplemented, issue 1 of 1997, amended, issue 21 of 1997 – Judgement of the Constitutional Court of the Republic of Bulgaria, amended and supplemented, issue 58 of 1997, issue 21 of 1998) is supplemented as follows:

- In Article 17c, paragraph 1, item 2 in fine, the following words are added: "upon submission of an authorisation for merger or fusion by the Commission for the Protection of Competition, where the grant of such authorisation is compulsory",

- In Article 22, item 1, after the words "between insurers" the following words are added: "after receipt of an authorisation for merger or fusion by the Commission for the Protection of Competition, where the grant of such authorisation is compulsory".

§ 8. Article 35 of the Law on Privatisation Funds (published, State Gazette, issue 1 of 1996, amended and supplemented, issues 68 and 85 of 1996, issue 39 of 1998) is amended and supplemented as follows:

- A new paragraph 2 is inserted:

"(2) The Commission may issue an authorisation for the acquisition of shares issued by another privatisation fund, for merger and fusion of privatisation funds only upon submission of authorisation from the Commission for the Protection of Competition, where the grant of such authorisation is compulsory".

- The now existing paragraph 2 becomes paragraph 3.

§ 9. In Article 2 of the Law on Cooperatives (published, issue 63 of 1991, amended, issues 34 and 55 of 1992, issue 63 of 1994, issue 59 of 1996, supplemented, issues 59 and 103 of 1996, amended, issue 52 of 1997) a paragraph 2 is inserted:

> "(2) In case of merger of co-operatives the court shall register the new cooperative or the changes under Article 40, paragraph 1, after it has been provided with the corresponding authorisation, issued by the Commission for the Protection of Competition, where the grant of such authorisation is compulsory."

§ 10. The Law on Securities, Stock Exchanges and Investment Companies (published, State Gazette, issue 63 of 1995, amended and supplemented, issues 68 and 85 of 1996, issues 52 and 94 of 1997, issue 42 of 1998) is amended and supplemented as follows:

- In Article 97, a paragraph 8 is inserted:

> "(8) The offeror shall mandatory enclose to the draft bidding proposal an authorisation from the Commission for the Protection of Competition".

- Article 98 is amended as follows:

  a) In paragraph 1, the words "Commission for the Protection of Competition" are deleted;
  b) paragraph 2 is repealed.

§ 11. The implementation of this law is entrusted to the Commission for the Protection of Competition.

§ 12. This law repeals the Law on the Protection of Competition (published, State Gazette, issue 39 of 1991, corrigendum, issue 79 of 1991, amended and supplemented, issue 53 of 1992).

The law was passed by the XXXVIIIth National Assembly on 29 April 1998 and the State seal has been affixed hereto.

President of the National Assembly:
(pp) Ivan Kurtev

II. ESTONIA

Commentary of the Government of Estonia on the Estonian Competition Act

A. Description of the reasons for the introduction of the legislation

From the political and economic standpoint, the late 1980s and early 1990s saw a breakthrough in Estonia similar to the changes in all Central and Eastern European countries. The result was a need to establish competition policy and apply supervision of competition in practice, which in turn led to the first Competition Act and the formation of the Competition Board in 1993.

The first Act contained the traditional provisions of the competition law – prohibition of agreements that restrict competition and prohibition of abuse of dominant position in the market. It also contained provisions related to unfair competition. After a few years of rapid development of the competitive environment and law making (in connection with the restoration of the independence, all acts had to be adopted in a very short time), and after the State had gained experience in implementation of the Act, in 1998 the need became apparent for a new, more precise and amended Competition Act. In elaborating this Act, the need to fulfil the obligations deriving from the Europe Agreement was taken into consideration, as well as the need (arising from everyday practice) to establish more exact rules of procedure in the Act in order to ensure more effective implementation of the Act.

The second Competition Act, which entered into force in 1998, for the first time required merging companies to notify the Competition Board. A basis and procedure for granting state aid was also established in this act over which the Ministry of Finance exercises supervision. In 2001, the current competition act took effect, giving the competition Board additional responsibility for total merger concentration and supervision of competitive situations among credit institutions, securities brokers and insurance companies. In the second half of 2002, the Competition Act was amended several times because of the new Penal Code. According to the amendments all competition offences are of a criminal nature, and the Estonian Competition Board has the competence to conduct pre-trial criminal investigation.

B. Description of the practices, acts or behaviour subject to control

According to the Competition Act, agreements between undertakings, concerted practices and decisions by association of undertakings which have as their object or effect the restriction of competition (including fixing prices, limiting production or sharing relevant markets) are prohibited (Article 4). The Competition Board has the right to exempt agreements and to make proposals on block exemptions to the Government. So block exemption rules are being made in the form of Government Regulation and undertakings can use them directly, without asking permission from the Competition Board. There are block exemptions valid now, for example horizontal and vertical agreements, motor vehicle distribution and servicing agreements. If an undertaking wants to use an individual exemption, then the Competition Board can allow it in the circumstances described in §6. The procedure for grant of exemption appears in Chapter 3.

The undertaking in a *dominant position* in the meaning of the Competition Act is an undertaking that accounts for at least 40 per cent of the turnover in the product market or whose position enables the undertaking to operate in such market to an appreciable extent independently of competitors, suppliers and buyers (Article 13). This 40 per cent guideline was established because of the small scale of the Estonian market, and in most of the cases it has been used. The acts that are considered to constitute

abuse of dominant position are described in Article 16, and they include directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions; limiting production, service or relevant market; unjustified refusal to sell or buy goods; and so on.

Now acquisition of control over part of an undertaking, as well as acquisition of joint control over the whole or a part of a third undertaking, is regarded as concentration. Pursuant to the current Competition Act, a concentration shall be subject to control if, during the previous financial year, the aggregate worldwide turnover of the parties to the concentration exceeded 500 million kroons and the aggregate worldwide turnover of each of at least two parties to the concentration exceeded 100 million kroons, and if the business activities of at least one of the merging undertakings or of the whole or part of the undertaking of which control is acquired are carried out in Estonia. The Competition Board has the authority to prohibit a concentration if it might create or strengthen a dominant position, as a result of which competition would be significantly restricted in the goods market. In order to avoid restriction of competition through creation or strengthening of a dominant position, the Competition Board may prescribe, in its decision on granting permission to concentrate, conditions and obligations directly related to the concentration for the parties to the concentration, taking into account the proposals of the parties.

C. Description of the scope of application of legislation

According to the Competition Act, the scope of the Act is to safeguard competition in the interest of free enterprise upon the extraction of natural resources, manufacture of goods, provision of services, and sale and purchase of products and services, and the preclusion and elimination of the prevention, limitation or restriction of competition in other economic activities. The Act applies to both products and services, which are named as goods in the Act. The Act also applies if an act directed at restricting competition is committed outside the territory of Estonia but restricts competition within the territory of Estonia.

D. Description of the enforcement machinery, indicating any notification and registration agreements and principal powers of body

The Competition Board was under the administration of the Ministry of Finance, and from 1 November 2002, the Ministry of Economy and Communications, which means that the Minister decides on the budget and appoints the Director General of the Competition Board. Currently there are over 40 officials working at the Competition Board, and it does not have any special council. The Competition Board has the authority to analyse the competitive situation; propose measures to promote competition; make recommendations to improve the competitive situation; make proposals for legislation to be passed or amended; and develop cooperation with the competition supervisory authorities of other states and associations of states. The Competition Board has the right to permit or prohibit concentrations; give exemptions from agreements; issue a precept to a natural or legal person; conduct pre-trial investigation; and compile a summary of charges in criminal proceedings.

E. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices

In 1995, the Agreement on Association (the Europe Agreement) was ratified between the European Communities and their Member States and the Republic of Estonia, after which the implementing rules in the field of competition were also adopted with the purpose of guaranteeing sufficient exchange of information in order to exercise effective supervision of the competitive situation.

In 1996, the Competition Boards of Latvia, Lithuania and Estonia signed a Memorandum of Understanding that laid down general principles of information exchange.

We have taken advantage of the possibilities offered by both of the agreements.

F. Description of major decisions taken by administrative and/or judicial bodies, and the specific issues covered

Concerted practices by three taxi companies in Pärnu having harmful, limiting and restrictive effect on free competition

The Competition Board initiated, by order No. 32 (17 May 1999) of the Director General, proceedings for case 13/99 to investigate violation of Article 4(1)(1) of the Competition Act, based on the information published in newspapers concerning the alleged price fixing cooperation between the taxi companies in Pärnu, and pursuant to Article 39(2) of the Competition Act.

Pursuant to Article 4(1)(1) of the Competition Act, agreements or concerted practices that have as their object or effect the restriction, prevention, limitation or distortion of free enterprise and competition are prohibited. Such agreements or activities are deemed to restrict competition if they directly or indirectly fix pricing conditions, including selling prices of services, tariffs or rebates to be applied to a third person.

Proceedings and decision of the competition board

According to Article 3(1) of the Competition Act, a market is an area in the whole territory of Estonia or a part thereof in which goods that are regarded as interchangeable by the buyer by reason of price, quality, technical characteristics, conditions of sale or use, consumption or other characteristics are circulated.

The Competition Board established that in accordance with Regulation No. 7 titled "Arrangements for Granting Licences for the Provision of Taxi Services and Taxi Certificates" adopted by Pärnu City Government on 27 April 1998, the Traffic Management Service of the Municipal Engineering Services Department issues licences to natural persons applying to provide taxi services.

According to the Engineering Services Department of the Pärnu City Government, by 11 August 1999 it had issued 190 licences conferring on licensees the right to provide taxi services on the territory of Pärnu city.

136 persons of 190 licensees had declared to the Pärnu Municipal Services Department that they had concluded cooperation or employment contracts with legal persons arranging taxi services. These contracts were divided between legal persons providing dispatcher services as follows: OÜ Bristol Takso (hereinafter BT) – 38; OÜ Pärnu Takso (hereinafter PT) – 37; OÜ E-Takso (hereinafter ET) – 37; OÜ Tulika Pärnu (hereinafter TP) – 10; and MTÜ Ranna Takso (hereinafter RT) – 11.

Business Code Article 1 states that an entrepreneur is a natural person selling goods or providing services for payment under his/her name and that the sale of goods and services is his/her permanent activity and commercial undertaking as provided for by the law.

Since the sole proprietors who have concluded cooperation contacts with legal persons arranging taxi services are providing those services on behalf of and under the trade name of that legal person, the Competition Board, for the purposes of this case, defined the legal persons offering taxi services and the sole proprietors offering those same services under their own name as competitors in the market.

The market share of the legal persons competing in the market was determined on the basis of the share of the number of persons who had signed a contract with a particular taxi company in the total number of licences issued for the provision of taxi services.

The market shares of competing taxi companies thus determined by the Competition Board were as follows: BT – 20%; PT – 19.5%; ET – 19.5%; RT – 5.8%; and TP – 5.3% of the total market providing taxi services in Pärnu. Having regard to the aforesaid and pursuant to Competition Act Article 3(2), the market as the Competition Board defined it for the purposes of this case covers the territory of Pärnu city, and the goods traded in that market were taxi services.

In order to establish all facts of significance to this case, the officials from the Competition Board collected information relevant for the proceedings of this case, taking oral explanations from the representatives of legal persons active in the market and from their employees, and requesting information from the entrepreneurs. They also requested the Pärnu City Government to submit data significant for the case.

Taking into consideration the specific feature of the case – potential violation of the Competition Act Article 4(1)(1) by legal persons providing taxi services – and bearing in mind that in such cases fast action is essential, the officials of the Competition Board interviewed representatives of the relevant legal persons in Pärnu on the first day after the proceedings had been initiated. In addition to explanations taken to establish possible violation of Competition Act Article 4(1)(1), the officials of the Competition Board investigated the development of regular taxi service rates and preferential prices during the period from May 1998 to May 1999.

Investigating the pricing principles, the Competition Board found out that although the mechanism for setting rates varied and the service providers were involved in pricing activities, the price valid in the market was established by legal persons organizing taxi services.

The Competition Board established in the course of the investigation that, during the period from May 1998 to late October/early November 1998, the rates adopted by companies providing taxi services varied. ET and PT charged 6 kroons/kilometre and BT, RT and TP provided the service for 5 kroons/kilometre. PT had established 4 kroons/kilometre as the preferential price.

During the period from October/November 1998 to April 1999, the rates in the market still varied: ET and BT charged 4 kroons/kilometre, and PT, RT and TP charged 5 kroons/kilometre. PT had introduced 3.80 kroons/kilometre as a preferential price for “loyal customer” card owners.

TP and RT did not adopt, in October/November 1998, the price reductions adopted by their competitors and provided services for 5 kroons/kilometre.

The price competition between the companies offering taxi services changed noticeably during the period from 1 to 6 April 1999, when PT, ET, BT and RT, whose total share of the market providing taxi services in Pärnu amounts to 65 per cent, set 6 kroons/kilometre as their regular tariff. Only TP and self-employed taxi drivers who had not concluded cooperation agreements with any of the companies continued to provide the service for 5 kroons/kilometre.

During the period from 1 to 6 May 1999, BT introduced for the first time, and ET and RT reintroduced, the loyal customer card providing price discounts; established similar preferential pricing – 5 kroons/kilometres – for loyal customer card owners; and agreed on cross-use of loyal customer cards. The total market share of the said legal persons formed 45 per cent of the Pärnu taxi services market. TP did not provide the service for a preferential price or introduce loyal customer cards providing favourable terms. PT did not accept the loyal customer cards of competitors and did not approve the idea of other companies’ charging preferential prices to holders of PT loyal customer cards. It established a preferential price for holders of its loyal customer card – 5 kroons/kilometre –

at the same time (i.e. one month before the competitors) also changing the regular price. As a result, the other companies lost customers.

The Chairman of the Board of BT, in his explanation to the Competition Board on 4 August 1999, said that the loyal customer card enabling purchase of services at the preferential price of 5 kroons/kilometre had been introduced because the company began to lose customers to PT, which had introduced the preferential price of 5 kroons/kilometre about a month earlier than its competitors. In Allar Tankler's article "Pärnu Takso Is Attacked by Three Taxi Companies", published in the newspaper *Pärnu Postimees,* E. Hiis, Managing Director and Chairman of the Board of ET, commented on the cooperation and cross-use of client cards between ET, BT and RT as follows: "We, together with Bristol Takso and Ranna Takso, came to the conclusion that the people of Pärnu should have concessions."

Thus, in order to attract the customers they had lost to PT, the three competitors RT, BT and ET, acting in the market providing taxi services in Pärnu, introduced cross-use of loyal customer cards providing the same preferential price. The ET Board member's statement that the cross-use of loyal customer cards providing similar preferential prices by three competing legal persons providing taxi services was advantageous to the consumer is incorrect. Contrary to the statement, in the long run it is advantageous to the customer to have service providers competing to provide preferential prices for the service provided. Otherwise, it is quite probable that the businesses dominating the market (with over 40% of the relevant market) will try to use their comparative independence of customers and competitors to raise their preferential and regular tariffs to an economically unjustified high level. The companies with smaller market share will follow suit in order to earn higher profits. Thus, such a concerted action could result in weakening or even ending price competition and in adoption of economically unjustified high prices in the relevant product market.

Given the aforesaid and the fact that OÜ Bristol Takso, OÜ E-Takso and MTÜ Ranna Takso had set similar preferential prices, the introduction from May 1999 of the cross-use of their loyal customer cards was a practice whereby competing companies established similar preferential tariffs to be adopted for customers holding loyal customer cards of different companies. Such an activity can be qualified as an anticompetitive concerted practice deemed to restrict, harm and limit price competition and is prohibited pursuant to Article 4(1)(1) of the Competition Act.

Having regard to the aforesaid and acting in accordance with Articles 4(1)(1) and 40(3)(2) of the Competition Act, the Competition Board closed the proceedings on case 13/99 on 29 December 1999 by decision No. 29 by the Deputy Managing Director ascertaining the infringement, and, in compliance with Articles 40(5), (6) (1) and 4 of the Competition Act, issued the following mandatory precept: OÜ Bristol Takso, OÜ E-Takso and MTÜ Ranna Takso will have to end cross-use of their client cards granting similar preferential tariffs.

Mandatory notification of the Competition Board of compliance with the precept was to take place no later than 25 February 2000.

All aforementioned legal persons have complied.

Acting in accordance with the Competition Act Articles 45(2) and 45(4), an official of the Competition Board compiled official reports concerning the violation of administrative law and submitted them to Pärnu Administrative Court, since, as provided for by Article 45(4) of the Competition Act, administrative judges have the right to impose punishments for the infringement of Article 4(1)(1) of the Competition Act.

By the decision of a judge of Pärnu Administrative Court dated 4 April 2000, the proceedings were closed owing to the absence of essential elements of administrative offence. The Competition Board

had the right to appeal to Tallinn District Court within 10 days of the date the court decision was received.

On 18 April 2000, the Competition Board submitted to Tallinn District Court an appeal to denounce the decision of Pärnu Administrative Court and to take a new decision to impose punishments on OÜ Bristol Takso, OÜ E-Takso and MTÜ Ranna Takso for the infringement of Article 4(1)(1) of the Competition Act.

On 6 November 2000, Tallinn District Court upheld the appeal of Competition Board. The Court imposed fines of 10,000 kroons each on OÜ Bristol Takso, OÜ E-Takso and MTÜ Ranna Takso. In reaching the decision, it was considered that the cross-use of client cards of competitors granting similar preferential tariffs had lasted a short period and that their cross-use was ended after the mandatory precept made by the Competition Board.

G. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof

The homepage of the Estonian Competition Board (www.konkurentsiamet.ee) has links to all the relevant legislation and decisions, as well as the annual reports (including in English).

COMPETITION ACT

Passed 5 June 2001

(RT[1] I 2001, 56, 332),

Entered into force 1 October 2001,

Amended by the following Acts:

09.10.2002 entered into force 23.10.2002 – RT I 2002, 87, 505;

18.09.2002 entered into force 24.10.2002 – RT I 2002, 82, 480;

19.06.2002 entered into force 01.09.2002 – RT I 2002, 63, 387;

19.06.2002 entered into force 01.08.2002 – RT I 2002, 61, 375;

14.11.2001 entered into force 01.02.2002 – RT I 2001, 93, 565.

Chapter 1

General Provisions

§ 1. Scope of application of Act

(1) The scope of application of this Act is the safeguarding of competition in the interest of free enterprise upon the extraction of natural resources, manufacture of goods, provision of services and sale and purchase of products and services (hereinafter goods), and the preclusion and elimination of the prevention, limitation or restriction (hereinafter restriction) of competition in other economic activities.

(2) This Act also applies if an act or omission directed at restricting competition is committed outside the territory of Estonia but restricts competition within the territory of Estonia.

(3) This Act does not regulate relationships in the labour market.

(4) The provisions of the Administrative Procedure Act (RT I 2001, 58, 354; 2002, 53, 336; 61, 375) apply to administrative proceedings prescribed in this Act, taking account of the specifications provided for in this Act.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 2. Undertaking

(1) For the purposes of this Act, an undertaking is a company, sole proprietor, any other person engaged in economic or professional activities, an association which is not a legal person, or a person acting in the interests of an undertaking.

(2) The provisions concerning undertakings apply to persons who perform functions in public law and to the state and local governments if they participate in a goods market. The provisions of Chapter 9 of this Act do not extend to the state, local governments or the Bank of Estonia.

(3) For the purposes of this Act, undertakings which operate in the same goods market and belong to the same group of companies or other undertakings which are connected through control may be deemed to be one undertaking if there is no competition between such undertakings.

(4) Control is the opportunity for one undertaking or several undertakings jointly or for a natural person, by purchasing shares and on the basis of a contract, transaction or articles of association or by any other means, to exercise direct or indirect influence on another undertaking which may consist of a right to:

1) exercise significant influence on the composition, work or decision-making of the management bodies of the other undertaking;

2) use or dispose of all or a significant proportion of the assets of the other undertaking.

§ 3. Goods market

(1) A goods market is an area covering the whole of the territory of Estonia or a part thereof where goods which are regarded as interchangeable or substitutable (hereinafter substitutable) by the buyer by reason of price, quality, technical characteristics, conditions of sale or use, consumption or other characteristics are circulated.

(2) In order to define a goods market, the turnover of substitutable goods shall, as a rule, be assessed in money. If this is not possible or expedient, the market size and the market shares of the undertakings participating in the goods market may be assessed on the basis of other comparable indicators.

Chapter 2

Prohibition on Agreements, Concerted Practices and Decisions by Associations of Undertakings

§ 4. Prohibition on agreements, concerted practices and decisions by associations of undertakings which restrict competition

(1) The following are prohibited: agreements between undertakings, concerted practices, and decisions by associations of undertakings (hereinafter agreements, practices and decisions) which have as their object or effect the restriction of competition, including those which:

1) directly or indirectly fix prices or any other trading conditions, including prices of goods, tariffs, fees, mark-ups, discounts, rebates, basic fees, premiums, additional fees, interest rates, rent or lease payments applicable to third parties;

2) limit production, service, goods markets, technical development or investment;

3) share goods markets or sources of supply, including restriction of access by a third party to a goods market or any attempt to exclude the person from the market;

4) exchange information which restricts competition;

5) agree on the application of dissimilar conditions to equivalent agreements, thereby placing other trading parties at a competitive disadvantage;

6) make entry into an agreement subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of such agreement.

(2) Clauses (1) 2)–6) of this section do not apply to agreements and practices of agricultural producers or to decisions by associations of agricultural producers, which concern the production or sale of agricultural products or the use of joint facilities, unless competition is substantially restricted by such agreements, practices or decisions.

§ 5. Agreements, practices or decisions of minor importance

(1) The provisions of clauses 4 (1) 2)–6) of this Act do not apply to agreements, practices and decisions of minor importance.

(2) Agreements, practices or decisions are considered to be of minor importance if the combined market share of the total turnover of the undertakings which enter into the agreement, engage in concerted practices or adopt the relevant decision does not exceed:

1) 10 per cent in the case of a vertical agreement, practice or decision;

2) 5 per cent in the case of a horizontal agreement, practice or decision;

3) 5 per cent in the case of an agreement, practice or decision which includes concurrently the characteristics of both vertical and horizontal agreements, practices or decisions.

(3) Agreements by undertakings, concerted practices of undertakings or decisions by associations of undertakings are considered to be vertical if the undertakings operate at different levels of the production or distribution chain (for example, the production of raw materials or finished goods, or retail or wholesale distribution). Agreements by undertakings, concerted practices of undertakings or decisions by associations of undertakings are considered to be horizontal if the undertakings operate as competitors at the same level of the production or distribution chain.

(4) Agreements, practices or decisions are deemed to be of minor importance if the conditions provided for in subsection (2) of this section are fulfilled during the whole period of effect of the agreement, practice or decision.

§ 6. Exemption

(1) An exemption is permission granted at the request of an undertaking by a decision of the Director General of the Competition Board or his or her deputy to enter into an agreement, engage in concerted practices or adopt a decision specified in § 4 of this Act.

(2) The permission specified in subsection (1) of this section may be granted if the agreement, practice or decision:

1) contributes to improving the production or distribution of goods or to promoting technical or economic progress or to protecting the environment, while allowing consumers a fair share of the resulting benefit;

2) does not impose on the undertakings which enter into the agreement, engage in concerted practices or adopt the decision any restrictions which are not indispensable to the attainment of the objectives specified in clause 1) of this subsection;

3) does not afford the undertakings which enter into the agreement, engage in concerted practices or adopt the decision the possibility of eliminating competition in respect of a substantial part of the goods market.

(3) In order to obtain the permission specified in subsection (1) of this section, all the conditions provided for in subsection (2) must be fulfilled.

§ 7. Block exemption

(1) A block exemption is general permission granted by a regulation of the Government of the Republic on the proposal of the Minister of Economic Affairs and Communications to enter into a certain category of agreements, engage in a certain category of concerted practices or adopt a certain category of decisions which complies with the conditions provided for in § 6 of this Act and restricts or may restrict competition.

(09.10.2002 entered into force 23.10.2002 - RT I 2002, 87, 505)

(2) A block exemption is established for a specified term and may designate:

1) the name of the category of agreements, practices or decisions to which the block exemption applies;

2) restrictions or conditions which shall not be included in such agreements, practices or decisions;

3) conditions which must be included in such agreements, practices or decisions, and restrictions and conditions which may be included in such agreements, practices or decisions;

4) other conditions which such agreements, practices or decisions must comply with.

(3) A block exemption established on the basis of subsection (1) of this section does not apply:

1) to an undertaking in a dominant position;

2) if competition is virtually non-existent in the goods market affected by the agreement, practices or decision.

§ 8. Invalidity of agreements or decisions

Any agreement or decision or a part thereof which has as its object or effect the consequences specified in § 4 of this Act and with regard to which permission has not been granted on the basis of § 6 or 7 of this Act is void unless it complies with § 5 of this Act.

Chapter 3

Procedure for Grant of Exemptions

§ 9. Submission of applications for exemption

(1) In order to obtain an exemption provided for in § 6 of this Act, an application for exemption shall be submitted to the Competition Board before entry into the relevant agreement, commencement of the concerted practices or adoption of the relevant decision. An application for exemption may also be submitted within six months after entry into an agreement or adoption of a decision which requires an exemption, and the corresponding agreement or decision or a part thereof which restricts competition shall be void until the grant of the exemption.

(2) An application for exemption with regard to an agreement, decision or a part thereof or practices which was not in conflict with this Act upon entry into the agreement, commencement of the practices or adoption of the decision shall be submitted within three months as of the appearance of circumstances due to which the agreement or decision or a part thereof or the practices becomes contrary to this Act or within three months as of the time such circumstances should have become evident. Such agreement or decision or a part thereof is invalid from the appearance of the circumstances until the grant of the exemption.

(3) An application for exemption shall be submitted jointly by the undertakings which entered into an agreement, engaged in concerted practices or adopted a decision, or by one of the undertakings.

(4) Persons specified in subsection (3) of this section may withdraw an application for exemption jointly or separately at any time before the grant of the exemption by submitting a corresponding written petition, and the person submitting the petition need not be the same as the person who submitted the application for exemption.

§ 10. Requirements for applications for exemption

(1) The requirements for applications for exemption, the requirements for applications for extension of the term of an exemption, and the procedure for submission of applications shall be

established by a regulation of the Minister of Economic Affairs and Communications. At the request of the Competition Board, an applicant for an exemption shall provide explanations and submit for examination original documents or true copies or transcripts thereof, certified by the signature of the person submitting the copies or transcripts.

(09.10.2002 entered into force 23.10.2002 - RT I 2002, 87, 505)

(2) If information contained in an application for an exemption or information relating to the application is incorrect, incomplete or misleading, the Competition Board shall set a deadline for the applicant to eliminate the deficiencies. After elimination of the deficiencies, the Competition Board shall send corresponding confirmation to the applicant for the exemption, and the running of the terms provided for in subsections 11 (2) and (3) of this Act shall commence as of the date on which the confirmation is sent.

(3) The person for whose benefit an exemption is granted and the person who applies for a decision on the grant of the exemption shall immediately give written notice to the Competition Board of any substantial changes in the information presented in the application for the exemption.

(4) An applicant for exemption or the other party to the agreement shall indicate any information which the applicant or other party deems to be a business secret.

§ 11. Processing of applications for exemption

(1) The Director General of the Competition Board or his or her deputy shall make one of the following decisions concerning an application for an exemption:

1) to grant the exemption if he or she finds that the agreement, practice or decision which is the basis for the application complies with the conditions provided for in § 6 of this Act;

2) to refuse to grant the exemption if he or she finds that the agreement, practice or decision which is the basis for the application does not comply with the conditions provided for in § 6 of this Act;

3) to terminate the proceedings if the application for the exemption has been withdrawn, or if the applicant for the exemption has failed to eliminate the deficiencies in the application within the term specified by the Competition Board or to submit the information requested by the Competition Board;

4) to terminate the proceedings without granting the exemption and to declare that the agreement, practice or decision does not require an exemption as it does not fall within § 4 of this Act or does not require an exemption on the bases specified in § 5 of this Act or requires a group exemption;

5) to initiate supplementary proceedings concerning the application for the exemption if he or she finds that it is doubtful whether the agreement, practice or decision which is the basis for the application qualifies for an exemption pursuant to § 6 of this Act and if it is necessary to obtain additional information or conduct a supplementary examination in order to make the decision.

(2) The Director General of the Competition Board or his or her deputy shall make one of the decisions provided for in clauses (1) 1)–4) of this section within two months after receiving all the information.

(3) If the Director General of the Competition Board or his or her deputy decides to initiate supplementary proceedings on the basis of clause (1) 5) of this section, he or she shall have a

corresponding written notice delivered to the applicant for the exemption and make one of the decisions provided for in clauses (1) 1)–3) within six months after receiving all the information.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(4) The Competition Board may extend the terms provided for in subsections (2) and (3) of this section only with the written consent of the applicant for exemption.

§ 12. Decision to grant exemption

(1) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(2) A decision to grant an exemption may contain conditions or obligations applicable to the undertakings which enter into the agreement, engage in the concerted practices or adopt the decision.

(3) The Director General of the Competition Board or his or her deputy may grant an exemption for up to five years, and upon expiry of the specified term, the term of the exemption may be extended by a decision to grant an exemption.

(4) An application for extension of the term of an exemption shall be submitted according to the regulation specified in subsection 10 (1) of this Act at least six months before the expiry of the term of the exemption specified in the decision.

(5) The Director General of the Competition Board or his or her deputy shall revoke a decision to grant an exemption or shall amend the decision depending on the competitive situation in each specific case if:

1) substantial changes have occurred in the information or conditions which were the basis for granting the exemption;

2) the conditions or obligations attached to the decision to grant the exemption have not been complied with;

3) the exemption was granted on the basis of incomplete or incorrect information and the agreement, practice or decision concerning which the exemption was granted does not comply with the conditions provided for in § 6 of this Act.

(6) The Competition Board shall make public all decisions made pursuant to clause 11 (1) 1) or subsection 11 (3) of this Act or subsection (5) of this section by publishing a corresponding notice in the official publication *Ametlikud Teadaanded*.[2]

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

Chapter 4

Undertaking in Dominant Position

§ 13. Definition of undertaking in dominant position

(1) For the purposes of this Act, an undertaking in a dominant position is an undertaking which accounts for at least 40 per cent of the turnover in the goods market or whose position enables the undertaking to operate in the market to an appreciable extent independently of competitors, suppliers and buyers.

(2) Undertakings with special or exclusive rights or in control of essential facilities specified in §§ 14 and 15 of this Act are also undertakings in a dominant position.

[2] *Official Notices.*

§ 14. Undertaking with special or exclusive rights

(1) For the purposes of this Act, special or exclusive rights are rights granted to an undertaking by the state or a local government which enable the undertaking to have a competitive advantage over other undertakings in a goods market or to be the only undertaking in the market.

(2) The procedure for the organisation of public competitions for granting special or exclusive rights shall be established by the Government of the Republic. If legislation on the basis of which special or exclusive rights are granted does not provide the procedure for the grant of a special or exclusive right, a public competition for the grant of such right shall be organised pursuant to the procedure established by the Government of the Republic.

§ 15. Undertaking controlling essential facility

An undertaking is deemed to control essential facilities or to have a natural monopoly if it owns, possesses or operates a network, infrastructure or any other essential facility which other persons cannot duplicate or for whom it is economically inexpedient to duplicate but without access to which or the existence of which it is impossible to operate in the goods market.

§ 16. Abuse of dominant position

The following are prohibited: any direct or indirect abuse by an undertaking in a dominant position of his or her position in the goods market, including:

1) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

2) limiting production, service, goods markets, technical development or investment;

3) offering or applying dissimilar conditions to equivalent agreements with other trading parties, thereby placing some of them at a competitive disadvantage;

4) making entry into an agreement subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of such agreement;

5) forcing an undertaking to concentrate, enter into an agreement which restricts competition, engage in concerted practices or adopt a decision together with the undertaking or another undertaking;

6) unjustified refusal to sell or buy goods;

7) failure by an undertaking with special or exclusive rights or in control of essential facilities to perform the obligation specified in clause 18 (1) 1) of this Act.

§ 17. Restrictions on activities of undertakings with special or exclusive rights or in control of essential facilities

(1) The state agency or local government which grants special or exclusive rights to an undertaking may designate the prices to be used or impose other conditions or obligations on the undertaking so that the buyers of the goods of such undertaking or sellers of goods to such undertaking are not placed in a substantially worse situation than they would be if competition were present in the corresponding area of activity.

(2) A state agency prescribed by law, the Government of the Republic or, in the case of an undertaking in control of essential facilities which provides services within the territory of a local government, the local government may designate the prices to be used by an undertaking in control of essential facilities or impose other conditions or obligations on the undertaking so that the buyers of the goods of such undertaking or sellers of goods to such undertaking are not placed in a substantially worse situation than they would be if competition were present in the corresponding area of activity.

(3) If the procedure for price regulation applicable to undertakings with certain categories of special or exclusive rights or in control of essential facilities has not been established by an Act or legislation established on the basis thereof, the Government of the Republic may establish the corresponding procedure.

(4) If the procedure for price regulation applicable to undertakings with special or exclusive rights or in control of essential facilities which provide services within the territory of a local government has not been established by an Act or legislation established on the basis thereof or if the procedure does not extend to such undertakings, the local government may establish the corresponding procedure.

§ 18. Obligations of undertakings with special or exclusive rights or in control of essential facilities

(1) An undertaking with special or exclusive rights or in control of an essential facility shall:

1) permit other undertakings to gain access to the network, infrastructure or other essential facility under reasonable and non-discriminatory conditions for the purposes of the supply or sale of goods;

2) draw a clear distinction in its accounts between primary and secondary activities (for example production, transportation, marketing and other activities of the undertaking), thereby ensuring accounting transparency.

(2) An undertaking with special or exclusive rights or in control of an essential facility may refuse to grant other undertakings access to the network, infrastructure or other essential facility if the refusal is based on objective reasons, including cases where:

1) the safety and security of the equipment connected with the network, infrastructure or other essential facility or the efficiency and security of the operation of such network, infrastructure or facility are endangered;

2) maintenance of the integrity or the inter-operability of the network, infrastructure or other essential facility is endangered;

3) equipment to be connected to the network, infrastructure or other essential facility is not in conformity with the established technical standards or rules;

4) the undertaking applying for access lacks the technical and financial capability and resources to provide services efficiently and safely to the necessary extent through or with the assistance of the network, infrastructure or other essential facility;

5) the undertaking applying for access does not hold the permit prescribed by law for the corresponding activity;

6) as a result of such access, data protection provided by law is no longer ensured.

Chapter 5

Control of Concentrations

§ 19. Concentration

(1) Concentration is deemed to arise where:

1) previously independent undertakings merge within the meaning of the Commercial Code (RT I 1995, 26/28, 355; 1998, 91/93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596;

102, 907; 2000, 29, 172; 49, 303; 55, 365; 57, 373; 2001, 24, 133; 34, 185; 56, 332; 336; 89, 532; 93, 565; 2002, 3, 6; 35, 214; 53, 336; 61, 375; 63, 387; 388);

2) an undertaking acquires control of the whole or part of another undertaking;

3) undertakings jointly acquire control of the whole or part of a third undertaking;

4) a natural person already controlling at least one undertaking acquires control of the whole or part of another undertaking;

5) several natural persons already controlling at least one undertaking jointly acquire control of the whole or part of another undertaking.

(2) The creation, by persons specified in clauses (1) 3) and 5) of this section, of a joint venture performing on a lasting and independent basis is also deemed to be acquisition of control within the meaning of clauses (1) 3) and 5) of this section.

(3) If the creation of a joint venture specified in subsection (2) of this section has as its object or effect the co-ordination of the competitive behaviour of the founders amongst themselves or if the joint venture does not perform on a lasting and independent basis, the provisions of § 4 of this Act apply to the creation of the joint venture.

(4) For the purposes of this Chapter, a part of an undertaking is the assets of the undertaking or an organisationally independent part of the undertaking, including an enterprise which constitutes a basis for business activities and to which market turnover can be clearly attributed.

(5) Transactions specified in subsection (1) of this section are not deemed to be a concentration if the transactions are carried out as an internal restructuring of a group of undertakings.

§ 20. Parties to concentration

The following are parties to a concentration:

1) the merging undertakings;

2) the natural person or undertaking who acquires control of the whole or part of another undertaking;

3) the natural persons or undertakings who jointly acquire control of the whole or part of a third undertaking;

4) the undertaking or a part thereof which is the subject of the acquisition of control.

§ 21. Application of control of concentration

(1) A concentration shall be subject to control if, during the previous financial year, the aggregate worldwide turnover of the parties to the concentration exceeded 500 million kroons and the aggregate worldwide turnover of each of at least two parties to the concentration exceeded 100 million kroons and if the business activities of at least one of the merging undertakings or of the whole or part of the undertaking of which control is acquired are carried out in Estonia.

(2) A concentration shall not be subject to control if credit institutions, financial institutions, insurers or securities brokers whose normal business activities include transactions and dealing in securities for their own account or for the account of others, acquire securities in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of the undertaking which issued the securities and provided that they exercise such voting rights only with a view to preparing the sale of the securities and that any such sale takes place within one year of the date of acquisition.

(3) If sale of the securities specified in subsection (2) of this section is not possible within one year, the Director General of the Competition Board or his or her deputy may extend the term by a decision on the basis of a reasoned application made by the person concerned.

§ 22. Appraisal of concentrations

(1) Appraisal of a concentration shall be based on the need to maintain and develop competition, taking into account the structure of goods markets and the actual and potential competition in the goods market, including:

1) the market position of the parties to the concentration and their economic and financial power and opportunities for competitors to access the goods market;

2) legal or other barriers to entry into the goods market;

3) supply and demand trends for the relevant goods;

4) the interests of the buyers, sellers and ultimate consumers.

(2) The Director General of the Competition Board or his or her deputy shall prohibit a concentration if it may create or strengthen a dominant position as a result of which competition would be significantly restricted in the goods market.

§ 23. Turnover of parties to concentration

(1) The turnover of a party to a concentration is comprised of the realised net turnover of the goods sold or services provided by the party during the financial year preceding the concentration, calculated pursuant to the Accounting Act (RT I 1994, 48, 790; 1995, 26/28, 355; 92, 1604; 1996, 40, 773; 42, 811; 49, 953; 52/54, 993; 1998, 59, 941; 91/93, 1500; 96, 1515; 1999, 55, 584; 101, 903; 2001, 11, 49; 87, 527; 2002, 23, 131; 53, 336; 57, 355; 67, 405).

(2) The turnover of a credit or financial institution is deemed to comprise the total amount of the following income items after deduction of value added tax and income tax:

1) interest income and other similar income;

2) income from securities;

3) income from holdings in undertakings;

4) commissions and service charges;

5) net profit on financial operations;

6) other operating income.

(3) The turnover of an insurer is deemed to comprise the value of gross premiums written which comprises all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurer, including outgoing reinsurance premiums.

§ 24. Calculation of turnover

(1) The turnover of a party to a concentration specified in subsection 21 (1) of this Act shall be calculated by adding the turnovers of the following undertakings to the turnover of the party:

1) undertakings controlled by the party to the concentration;

2) undertakings controlling the party to the concentration;

3) undertakings controlled by an undertaking specified in clause 2) of this subsection;

4) undertakings jointly controlled by undertakings specified in clauses 1)–3) of this subsection.

(2) If control over an undertaking is acquired in a manner provided for in clauses 19 (1) 2)–5) of this Act, the turnover of the undertaking shall be calculated by taking into account only the turnover of such undertaking and the turnovers of the undertakings controlled by the undertaking.

(3) If control over a part of an undertaking is acquired in a manner provided for in clauses 19 (1) 2)–5) of this Act, the turnover of the undertaking shall be calculated by taking into account the turnover of only such part of the undertaking which is the subject of the transaction.

(4) If control of the whole or part of an undertaking is acquired through two or more transactions, turnover shall be calculated by taking into account the turnovers of all such parts which were subject to transactions during the preceding two years.

(5) If within the preceding two years one and the same undertaking has acquired control of undertakings which operate in Estonia in one and the same sector of the economy, the turnover of the undertaking of which control is acquired shall include the turnover of the undertakings of which control has been acquired within the two years preceding the concentration.

(6) The guidelines for the calculation of turnover shall be established by a regulation of the Minister of Economic Affairs and Communications. The guideline may prescribe different methods for calculation of the turnover of parties to a concentration which operate in different sectors of the economy.

(09.10.2002 entered into force 23.10.2002 - RT I 2002, 87, 505)

§ 25. Notification of concentrations

(1) A concentration subject to control shall be notified to the Competition Board within one week as of:

1) entry into the merger agreement;

2) acquisition of control;

3) acquisition of joint control;

4) announcement of the public bid for securities.

(2) Notification of a concentration shall be effected:

1) jointly by the parties to a concentration as specified in clause 19 (1) 1) of this Act;

2) by an undertaking acquiring control as specified in clause 19 (1) 2) of this Act;

3) jointly by undertakings acquiring joint control as specified in clause 19 (1) 3) of this Act;

4) by a person acquiring control as specified in clause 19 (1) 4) of this Act;

5) jointly by persons acquiring joint control as specified in clause 19 (1) 5) of this Act.

(3) Credit institutions, securities brokers and insurers shall give notification of a concentration within the term provided for in subsection (1) of this section or not later than within one week after obtaining permission from the state supervisory authority in the corresponding field of activity.

§ 26. Notice of concentration

(1) A notice of concentration shall be submitted to the Competition Board in writing and shall set out:

1) information concerning the parties to the concentration, including business names, registry codes, contact details and areas of activity;

2) a description of the concentration;

3) data concerning the turnovers of the parties to the concentration during the preceding financial year;

4) information concerning control exercised or holdings owned in other undertakings by undertakings specified in clauses 24 (1) 1)–4) of this Act which belong to the same group as the parties to the concentration;

5) information concerning the goods markets, including information concerning the market shares, main competitors, clients and the market shares of the competitors and clients of the parties to the concentration, and concerning barriers to entry into or exit from the goods market;

6) a description of the effect of the concentration on the goods market, prepared by the person submitting the notice;

7) information concerning associations of undertakings in which at least one of the parties to the concentration is a member;

8) restrictions on competition, if any, which are directly related to and necessary for giving effect to the concentration, and the reasons for applying such restrictions;

9) information concerning other circumstances, if any, relating to the concentration, including proposals concerning the conditions and obligations directly related to the concentration.

(2) The following shall be annexed to a notice of concentration:

1) copies of the registration documents of the parties to the concentration who are entered in foreign registers from such registers;

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

2) the documents on the basis of which the concentration is put into effect;

3) the annual reports and annual accounts of the parties to the concentration for the financial year preceding the concentration;

4) a document certifying the authority of the person submitting the notice;

5) a document certifying payment of the state fee;

6) a list of the documents annexed to the notice of concentration.

(3) Documents annexed to a notice of concentration shall be originals or certified copies thereof.

(14.11.2001 entered into force 01.02.2002 - RT I 2001, 93, 565)

(4) A notice shall contain the date of submission of the notice and the signature of the person submitting the notice.

(5) The guidelines for the submission of notices of concentration shall be established by a regulation of the Minister of Economic Affairs and Communications.

(09.10.2002 entered into force 23.10.2002 - RT I 2002, 87, 505)

(6) If a notice does not meet the requirements provided for in subsections (1)–(4) of this section or the guideline specified in subsection (5) of this section, the notice shall be deemed not to have been submitted.

(7) The Director General of the Competition Board or his or deputy may establish a deadline for elimination of the deficiencies in a notice of concentration.

(8) The Director General of the Competition Board or his or her deputy may release a party to a concentration from the obligation to submit some of the documents or information specified in subsection (1) or (2) of this section if such documents or information are not necessary for the proceedings concerning the concentration.

(9) The person submitting a notice of concentration shall indicate information contained in the notice which the person deems to be a business secret. The fact of a concentration and the information provided for in clauses (1) 1) and 4) of this section shall not be deemed to be a business secret.

§ 27. Proceedings concerning concentration

(1) Within thirty calendar days as of the submission of a notice of concentration, the Director General of the Competition Board or his or her deputy shall:

1) make a decision to grant permission to concentrate if the concentration subject to control does not involve circumstances specified in subsection 22 (2) of this Act;

2) make a decision to initiate supplementary proceedings in order to ascertain whether the concentration subject to control does or does not involve circumstances specified in subsection 22 (2) of this Act;

3) have a written notice delivered to the person who submitted the notice of concentration if the concentration does not fall within the scope of subsection 19 (1) or (2) of this Act or is not subject to control pursuant to § 21 of this Act.

(19.06.2002 entered into force 01.08.2002 – RT I 2002, 61, 375)

(1)[3] In the course of concentration proceedings, the Competition Board shall verify information in registers concerning the parties to the concentration who are registered in Estonia.

(19.06.2002 entered into force 01.08.2002 – RT I 2002, 61, 375)

(2) In the course of supplementary proceedings, the Director General of the Competition Board or his or her deputy shall make one of the following decisions within four months:

1) to grant permission to concentrate;

2) to prohibit the concentration;

3) to terminate the proceedings if the parties to the concentration decide not to concentrate.

(3) In order to avoid restriction of competition through creation or strengthening of a dominant position, the Director General of the Competition Board or his or her deputy may, by a decision to grant permission to concentrate, attach conditions and obligations directly related to the concentration for the parties to the concentration, taking into account the proposals of the parties.

(4) A concentration is permitted if the Director General of the Competition Board or his or her deputy has not made one of the decisions provided for in subsection (1) and (2) of this section within the term specified in the same subsection.

(5) Before adoption of a decision specified in subsection (2) of this section, the parties to the concentration shall not perform any acts directed at giving effect to the concentration or do anything that would hinder execution of a decision prohibiting the concentration. Unless concentration is permitted pursuant to subsection (4) of this section, all such acts are void until permission is obtained.

(6) If the Director General of the Competition Board or his or her deputy sets a term for elimination of the deficiencies contained in a notice of concentration, the terms provided for in subsection (1) and (2) of this section begin to run as of the elimination of the deficiencies.

(7) If the parties to a concentration fail to submit the necessary information or materials within the term set by the Director General of the Competition Board or his or her deputy, the running of the terms provided for in subsections (1) and (2) of this section shall be suspended until the information or materials is submitted.

(8) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(9) The Competition Board shall publish a notice concerning receipt of a notice of concentration, a decision made on the basis of subsection (1) or (2) of this section or a written notice sent on the basis of clause (1) 3) of this section in the official publication *Ametlikud Teadaanded*.

(10) Interested parties have the right to submit opinions and objections to the Competition Board within seven calendar days as of publication of a notice concerning receipt of a notice of concentration specified in subsection (9) of this section.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 28. Explanation obligation and oral hearings

(1) If the Competition Board finds that a concentration subject to proceedings involves the circumstances specified in subsection 22 (2) of this Act, a corresponding notice shall be delivered to the person who submitted the notice of concentration.

(2) At the request of the parties to a concentration or on the initiative of the Competition Board, a meeting may be held for the oral hearing of the parties to the concentration. A meeting shall be held at the time and place specified by the Director General of the Competition Board or his or her deputy, and the persons to be heard shall be notified of the hearing in the manner prescribed in § 26 of the Administrative Procedure Act not later than ten calendar days before the hearing. On the basis of a reasoned written request of a person summoned to a meeting, the Director General of the Competition Board or his or her deputy may change the term or the place of the meeting.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 29. Nullity of concentration

(1) The Director General of the Competition Board or his or her deputy may decide to revoke a decision to grant permission to concentrate if:

1) the parties to the concentration submitted false, misleading or incomplete information which was a determining factor for the decision;

2) the concentration was effected in violation of a term or other condition or obligation specified in this Act or the decision to grant permission to concentrate.

(2) Revocation of permission to concentrate does not deprive the parties to the concentration of the right to apply for new permission to concentrate.

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[3] *Riigi Teataja (State Gazette).*

Chapter 6

State Aid

§ 30. General provisions

(1) State aid is an advantage granted directly or indirectly in any form whatsoever by the state or a local government (hereinafter grantor of state aid) or from their resources which distorts or threatens to distort competition by favouring certain undertakings or the production or sale of certain goods. Such aid may be financial aid, postponement of the payment of tax arrears, debt write-offs and the grant of loans under more favourable terms than usually granted to other undertakings, and other forms of aid.

(2) The following shall also be deemed to be grantors of state aid:

1) foundations which directly or indirectly use the resources of the state or a local government;

2) non-profit associations which directly or indirectly use the resources of the state or a local government;

3) legal persons in public law which directly or indirectly use the resources of the state or a local government;

4) companies in which the state, a local government or any other legal person in public law holds more than one-half of the share capital or votes represented by shares;

5) companies belonging to the same group as a company specified in clause 4) of this subsection.

(3) This Act does not grant the right to receive state aid but provides for the right of a grantor of state aid to grant state aid to an undertaking if the provisions of this Act are complied with.

(4) Activities of a person specified in subsection (2) of this section are not deemed to be state aid in cases where the person operates as a rational undertaking would usually operate in a market economy.

(5) The provisions of this Chapter do not apply to aid granted as state aid to undertakings engaged in the production, processing or marketing of goods prescribed in Article 63 (5) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part (RT II 1995, 22–27, 120). The conditions and procedure for granting such aid shall be provided by separate Acts.

§ 31. General and special conditions for granting state aid

(1) State aid may be granted only if it is compatible with the public interest and complies with the provisions of this Act and the special conditions established on the basis of subsection (6) of this Act.

(2) The following types of state aid are deemed to be compatible with the public interest:

1) state aid having a social character provided that such aid is granted without discrimination related to the origin of the goods concerned;

2) state aid to make good the damage caused by natural disasters or other exceptional occurrences.

(3) In addition to the provisions of subsection (2) of this section, the following may be considered to be compatible with the public interest:

1) state aid to promote the economic development of areas where the standard of living is very low or where there is serious unemployment;

2) state aid to promote the execution of a project of common European interest or to remedy a serious disturbance in the Estonian economy;

3) state aid to facilitate the development of certain economic activities or economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the public interest;

4) state aid to promote culture and heritage conservation.

(4) State aid shall be granted for a specified term and to the extent necessary to achieve an objective specified in subsection (2) or (3) of this section. The grant of such state aid shall be terminated if it no longer complies with the general conditions provided in subsections (2) and (3) of this section or the special conditions established on the basis of subsection (6) of this section.

(5) In calculating the total amount of state aid, state aid granted to an undertaking out of the resources of the European Communities or the Member States thereof shall also be taken into account unless otherwise provided by this Act or the special conditions established on the basis of subsection (6) of this section.

(6) The special conditions for granting state aid and the related definitions shall be established by the Government of the Republic separately for each area of activity, taking into account the provisions of subsection 63 (2) of the Europe Agreement.

§ 32. State aid relating to export activities and aid to substitute imports

(1) State aid relating to export activities (hereinafter export aid) and aid to substitute imports are not compatible with the public interest.

(2) Export aid is any aid directly linked to the quantities of goods exported, to the establishment and operation of a distribution network or to any other current expenditure linked to the export activity.

(3) Aid to substitute imports is aid granted to an undertaking for using domestic goods instead of imported goods.

(4) Aid granted to an undertaking for participating in trade fairs or for studies or consultancy services needed for the launch of a new or existing product in a new market is not deemed to be export aid.

(5) Export guarantees and credits may be deemed to be compatible with the public interest if the guarantees or credits do not contradict the Europe Agreement or any other international agreement.

§ 33. De minimis aid

(1) Aid granted during three consecutive years in an amount not exceeding 1.5 million kroons per undertaking is deemed to be de minimis aid. De minimis aid is deemed to be compatible with the public interest.

(2) The provisions of subsection (1) of this section do not apply in the case of state aid granted to transport, export aid or aid to substitute imports.

(3) It is not necessary to apply for permission to grant state aid, as provided in § 34 of this Act, in order to grant de minimis aid.

§ 34. Permission to grant state aid

(1) State aid shall be granted only with the prior written permission of the Minister of Finance and the grant of state aid shall not commence before the Minister of Finance has granted permission to grant state aid or deemed the state aid to be permitted pursuant to subsection 36 (3) of this Act or

before the Government of the Republic has granted permission to grant state aid pursuant to § 48 of this Act.

(2) Applications for permission to grant state aid (hereinafter applications for permission) shall be submitted to the Minister of Finance together with the necessary information taking into account the terms in the proceedings provided for in this Act. The format(s) of applications for permission and the instructions for completing the applications shall be established by the Minister of Finance.

(3) A decision concerning an application for permission to grant state aid shall be made by the Minister of Finance pursuant to § 36 or 38 of this Act. The Minister of Finance shall make the decision by his or her directive and the applicant for permission shall be notified thereof without delay by sending an unregistered letter by post.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 35. State aid scheme and individual state aid

(1) A grantor of state aid may apply for permission to grant state aid both in the case of a state aid scheme (hereinafter aid scheme) and in the case of individual state aid.

(2) A state aid scheme is based on any legal act or contract which provides for the possibility for state aid to be granted to undertakings not previously defined by the act or contract in order to promote achievement of one and the same objective or several similar objectives.

(3) Individual state aid is state aid which is not granted on the basis of an aid scheme, or state aid which is granted on the basis of an aid scheme and for which separate permission must be applied for from the Minister of Finance.

§ 36. Proceedings concerning applications for permission to grant state aid

(1) The Minister of Finance shall examine the applications for permission submitted to him or her and make one of the following decisions:

1) to return the application if the measures set out in the application do not constitute state aid within the meaning of subsection 30 (1) of this Act;

2) to grant permission to grant state aid if the state aid specified in the application is compatible with the public interest;

3) to initiate supplementary proceedings concerning the application for permission to grant state aid if doubts are raised as to the compatibility of the state aid with the public interest.

(1) The Minister of Finance shall make one of the decisions provided for in subsection (1) of this section within two months after all the necessary information is submitted by the person applying for permission to grant state aid or the beneficiary of the state aid or a notice specified in subsection 37 (3) of this Act is received. The above term may be altered with the mutual written consent of the Minister of Finance and the applicant for permission.

(2) If, within the term provided for in subsection (2) of this section, an applicant for permission has not received a written notice concerning a decision made by the Minister of Finance pursuant to subsection (1), the person shall notify the Minister of Finance thereof. If, within fifteen working days after receipt of the abovementioned notice, the Minister of Finance has not notified the applicant for permission of a decision made pursuant to subsection (1) of this section, the grant of state aid is deemed to be permitted by the Minister of Finance.

§ 37. Requests for information

(1) The Minister of Finance has the right to request an applicant for permission to grant state aid, the beneficiary and third parties to submit information necessary for the proceedings concerning the application within two months after the date of receipt of the application or any additional information requested. The above term shall be altered according to how the term provided for in subsection 36 (2) of this Act is altered.

(2) If information set out in an application submitted pursuant to subsection 34 (2) of this Act by an applicant for permission to grant state aid is incorrect, incomplete or misleading or if additional information is necessary in order to examine the application, the applicant for permission, the beneficiary of the aid or third parties shall be notified thereof by sending an unregistered letter by post or using electronic means and requested to eliminate the deficiencies or submit the information within a specified term.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(3) An application for permission shall not be reviewed if the deficiencies have not been eliminated or the applicant has not submitted all the information requested by the end of the term specified in subsection (2) of this section or if the applicant has not given notice by then that the additional information requested is not available or has already been submitted. The unavailability of information shall be reasoned. Notice of the fact that the application shall not be reviewed shall be given to the applicant by sending an unregistered letter by post or using electronic means.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(4) The Minister of Finance may, with good reason, extend the term specified in subsection (2) of this section on the basis of a corresponding petition from the applicant for permission.

§ 38. Termination of supplementary proceedings

(1) The Minister of Finance shall terminate supplementary proceedings initiated on the basis of clause 36 (1) 3) of this Act by making one of the following decisions:

1) to grant permission to grant state aid if the state aid is compatible with the public interest;

2) to return the application if, after amendment of the planned aid scheme or individual state aid by the applicant, the Minister of Finance finds that the measures set out in the application do not constitute state aid within the meaning of subsection 30 (1) of this Act;

3) to grant permission to grant state aid if, after amendment of the aid scheme or the planned individual state aid by the applicant, the Minister of Finance finds that the state aid is compatible with the public interest;

4) to refuse to grant permission to grant state aid if the state aid is incompatible with the public interest.

(2) The Minister of Finance may attach to a decision provided for in clause (1) 1) or 3) of this section conditions corresponding to the special conditions established on the basis of subsection 31 (6) of this Act subject to which an aid may be deemed compatible with the public interest and may lay down obligations to enable compliance with the decision to be monitored.

(3) The Minister of Finance shall make the decisions provided for in subsection (1) of this section within six months after receipt of all the necessary information. If necessary, the above term may be altered with the mutual written consent of the Minister of Finance and the applicant for the permission.

§ 39. Withdrawal of application for permission to grant state aid

(1) An applicant for permission to grant state aid provided for in subsection 34 (2) of this Act may withdraw the application before the Minister of Finance has made a decision pursuant to § 36.

(2) If supplementary proceedings have been initiated on the basis of clause 36 (1) 3) of this Act and the applicant for permission withdraws the application before the Minister of Finance makes a decision pursuant to § 38, the Minister of Finance shall, by a directive, make a decision to terminate the proceedings and to return the application.

§ 40. Publication of decisions

Decisions made by the Minister of Finance on the basis of clause 36 (1) 2) or 3), clause 38 (1) 1), 3) or 4), subsection 39 (2) or subsection 43 (1) of this Act shall be made public in the official publication *Ametlikud Teadaanded*.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 41. Revocation of decisions retroactively

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(1) The Minister of Finance may retroactively revoke a decision made pursuant to clause 36 (1) 1) or 2) or subsection 38 (1) of this Act if the decision was based on incorrect information submitted during the proceedings which was a determining factor for the decision. Before revoking a decision retroactively and making a new decision, the Minister of Finance shall initiate supplementary proceedings pursuant to clause 36 (1) 3) of this Act.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(2) If the Minister of Finance makes a decision provided for in clause 38 (1) 4) of this Act after termination of the supplementary proceedings specified in subsection (1) of this section, he or she may demand recovery of the state aid pursuant to § 43.

§ 42. Proceedings concerning unlawful state aid and misuse of state aid

(1) Unlawful state aid is state aid which is granted after the entry into force of this Act and for which the corresponding permission has not been granted by the Minister of Finance or which is not deemed to have been permitted pursuant to subsection 36 (3) of this Act or concerning which permission to grant state aid has not been obtained from the Government of the Republic pursuant to § 48 of this Act.

(2) Misuse of state aid is the use of state aid for purposes other than the intended use or purpose specified in the information submitted concerning the state aid, or non-compliance with the conditions or obligations provided for in subsection 38 (2) of this Act.

(3) All interested parties may notify the Minister of Finance of unlawful state aid or the misuse of state aid.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(4) If the Minister of Finance receives information concerning alleged unlawful state aid or alleged misuse of state aid, he or she shall issue a precept:

1) to the grantor of the state aid or the beneficiary of the state aid requiring information to be submitted within a specified term;

2) to the grantor of the state aid requiring an application for permission to grant state aid to be submitted within a specified term;

3) to the grantor of the state aid requiring suspension of the grant of unlawful state aid or alleged misused state aid until the Minister of Finance has made a decision provided for in clause 36 (1) 1) or 2) or subsection 38 (1) of this Act concerning the matter.

(5) The course of proceedings concerning unlawful state aid or the misuse of state aid, the Minister of Finance shall make a decision pursuant to § 36 of this Act. If a grantor of state aid or a beneficiary of state aid fails to comply with a precept provided for in subsection (4) of this section or to submit the additional information requested, the decision shall be made on the basis of the existing information. Supplementary proceedings initiated on the basis of clause 36 (1) 3) of this Act shall be terminated by making one of the decisions provided for in subsection 38 (1).

(6) If the Minister of Finance makes a decision provided for in clause 38 (1) 4) of this Act after termination of supplementary proceedings, he or she may demand that the state aid is recovered pursuant to § 43.

§ 43. Recovery of state aid

(1) If a decision provided for in clause 38 (1) 4) is made after supplementary proceedings conducted on the basis of § 41 or 42 of this Act, the Minister of Finance has the right to issue a precept to the grantor or beneficiary of the state aid requiring revocation of the decision to grant state aid retroactively or recovery of the state aid.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(2) In calculating the amount of state aid to be recovered, the size of the aid and expenses before the deduction of direct taxes shall be taken into account. If aid was granted in a form other than monetary support, the aid shall be converted into financial support of an equal value. Aid granted in instalments shall be discounted to the present value. The reference interest rate applicable to the state aid at the time when the aid was made available shall be used as the discount rate.

(3) The Minister of Finance has the right to demand recovery of state aid specified in subsections 41 (2) and 42 (1) and (2) of this Act within ten years. The term begins to run as of the date when the state aid is made available. The running of the term shall be suspended for the period during which proceedings are conducted by the Minister of Finance or the matter is heard by a court.

(4) If a beneficiary of state aid fails to comply with a precept concerning recovery of the state aid, the Minister of Finance has the right of recourse to the courts.

§ 44. Demand of interest

In each case of the recovery of state aid, the Minister of Finance has the right to demand interest to be paid on the amount of state aid recovered on the basis of subsection 43 (1) of this Act. The interest collected shall be transferred to the revenue of the state budget. Interest shall be calculated as of the date when the state aid was made available, using the average interest rate applied by Estonian banks to loans granted to undertakings in non-financial sectors during the month preceding the date of the decision to permit the grant of the state aid or, in the absence of such decision, the month preceding the grant of the state aid.

§ 45. Precepts

(1) A precept specified in subsection 42 (4) or 43 (1) of this Act shall set out:

1) the name and position of the person preparing the precept;

2) the date of issue of the precept;

3) the name and address of the recipient of the precept;

4) the bases for issuing the precept together with references to the provisions of relevant Acts;

5) in the case provided for in clause 42 (4) 1) of this Act, an indication of the information requested;

6) the term for compliance with the precept;

7) the amount of the penalty payment applied upon failure to comply with the precept;

8) the procedure and term for appeal against the precept.

(2) A precept of the Minister of Finance may prescribe obligatory acts to be performed upon suspension of the grant of the state aid.

§ 46. Imposition of penalty payment

(1) In the case of failure to comply with a precept provided for in § 45 of this Act, the Minister of Finance may impose, pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act (RT I 2001, 50, 283; 94, 580), a penalty payment of up to 50 000 kroons on natural persons and up to 100 000 kroons on legal persons.

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

(2) A penalty payment provided for in subsection (1) of this section may be imposed several times until the corresponding precept is complied with.

§ 47. State aid committee

(1) The Government of the Republic shall form a state aid committee (hereinafter committee) whose function is to submit proposals to the Government of the Republic concerning applications for revocation of a decision of the Minister of Finance submitted on the basis of subsection 48 (1) of this Act.

(2) The procedure for the formation of and the organisation of the work of the committee shall be established by the Government of the Republic.

§ 48. Proceedings concerning disputable cases of state aid

(1) If the Minister of Finance attaches to his or her decision conditions or obligations on the basis of subsection 38 (2) of this Act or makes a decision provided for in clause 38 (1) 4) of this Act to which the applicant for permission does not consent, the applicant for permission has the right to address the committee and apply for the decision of the Minister of Finance to be revoked and a new decision to be made, and the committee shall examine the matter and send the materials together with its proposals to the Government of the Republic for a decision.

(2) All materials submitted to the Minister of Finance by an applicant for permission, the beneficiary or third parties and the decision made by the Minister of Finance concerning the case shall be submitted to the committee.

(3) The Government of the Republic shall examine applications submitted thereto and shall make one of the following decisions:

1) to revoke the decision of the Minister of Finance and to grant permission to grant state aid by an order of the Government of the Republic;

2) to deny the application submitted to the Government of the Republic.

§ 49. Reporting on state aid

(1) The format of a report on the grant and use of state aid and the due date for the submission of the report shall be established by the Minister of Finance. Grantors of state aid shall submit reports on the grant and use of state aid to the Minister of Finance. Reports shall also be submitted on the grant and use of de minimis state aid.

(2) Within twelve months as of the end of a calendar year, the Minister of Finance shall prepare a report on all state aid granted during the given year. The report shall be submitted to the Government of the Republic for approval.

Chapter 7

Unfair Competition

§ 50. Prohibition on unfair competition

(1) Unfair competition is taken to mean dishonest trading practices and acts which are contrary to good morals and practices, including:

1) publication of misleading information, presentation or ordering of misleading information for publication, or disparagement of a competitor or the goods of the competitor;

2) misuse of confidential information or of an employee or representative of a competitor.

(2) Unfair competition is prohibited.

(3) The provisions of the Advertising Act (RT I 1997, 52, 835; 1999, 27, 388; 30, 415; 2001, 23, 127; 50, 284; 2002, 13, 81; 53, 336; 61, 375; 63, 387) apply to misleading, offensive or denigratory information as a method of advertising.

§ 51. Publication of misleading information, presentation or ordering of misleading information for publication, or disparagement of competitor or goods of competitor

(1) Misleading information is incorrect information which, given ordinary attention on the part of the buyer, may leave a misleading impression of an offer or which harms or may harm the reputation or economic activities of another undertaking

(2) Publication, or presentation or ordering for publication, of misleading information concerning either oneself or another undertaking participating in a goods market or concerning the goods or work equipment of such undertaking is prohibited, except in cases where publication of such information has been ordered from the publisher of the information or the publisher is not responsible for the correctness of the information presented thereto.

(3) Information specified in subsection (1) of this section primarily refers to information concerning the origin, qualities, method of production, means or sources of supply, prices, tariffs, discounts, awarding as a prize, reasons for sale and the size of the stock of the goods offered, as well as the preferential rights, financial status and other qualities of the undertaking.

§ 52. Misuse of confidential information or of employee or representative of another undertaking

(1) Misuse of confidential information is the use of confidential information regarding a competitor where the corresponding information was obtained illegally.

(2) Misuse of an employee or representative of a competitor is the exertion of influence on him or her to act in the interests of the influencing party or a third party.

§ 53. Ascertainment of unfair competition

The existence or absence of unfair competition shall be ascertained in a dispute between parties held pursuant to civil procedure.

Chapter 8

State Supervision

§ 54. Organisation of state supervision

(1) The Competition Board shall exercise state supervision over implementation of this Act, except implementation of the provisions of Chapters 6 and 7.

(2) The Minister of Finance shall exercise state supervision over implementation of the provisions of Chapter 6.

§ 55. Competence of Competition Board

(1) The Competition Board is competent to perform all acts assigned to it by this Act and to take measures to protect competition.

(2) The Competition Board shall analyse the competitive situation, propose measures to promote competition, make recommendations to improve the competitive situation, make proposals for legislation to be passed or amended, and develop co-operation with the competition supervisory authorities of other states and associations of states.

§ 56. Co-operation with European Commission

Pursuant to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part and decision No. 1/99 of the Association Council between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part adopting the necessary rules for the implementation of Article 63 (1) i), (1) ii) and (2) of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part (RT II 1999, 15, 94), co-operation between the European Commission and the Competition Board shall be effected pursuant to the general principles provided for in Article 1 of the above rules.

§ 57. Right of Competition Board to request information

(1) The Competition Board has the right to request all natural and legal persons and the representatives thereof and all state agencies and local governments and the officials thereof to submit information necessary for:

1) analysing the competitive situation;

2) defining a goods market;

3) inspecting an agreement, activity or decision;

4) deciding on the grant of exemptions;

5) monitoring the activities of an undertaking in a dominant position;

6) monitoring a concentration;

7) (Repealed - 18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

8) (Repealed - 18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

9) exercising state supervision over the implementation of this Act.

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

(2) The information provided for in subsection (1) of this section shall be requested in a written request wherein the purpose of and the legal basis for the request for information shall be specified and the possibility of issue of a precept upon failure to provide information or provision of incomplete, incorrect or misleading information shall be referred to. The term for submission of the information shall be not less than ten calendar days.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(3) The Competition Board has the right to request natural persons, including representatives or employees of legal persons or associations which are not legal persons and officials or representatives of state agencies or local governments, to provide explanations at the Competition Board or on site. Explanations shall be prepared in writing and the person requesting an explanation and the person providing the explanation shall sign each page of the explanation. If a person providing an explanation refuses to sign the explanation, an entry indicating refusal to sign the explanation and the reasons for the refusal shall be made in the explanation.

§ 58. Summoning to Competition Board

(1) Natural persons, including representatives or employees of legal persons or associations which are not legal persons and officials or representatives of state agencies or local governments, shall be summoned to the Competition Board by a summons which sets out:

1) the name or official title of the person summoned;

2) the reason and legal basis for summoning the person;

3) (Repealed - 18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

4) the place and time of appearance;

5) the rights of the person summoned, including the right to submit a written explanation;

6) the obligation to give notice of good reasons for failure to appear.

(2) A summons shall be served against signature or sent by post with advice of delivery (hereinafter service) and the person summoned or his or her representative shall be granted a term of not less than ten calendar days to appear. By agreement of the parties, the term may be altered and the summons may be delivered orally.

(3) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(4) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(5) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(6) (Repealed - 19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 59. Right of Competition Board to request submission of materials

(1) The Competition Board has the right to request all natural and legal persons and the representatives thereof and all state agencies and local governments and the officials and representatives thereof to submit the originals of documents, drafts or other materials, or true copies thereof, certified by the signature of the person submitting the copies. Upon submission of a copy, the Competition Board has the right to request submission of the original document to verify the authenticity of the copy.

(2) At the request of a person who submits materials or the representative of such person, the Competition Board shall issue confirmation concerning receipt of the materials and the person or the representative has the right to the return of the originals of the documents, drafts and other materials by the Competition Board after completion of the supervisory operations.

§ 60. Inspection of seat or place of business of undertaking

(1) In order to establish a violation or possible violation of this Act, an official or representative of the Competition Board authorised by a directive of the Director General of the Competition Board or his or her deputy (hereinafter person conducting an investigation) has the right, without prior warning or special permission, to inspect the seat and place of business of an undertaking, including the enterprises, territory, buildings, rooms and means of transport of the undertaking, both during working hours and at any time the place of business is used. With the consent of the undertaking, the seat, place of business or enterprises of the undertaking may also be inspected at any other time.

(2) An inspection provided for in subsection (1) of this section shall be conducted with the knowledge of the undertaking, or a representative or employee thereof, and they have the right to be present during the inspection.

(3) At the seat of the undertaking or the location of the activities of an undertaking under inspection, the person conducting such inspection shall present to the undertaking, its representative or employee the directive issued by the Director General of the Competition Board or his or her deputy concerning the authorisation of the person conducting the inspection.

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

(4) During an inspection provided for in subsection (1) of this section, the person conducting the inspection has the right to:

1) immediately examine documents relating to the activities of the undertaking, drafts thereof and other materials and to obtain, at the expense of the person under inspection, copies or transcripts thereof, the authenticity of which shall be certified by the signature of the person submitting them;

2) immediately examine data or databases kept in electronic form on computer at the seat or place of business of the undertaking under inspection and electronic data media held at the seat or place of business and to make printouts and electronic copies thereof at the expense of the undertaking under inspection, the authenticity of which shall be certified by the signature of the person under inspection or his or her representative or employee on the printout or on a separate page;

3) request the undertaking or a representative or employee thereof to submit explanations which shall be documented pursuant to subsection 57 (3) of this Act.

(5) The person conducting an inspection is required to prepare a report of the results of the inspection.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(6) A report specified in subsection (5) of this section shall set out:

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

1) the time and place of preparation of the report;

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

2) the name and position of the person preparing the report;

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

3) in the case of a natural person under inspection, the name and position of the person or his or her representative or employee or, in the case of a legal person, the name of the legal person and the name and position of the representative or employee of the legal person;

4) a description of the course of the inspection;

5) a notation concerning presentation of the directive specified in subsection (3) of this section to the undertaking under inspection or the representative or employee thereof;

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

6) a list of the explanations received from the undertaking under inspection or the representative or employee thereof;

7) a list of the materials obtained in the course of the inspection;

8) a notation concerning the participation of an interpreter or translator if one is involved;

9) the notes of the undertaking under inspection or the representative or employee thereof concerning the inspection;

10) a notation indicating that the undertaking under inspection or the representative or employee thereof has received one copy of the report.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(7) If an undertaking or the representative or employee thereof interferes with an inspection, a corresponding entry shall be made in the report indicating the reasons for such interference, if possible.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(8) A report shall be prepared in two copies which shall be signed by the person preparing the summary and the representative or employee of the undertaking under inspection. Each page of the report shall be signed and the undertaking under inspection and the Competition Board shall each receive one copy of the report. All materials obtained in the course of the inspection shall be annexed to the copy held by the Competition Board.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

(9) If an undertaking under inspection or the representative or employee thereof refuses to sign the report, a corresponding entry shall be made in the report indicating the reasons for such refusal.

(19.06.2002 entered into force 01.08.2002 - RT I 2002, 61, 375)

§ 61. Making of recommendations

The Director General of the Competition Board or his or her deputy may make recommendations to state agencies, local governments and natural and legal persons as to improvement of the competitive situation.

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

§ 62. Precepts and imposition of penalty payment

(1) The Director General of the Competition Board or his or her deputy has the right to issue a precept to a natural or legal person if the person:

1) fails to submit information or materials within the term specified in a written request of the Competition Board;

2) interferes with an inspection at the seat or place of business of the undertaking;

3) fails to appear at an oral hearing or when requested to provide explanations;

4) puts into effect a concentration which is subject to control but concerning which a decision has not been made on the basis of clause 27 (1) 1) or (2) 1) of this Act or if a decision prohibiting the concentration has been made on the basis of clause 27 (2) 2) of this Act or the permission for the concentration has been revoked by the Director General of the Competition Board or his or her deputy or violates the conditions of the permission for the concentration;

5) abuses a dominant position;

6) violates a prohibition against agreements, practices or decisions restricting competition.

(2) An obligation to perform the following may be imposed by a mandatory precept provided for in subsection (1) of this section:

1) perform the act required by the precept;

2) refrain from a prohibited act;

3) terminate or suspend activities which restrict competition;

4) restore the situation prior to the offence.

(3) In the case of failure to comply with a precept, the Director General of the Competition Board or his or her deputy may impose, pursuant to the procedure provided for in the Substitutive Enforcement and Penalty Payment Act, a penalty payment of up to 50 000 kroons on natural persons and up to 100 000 kroons on legal persons.

(18.09.2002 entered into force 24.10.2002 - RT I 2002, 82, 480)

§ 63. Obligation to maintain business secrets

(1) Unless otherwise provided by law, the Competition Board does not have the right to disclose the business secrets, including information subject to banking secrecy, of an undertaking which have become known to the Competition Board in the course of performance of its official duties to other persons nor publish them without the consent of the undertaking.

(2) Information subject to disclosure to the public, decisions made by the Director General of the Competition Board or his or her deputy and documents prepared by the Director General of the Competition Board or his or her deputy or any other official of the Competition Board from which business secrets have been excluded are not deemed to be business secrets.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

(3) Upon preparation of a document, the Competition Board shall not use any information against an undertaking which, in accordance with the provisions of this Act, may not be disclosed to the undertaking.

(19.06.2002 entered into force 01.09.2002 - RT I 2002, 63, 387)

(4) The Competition Board shall exclude business secrets from the texts of decisions subject to disclosure.

[§§ 64–73 repealed – 18.09.2002 entered into force 24.10.2002 – RT I 2002, 82, 480]

§ 73.[1] Interference with exercise of state supervision

A legal person who refuses to submit or fails to submit documents or information necessary for supervision to the Minister of Finance or the Competition Board on time, submits false information to the Minister of Finance or the Competition Board or submits documents or information to the Minister of Finance or the Competition Board in a manner which does not permit exercise of supervision shall be punished by a fine of up to 50 000 kroons.

(19.06.2002 entered into force 01.09.2002 – RT I 2002, 63, 387)

§ 73.[2] Misuse of state aid

(1) Misuse of state aid is punishable by a fine of up to 300 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 50,000 kroons.

(19.06.2002 entered into force 01.09.2002 – RT I 2002, 63, 387)

§ 73.[3] (Repealed – 18.09.2002 entered into force 24.10.2002 – RT I 2002, 82, 480)

§ 73.[4] Proceedings

(1) The provisions of the General Part of the Penal Code (RT I 2001, 61, 364; RT I 2002, 86, 504) and of the Code of Misdemeanour Procedure (RT I 2002, 50, 313) apply to the misdemeanours provided for in §§ 73^1–73^2 of this Act.

(18.09.2002 entered into force 24.10.2002 – RT I 2002, 82, 480)

(2) The Ministry of Finance shall conduct extra-judicial proceedings in the matters of the misdemeanours provided for in §§ 73^1 and 73^2 of this Act.

(3) The Competition Board shall conduct extra-judicial proceedings in the matters of the misdemeanours provided for in § 73^1 of this Act.

(19.06.2002 entered into force 01.09.2002 – RT I 2002, 63, 387; 18.09.2002 entered into force 24.10.2002 – RT I 2002, 82, 480)

Chapter 9

Liability

§ 74. (Repealed – 19.06.2002 entered into force 01.09.2002 – RT I 2002, 63, 387)

§ 75. (Repealed – 19.06.2002 entered into force 01.09.2002 – RT I 2002, 63, 387)

§ 76. (Repealed – 19.06.2002 entered into force 01.09.2002 – RT I 2002, 63, 387)

§ 77. (Repealed – 19.06.2002 entered into force 01.09.2002 – RT I 2002, 63, 387)

§ 78. Compensation for damage

Proprietary or other damage caused by acts prohibited by this Act shall be subject to compensation by way of civil procedure.

Chapter 10

Implementing Provisions

§ 79. Amendment of Criminal Code

Sections 148^{16}–148^{19} are added to the Criminal Code (RT 1992, 20, 288; RT I 1999, 38, 485; 57, 595, 597 and 598; 60, 616; 97, 859; 102, 907; 2000, 10, 55; 28, 167; 29, 173; 33, 193; 40, 247; 49, 301 and 305; 54, 351; 57, 373; 58, 376; 84, 533; 92, 597; 104, 685; 2001, 21, 115 and 116; 31, 174) in the following wording:

"§ 148^{16}. Abuse of dominant position

A member of the management board, of a body substituting for the management board or of the supervisory board of a legal person who establishes unfair trading conditions, limits production, services, the market, technical development or investment to the prejudice of consumers or who engages in other activities causing a direct or indirect abuse of a dominant position shall be punished by a fine or up to three years' imprisonment.

§ 148^{17}. Agreements, practices or decisions restricting competition

A member of the management board, of a body substituting for the management board or of the supervisory board of a legal person who violates a prohibition on an agreement, practice or decision restricting competition or who enters into an agreement, engages in practices or makes a decision requiring an exemption without obtaining such exemption or who violates the conditions of an exemption shall be punished by a fine or up to three years' imprisonment.

§ 148^{18}. Failure to perform obligations relating to concentration

A member of the management board, of a body substituting for the management board or of a supervisory board of a legal person who fails to give notice of a concentration within the specified term or who violates a prohibition on concentration or the conditions of permission to concentrate shall be punished by a fine or up to three years' imprisonment.

§ 148^{19}. Failure to draw clear distinction between primary and secondary activities in accounts of legal person with special or exclusive rights or in control of essential facilities

A member of the management board, of a body substituting for the management board or of a supervisory board of a legal person with special or exclusive rights or in control of essential facilities who engages in activities resulting in failure to draw a clear distinction between primary and secondary activities in the accounts of the legal person shall be punished by a fine or up to three years' imprisonment."

§ 80. Amendment of Price Act

Sections 9 and 10 of the Republic of Estonia Price Act (ENSV $ÜVT^{3}$ 1989, 39, 610; RT 1992, 30, 400; RT I 1996, 49, 953; 1997, 52, 833; 1998, 60, 951) are repealed.

§ 81. Amendment of Geographical Indications Protection Act

Clause 49 1) of the Geographical Indications Protection Act (RT I 1999, 102, 907; 2000, 40, 252; 2001, 27, 151; 56, 332; 335; 2002, 53, 336; 63, 387) is repealed.

§ 82. Amendment of Trade Marks Act

Clause 36^{4} (1) 1) of the Trade Marks Act (RT 1992, 35, 459; RT I 1998, 15, 231; 91/93, 1500; 1999, 93, 834; 102, 907; 2001, 27, 151; 56, 332; 335; 2002, 63, 387) is repealed.

§ 83. Amendment of State Fees Act

The State Fees Act (RT I 1997, 80, 1344; 2001, 55, 331; 56, 332; 64, 367; 65, 377; 85, 512; 88, 531; 91, 543; 93, 565; 2002, 1, 1; 9, 45; 13, 78; 79; 81; 18, 97; 23, 131; 24, 135; 27, 151; 153; 30, 178; 35, 214; 44, 281; 47, 297; 51, 316; 57, 358; 58, 361; 61, 375; 62, 377) is amended as follows:

1) Clause 20^1 is added to subsection 3 (2) worded as follows:

"20^1) Acts performed by the Competition Board;";

2) Division 13^1 is added to Chapter 7 of the Act worded as follows:

"Division 13^1

Acts of Competition Board

§ 147^{20}. Proceedings concerning concentration

A state fee of 20 000 kroons shall be paid for proceedings concerning a concentration.

§ 147^{21}. Proceedings concerning application for exemption

A state fee of 10 000 kroons shall be paid for proceedings concerning an application for exemption."

§ 84. Amendment of Consumer Protection Act

Clause 11 (2) 1^1) of the Consumer Protection Act (RT I 1994, 2, 13; 1999, 35, 450; 102, 907; 2000, 40, 252; 59, 379; 2001, 50, 283; 289; 56, 332; 2002, 13, 81; 18, 97; 35, 214; 53, 336; 61, 375; 63, 387) is repealed.

§ 85. Amendment of Commercial Code

The Commercial Code (RT I 1995, 26/28, 355; 1998, 91/93, 1500; 1999, 10, 155; 23, 355; 24, 360; 57, 596; 102, 907; 2000, 29, 172; 49, 303; 55, 365; 57, 373; 2001, 24, 133; 34, 185; 56, 332; 336; 89, 532; 93, 565; 2002, 3, 6; 35, 214; 53, 336; 61, 375; 63, 387; 388) is amended as follows:

1) Subsection 393 (2) is amended and worded as follows:

"(2) A merger report need not be prepared if all the shares of the company being acquired are held by the acquiring company, or if this is agreed to by all the partners or shareholders of the merging company, unless the aggregate worldwide realised net turnover of the merging companies during the previous financial year exceeded 500 million kroons and the aggregate worldwide realised net turnover of each of at least two of the merging companies exceeded 100 million kroons or if the business activities of at least one of the merging undertakings are carried out in Estonia.";

2) Clause 400 (1) 9) is amended and worded as follows:

"9) A decision of the Director General of the Competition Board or his or her deputy concerning the grant of permission to concentrate, if the aggregate worldwide realised net turnover of the merging companies during the previous financial year exceeded 500 million kroons and the aggregate worldwide turnover of each of at least two of the merging companies exceeded 100 million kroons and if the business activities of at least one of the merging undertakings are carried out in Estonia, except in cases of mergers within groups."

§ 86. Amendment of Rural Municipality and City Budgets Act

Subsection 11 (3) of the Rural Municipality and City Budgets Act (RT I 1993, 42, 615; 1995, 17, 234; 1997, 40, 619; 2000, 7, 40; 2001, 56, 332; 2002, 64, 393) is amended and worded as follows:

"(3) Before a draft budget is presented to the council, the government shall submit an application for permission to grant state aid concerning the state aid prescribed in the draft budget to the Minister of Finance pursuant to the Competition Act."

§ 87. Implementation of Act

(1) This Act applies to all agreements, concerted practices and decisions which restrict competition and are in force at the moment of the entry into force of this Act and which are carried out thereafter.

(2) Proceedings initiated before the entry into force of this Act shall be conducted pursuant to the Act in force at the time of initiation of the proceedings concerning the case.

(3) Permission granted in any form or pursuant to any procedure to an undertaking by the state or a local government before 1 October 1998 which enables the undertaking to have a competitive advantage over other undertakings in a goods market or to be the only undertaking in the market shall also be deemed to be a special or exclusive right.

(4) The Government of the Republic and its ministers shall bring the regulations passed on the basis of the Competition Act (RT I 1998, 30, 410; 1999, 89, 813; 2000, 53, 343; RT III 2000, 21, 232) into conformity with this Act within three months after the entry into force of this Act.

§ 88. Proceedings concerning existing state aid

(1) Existing state aid is taken to mean aid schemes and individual state aid the grant of which commenced between 1 January 1995 and the entry into force of this Act and continued after the entry into force of this Act, state aid for the grant of which permission has been granted by the Minister of Finance or the Government of the Republic, and state aid which is deemed to be permitted pursuant to subsection 36 (3) of this Act.

(2) Existing state aid shall be assessed in accordance with the general requirements provided for in this Act and pursuant to the special requirements established on the basis of subsection 31 (6) of this Act.

(3) If the Minister of Finance finds that existing state aid is not or is no longer compatible with the public interest, he or she shall notify the grantor of the state aid in writing of his or her preliminary view and give the grantor the opportunity to submit its comments within one month. In duly justified cases, the Minister of Finance may extend the term.

(4) If the Minister of Finance, on the basis of the comments submitted by a grantor of state aid pursuant to subsection (3) of this section, makes a decision that the existing state aid is compatible with the public interest, the Minister of Finance shall notify the grantor of state aid of the decision.

(5) If the Minister of Finance, on the basis of the comments submitted by a grantor of state aid pursuant to subsection (3) of this section, makes a decision that the existing state aid is not compatible with the public interest, the Minister of Finance has the right to request substantive amendment of the aid scheme and submission of a new application for permission within a specified term or termination of the grant of the state aid within a specified term.

(6) Proceedings concerning applications for permission to grant state aid submitted on the basis of subsection (5) of this section shall be conducted pursuant to § 36 of this Act.

(7) If a grantor of state aid fails to comply with the requirements set by the Minister of Finance pursuant to subsection (5) of this section within the specified term, the state aid granted after the expiry of the term is deemed to be unlawful state aid and the Minister of Finance has the right to initiate proceedings pursuant to § 42 of this Act.

§ 89. Repeal of Act

The Competition Act (RT I 1998, 30, 410; 1999, 89, 813; 2000, 53, 343; RT III 2000, 21, 232) is repealed as of the entry into force of this Act.

§ 90. Entry into force of Act

This Act enters into force on 1 October 2001.

[1] RT = *Riigi Teataja = State Gazette*

[2] *Ametlikud Teadaanded = Official Notices*

[3] ENSV ÜVT = *ENSV Ülemnõukogu ja Valitsuse Teataja = ESSR Supreme Council and Government Gazette*

III. INDIA

The Gazette of India

Extraordinary

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MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 14th January, 2003/Pausa 241924 (Saka)

The following Act of Parliament received the assent of the President on the 13th January 2003

and is hereby published for general information:—

THE COMPETITION ACT, 2002
No. 12 of 2003

[13th January, 2003.]

An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

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

Chapter I

PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the Competition Act, 2002.

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

(3) 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.

Definitions

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

(a) "acquisition" means, directly or indirectly, acquiring or agreeing to acquire—
  (i) shares, voting rights or assets of any enterprise; or
  (ii) control over management or control over assets of any enterprise;

(b) "agreement" includes any arrangement or understanding or action in concert,—
  (i) whether or not such arrangement, understanding or action is formal or in writing; or
  (ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

(c) "cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services;

(d) "Chairperson" means the Chairperson of the Commission appointed under sub-section (1) of section 8;

(e) "Commission" means the Competition Commission of India established under sub-section (1) of section 7;

(f) "consumer" means any person who—
  (i) buys any goods 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 other than the person who buys such goods 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 of goods is for resale or for any commercial purpose or for personal use;
  (ii) hires or avails of any 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 beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person, whether such hiring or availing of services is for any commercial purpose or for personal use;

(g) "Director General" means the Director General appointed under sub-section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section;

(h) "enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any 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, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, 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.

Explanation.—For the purposes of this clause,—

(a) "activity" includes profession or occupation;

(b) "article" includes a new article and "service" includes a new service;

(c) "unit" or "division", in relation to an enterprise, includes—

(i) a plant or factory established for the production, storage, supply, distribution, acquisition or control of any article or goods;
(ii) any branch or office established for the provision of any service;

(i) "goods" means goods as defined in the Sale of Goods Act, 1930 (8 of 1930) and includes—
(i) products manufactured, processed or mined;
(ii) debentures, stocks and shares after allotment;
(iii) in relation to goods supplied, distributed or controlled in India, goods imported into India;

(j) "Member" means a Member of the Commission appointed under sub-section (/) of section8 and includes the Chairperson;

(k) "notification" means a notification published in the Official Gazette;

(l) "person" includes—
(i) an individual;
(ii) a Hindu undivided family;
(iii) a company;
(iv) a firm;
(v) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
(vi) any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
(vii) any body corporate incorporated by or under the laws of a country outside India;
(viii) a co-operative society registered under any law relating to cooperative societies;
(ix) a local authority;
(x) every artificial juridical person not falling within any of the preceding sub-clauses;

(m) "practice" includes any practice relating to the carrying on of any trade by a person or an enterprise;

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

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

(p) "public financial institution" means a public financial institution specified under section 4A of the Companies Act, 1956 (1 of 1956) and includes a State Financial, Industrial or Investment Corporation;

(q) "regulations" means the regulations made by the Commission under section 64;

(r) "relevant market" means the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets;

(s) "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;

(t) "relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;

(u) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit

funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

(v) "shares" means shares in the share capital of a company carrying voting rights and includes—
  (i) any security which entitles the holder to receive shares with voting rights;
  (ii) stock except where a distinction between stock and share is expressed or implied;

(w) "statutory authority" means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto;

(x) "trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services;

(y) "turnover" includes value of sale of goods or services;

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

Chapter II

PROHIBITION OF CERTAIN AGREEMENTS, ABUSE OF DOMINANT POSITION AND REGULATION OF COMBINATIONS

Prohibition of agreements

Anti-competitive agreements

3. (1) No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

(2) Any agreement entered into in contravention of the provisions contained in subsection shall be void.

(3) Any agreement entered into between enterprises or associations of enterprises or persons or associations of persons or between any person and enterprise or practice carried on, or decision taken by, any association of enterprises or association of persons, including cartels, engaged in identical or similar trade of goods or provision of services, which—

(a) directly or indirectly determines purchase or sale prices;

(b) limits or controls production, supply, markets, technical development, investment or provision of services;

(c) shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way;

(d) directly or indirectly results in bid rigging or collusive bidding, shall be presumed to have an appreciable adverse effect on competition:

Provided that nothing contained in this sub-section shall apply to any agreement entered into by way of joint ventures if such agreement increases efficiency in production, supply, distribution, storage, acquisition or control of goods or provision of services.

Explanation.—For the purposes of this sub-section, "bid rigging" means any agreement, between enterprises or persons referred to in sub-section (3) engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding

(4) Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including—

(a) tie-in arrangement;
(b) exclusive supply agreement;
(c) exclusive distribution agreement;
(d) refusal to deal;
(e) resale price maintenance,

shall be an agreement in contravention of sub-section (1) if such agreement causes or is likely to cause an appreciable adverse effect on competition in India.

Explanation.—For the purposes of this sub-section,—

(a) "tie-in arrangement" includes any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods;
(b) "exclusive supply agreement" includes any agreement restricting in any manner the purchaser in the course of his trade from acquiring or otherwise dealing in any goods other than those of the seller or any other person;
(c) "exclusive distribution agreement" includes any agreement to limit, restrict or withhold the output or supply of any goods or allocate any area or market for the disposal or sale of the goods;
(d) "refusal to deal" includes any agreement which restricts, or is likely to restrict, by any method the persons or classes of persons to whom goods are sold or from whom goods are bought;
(e) "resale price maintenance" includes any agreement to sell goods on condition that the prices to be charged on the resale by the purchaser shall be the prices stipulated by the seller unless it is clearly stated that prices lower than those prices may be charged.

(5) Nothing contained in this section shall restrict—

(i) 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 upon him 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 Integrated Circuits Layout-Design Act, 2000 (37 of 2000);

(ii) 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.

Prohibition of abuse of dominant position

Abuse of dominant position

4. (1) No enterprise shall abuse its dominant position.

(2) There shall be an abuse of dominant position under sub-section (1), if an enterprise.—

(a) directly or indirectly, imposes unfair or discriminatory—

(i) condition in purchase or sale of goods or service; or

(ii) price in purchase or sale (including predatory price) of goods or service,

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

(b) limits or restricts—

(i) production of goods or provision of services or market therefore; or

(ii) technical or scientific development relating to goods or services to the prejudice of consumers; or

(c) indulges in practice or practices resulting in denial of market access; or

(d) makes conclusion of contracts subject to acceptance by other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts; or

(e) uses its dominant position in one relevant market to enter into, or protect, other relevant market.

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

(a) "dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—

(i) operate independently of competitive forces prevailing in the relevant market; or

(ii) affect its competitors or consumers or the relevant market in its favour;

(b) "predatory price" means the sale of goods or provision of services, at a. price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.

Regulation of combinations

Combination

5. The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—

(a) any acquisition where—

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—

(A) either, in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

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

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or

(b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if—

(i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

(ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have,—

(A) either in India, the assets of the value of more than rupees four thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars; or

(C) any merger or amalgamation in which—

(i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,—

(A) either in India, the assets of the value of more than rupees one thousand crores or turnover more than rupees, three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover more than fifteen hundred million US dollars; or

(ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,—

(A) either in India, the assets of the value of more than rupees four-thousand crores or turnover more than rupees twelve thousand crores; or

(B) in India or outside India, the assets of the value of more than two billion US dollars or turnover more than six billion US dollars.

Explanation.—For the purposes of this section,—

(a) "control" includes controlling the affairs or management by—

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

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

(b) "group" means two or more enterprises which, directly or indirectly, are in a position to—

(i) exercise twenty-six per cent or more of the voting rights in the other enterprise; or

(ii) appoint more than fifty percent of the members of the board of directors in the other enterprise; or

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

(c) 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 merger falls, 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 (5) of section 3.

Regulation of combinations

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

(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, may, at his or its option, give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within seven days of—

(a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be;
(b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (h) of that section.

(3) The Commission shall, after receipt of notice under sub-section (2), deal with such notice in accordance with the provisions contained in sections 29, 30 and 31.

(4) The provisions of this section shall not apply to share subscription or financing facility or any acquisition, by a public financial institution, foreign institutional investor, bank or venture capital fund, pursuant to any covenant of a loan agreement or investment agreement.

(5) The public financial institution, foreign institutional investor, bank or venture capital fund, referred to in sub-section (4) shall, within seven days from the date of the acquisition, file, in the form as may be specified by regulations, with the Commission the details of the acquisition including the details of control, the circumstances for exercise of such control and the consequences of default arising out of such loan agreement or investment agreement, as the case may be.

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

(a) "foreign institutional investor" has the same meaning as assigned to it in clause (a) of the Explanation to section 115AD of the Income-tax Act, 1961(43 of 1961);
(b) "venture capital fund" has the same meaning as assigned to it in clause (b) of the Explanation to clause (23 FB) of section 10 of the Income-tax Act, 1961(43 of 1961).

Chapter III

COMPETITION COMMISSION OF INDIA

Establishment of Commission

7. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Commission to be called the "Competition Commission of India".

(2) The Commission shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued,

(3) The head office of the Commission shall be at such place as the Central Government may decide from time to time.

(4) The Commission may establish offices at other places in India.

Composition of Commission

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

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

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

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

Selection of Chairperson and other Members

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

Term of office of Chairperson and other Members

10. (1) The Chairperson and every other Member shall hold office as such for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment:
Provided that no Chairperson or other Member shall hold office as such after he has attained,—

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

(2) A vacancy caused by the resignation or removal of the Chairperson or any other Member under section 11 or by death or otherwise shall be filled by fresh appointment in accordance with the provisions of sections 8 and 9.

(3) The Chairperson and every other Member shall, before entering upon his office, make and subscribe to an oath of office and of secrecy in such form, manner and before such authority, as may be prescribed.

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

(5) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of his functions.

Resignation, removal and suspension of Chairperson and other members

11. (1) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

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

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, by order, remove the Chairperson or any other Member from his office if such Chairperson or Member, as the case may be,—

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

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

Restriction on employment of Chairperson and other Members in certain cases

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

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).

Financial and administrative powers of Member Administration

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

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

Salary and allowances and other terms and conditions of service of Chairperson and other Members

14. (1) The salary, and the other terms and conditions of service, of the Chairperson and other Members, including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be prescribed.

(2) The salary, allowances and other terms and conditions of service of the Chairperson or a Member shall not be varied to his disadvantage after appointment.

Vacancy, etc. not to invalidate proceedings of Commission

15. No act or proceeding of the Commission shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Commission; or
(b) any defect in the appointment of a person acting as a Chairperson or as a Member; or
(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

Appointment of Director General, etc.

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

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

(3) The salary, allowances and other terms and conditions of service of the Director General and

Additional, Joint, Deputy and Assistant Directors General or such other advisers, consultants or officers, shall be such as may be prescribed.

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

Registrar and officers and other employees of Commission

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

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

Chapter IV

DUTIES, POWERS AND FUNCTIONS OF COMMISSION

Duties of Commission

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:

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.

Inquiry into certain agreements and dominant position of enterprise

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

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

Inquiry into combination by Commission

20. (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 to in clause (c) 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 or upon receipt of a reference under sub-section (1) of section 21, inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.

(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 assets or 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 an 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 sustainable increase prices or profit margins;
(f) extent of effective competition likely to sustain in a market;
(g) extent to which substitutes are available or arc 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.

Reference by statutory authority

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

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

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

Benches of Commission

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

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

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

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

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

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

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

Distribution of business of Commission amongst Benches

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

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

(3) The Chairperson may—

(i) transfer a Member from one Bench to another Bench; or
(ii) authorize the Members of one Bench to discharge also the functions of the Members of other Bench:

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

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

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

24. If the Members of a Bench differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Chairperson who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members and such point or points shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

Jurisdiction of Bench

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

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

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

Procedure for inquiry on complaints under Section 19

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

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

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

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

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

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

(7) If, after hearing the complainant, the Commission is of the opinion that further inquiry is called for, it shall direct the complainant to proceed with the complaint.

(8) If the report of the Director General relates on a reference made under sub-section (/) and such report recommends that there is no contravention of the pro visions of this Act, the Commission shall invite comments of the Central Government or the State Government or the statutory authority, as the case may be, on such report and on receipt of such comments, the Commission shall return the reference if there is no prima facie case or proceed with the reference as a complaint if there is a prima facie case.

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

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

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

(a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re-enter such agreement or discontinue such abuse of dominant position, as the case may be;

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

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

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

(d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

(e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any:

(f) recommend to the Central Government for the division of an enterprise enjoying dominant position;
(g) pass such other order as it may deem fit.

Division of enterprise enjoying dominant position

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

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

(a) the transfer or vesting of property, rights, liabilities or obligations;
(b) the adjustment of contracts either by discharge or reduction of any liability or obligation or otherwise;
(c) the creation, allotment, surrender or cancellation of any shares, stocks or securities;
(d) the payment of compensation to any person who suffered any loss due to dominant position of such enterprise;
(e) the formation or winding up of an enterprise or the amendment of the memorandum of association or articles of association or any other instruments regulating the business of any enterprise;
(f) the extent to which, and the circumstances in which, provisions of the order affecting an enterprise may be altered by the enterprise and the registration thereof;
(g) any other matter which may be necessary to give effect to the division of the enterprise.

(3) Notwithstanding anything contained in any other law for the time being in force or in any contract or in any memorandum or articles of association, an officer of a company who ceases to hold office as such in consequence of the division of an enterprise shall not be entitled to claim any compensation for such cesser.

Procedure for investigation of combination

29. (1) Where the Commission is of the opinion that a combination is likely to cause, or has caused an appreciable adverse effect on competition within the relevant market in India, it shall issue a notice to show cause to the parties to combination calling upon them to respond within thirty days of the receipt of the notice, as to why investigation in respect of such combination should not be conducted.

(2) The Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.

(3) The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published under sub-section (2).

(4) The Commission may, within fifteen working days from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination.

(5) The additional or other information called for by the Commission shall be furnished by the parties referred to in sub-section (4) within fifteen days from the expiry of the period specified in sub-section (4).

(6) After receipt of all information and within a period of forty-five working days from the expiry of the period specified in sub-section (5), the Commission shall proceed to deal with the case in accordance with the provisions contained in section 31.

Inquiry into disclosures under sub-section (2) of section 6

30. Where any person or enterprise has given a notice under sub-section (2) of section 6. The Commission shall inquire—

(a) whether the disclosure made in the notice is correct;
(b) whether the combination has, or is likely to have, an appreciable adverse effect on competition.

Orders of Commission on certain combinations

31. (1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of section 6.

(2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.

(3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination.

(4) The parties, who accept the modification proposed by the Commission under subsection (3), shall carry out such modification within the period specified by the Commission.

(5) If the parties to the combination, who have accepted the modification under subsection (4), fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act.

(6) If the parties to the combination do not accept the modification proposed by the Commission under sub-section (3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under that sub-section.

(7) If the Commission agrees with the amendment submitted by the parties under subsection (6), it shall, by order, approve the combination.

(8) If the Commission does not accept the amendment submitted under sub-section (6), then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under sub-section (3).

(9) If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act.

(10) Where the Commission has directed under sub-section (2) that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-section (9), 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—

(a) the acquisition referred to in clause (a) of section 5; or
(b) the acquiring of control referred to in clause (b) of section 5; or
(c) the merger or amalgamation referred to in clause (c) of section 5, shall not be given effect to:

Provided that the Commission may, if it considers appropriate, frame a scheme to implement its order under this sub-section.

(11) If the Commission does not, on the expiry of a period of ninety working days from the date of publication referred to in sub-section (2) of section 29, pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or sub-section (7), the combination shall be deemed to have been approved by the Commission.

Explanation.—For the purposes of determining the period of ninety working days specified in this subsection, the period of thirty working days specified in sub-section (6) and a further period of thirty working days specified in sub-section (8) shall be excluded.

(12) Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties.

(13) Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.

(14) Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.

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

32. The Commission shall, notwithstanding that,—

(a) an agreement referred to in section 3 has been entered into outside India; or
(b) any party to such agreement is outside India; or
(c) any enterprise abusing the dominant position is outside India; or
(d) a combination has taken place outside India; or
(e) any party to combination is outside India; or
(f) any other matter or practice or action arising out of such agreement or dominant position or combination is outside India, have power to inquire into such agreement or abuse of dominant position or combination if such agreement or dominant position or combination has, or is likely to have, an appreciable adverse effect on competition in the relevant market in India.

Power to grant interim relief

33. (1) Where during an inquiry before the Commission, it is proved to the satisfaction of the Commission, by affidavit or otherwise, that an act in contravention of sub-section (1) of section 3 or sub-section (1) of section 4 or section 6 has been committed and continues to be committed or that such act is about to be committed, the Commission may, by order, grant a temporary injunction

restraining any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to the opposite party, where it deems it necessary.

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

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

Power to award compensation

34. (1) Without prejudice to any other provisions contained in this Act, any person may make an application to the Commission for an order for the recovery of compensation from any enterprise for any loss or damage shown to have been suffered, by such person as a result of any contravention of the provisions of Chapter II, having been committed by such enterprise.

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

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

Appearance before Commission

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

Explanation.—For the purposes of this section,—

(a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

Power of Commission to regulate its own procedure

36. (1) The Commission shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have powers to regulate its own procedure including the places at which they shall have their sittings, duration of oral hearings when granted, and times of its inquiry.

(2) The Commission shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908(5 of 1908), while trying a suit, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) issuing commissions for the examination of witnesses or documents;
(e) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
(f) dismissing an application in default or deciding it ex parte;
(g) any other matter which may be prescribed.

(3) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code (45 of 1860) and the Commission shall be deemed to be a civil court for the purposes of section 195 (2 of 1974) and Chapter XXVI of the Code of Criminal Procedure, 1973.

(4) The Commission may call upon such experts, from the fields of economics, commerce, accountancy, international trade or from any other discipline as it deems necessary, to assist the Commission in the conduct of any inquiry or proceeding before it.

(5) The Commission may direct any person—

(a) to produce before the Director General or the Registrar or an officer authorised by it, such, books, accounts or other documents in the custody or under the control of such person so directed as may be specified or described in the direction, being documents relating to any trade, the examination of which may be required for the purposes of this Act;
(b) to furnish to the Director General or the Registrar or any officer authorised by it, as respects the trade or such other information as may be in his possession in relation to the trade carried on by such person, as may be required for the purposes of this Act.

(6) If the Commission is of the opinion that any agreement referred to in section 3 or "abuse of dominant position referred to in section 4 or the combination referred to in section 5 has caused or is likely to cause an appreciable adverse effect on competition in the relevant market in India and it is necessary to protect, without further delay, the interests of consumers and other market participants in India, it may conduct an inquiry or adjudicate upon any matter under this Act after giving a reasonable oral hearing to the parties concerned.

Review of orders of Commission

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

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

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

Rectification of orders

38. (1) With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of this Act.

(2) Subject to the other provisions of this Act, the Commission may make—

(a) an amendment under sub-section (1) of its own motion;
(b) an amendment for rectifying any such mistake which has been brought to its notice by any party to the order.

Explanation.— For the removal of doubts, it is hereby declared that the Commission shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

Execution of orders of Commission

39. Every order passed by the Commission under this Act shall be enforced by the Commission in the same manner as if it were a decree or order made by a High Court or the principal civil court in a suit pending therein and it shall be lawful for the Commission to send, in the event of its inability to execute it, such order to the High Court or the principal civil court, as the case may be, within the local limits of whose jurisdiction,—

(a) in the case of an order against a person referred to in sub-clause (iii) or sub-clause (vi) or subclause (vii) of clause (l) of section 2, the registered office or the sole or principal place of business of the person in India or where the person has also a subordinate office, that subordinate office, is situated;
(b) in the case of an order against any other person, the place, where the person concerned voluntarily resides or carries on business or personally works for gain, is situated, and thereupon the court to which the order is so sent shall execute the order as if it were a decree or order sent to it for execution.

Appeal

40. Any person aggrieved by any decision or order of the Commission may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Commission to him on one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days:

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

Chapter V

DUTIES OF DIRECTOR GENERAL

Director General to investigate contravention

41. (1) The Director General shall, when so directed by the Commission, assist the Commission in investigating into any contravention of the provisions of this Act or any rules or regulations made there under.

(2) The Director General shall have all the powers as are conferred upon the Commission under subsection (2) of section 36.

(3) Without prejudice to the provisions of sub-section (2), sections 240 and 240A of the Companies Act, 1956 (1 of 1956), so far as may be, shall apply to an investigation made by the Director General or any other person investigating under his authority, as they apply to an inspector appointed under that Act.

Chapter VI

PENALTIES

Contravention of orders of Commission

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

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

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

43. If any person fails to comply with a direction given by—

(a) the Commission under sub-section (5) of section 36; or
(b) the Director General while exercising powers referred to in sub-section (2) of section 41, the Commission shall impose on such person a penalty of rupees one lakh for each day during which such failure continues.

Penalty for making false statement or omission to furnish material information

44. If any person, being a party to a combination,—

(a) makes a statement which is false in any material particular, or knowing it to be false; or
(b) omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Commission.

Penalty for offences in relation to furnishing of information

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

(a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or
(b) omits to state any material fact knowing it to be material; or
(c) willfully alters, suppresses or destroys any document which is required to be furnished as aforesaid, the Commission shall impose on such person a penalty which may extend to rupees ten lakhs.

(2) without prejudice to the provisions of sub-section (1), the Commission may also pass such other order as it deems fit.

Power to impose lesser penalty

46. The Commission may, if it is satisfied that any producer, seller, distributor, trader or service provider included in any cartel, which is alleged to have violated section 3, has made a full and true disclosure in respect of the alleged violations and such disclosure is vital, impose upon such producer, seller, distributor, trader or service provider a lesser penalty as it may deem fit, than leviable under this Act or the rules or the regulations:

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

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

Provided also that the Commission may, if it 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 offence with respect to which the lesser penalty was imposed and shall also be liable to the imposition of penalty to which such person has been liable, had lesser penalty not been imposed.

Crediting sums realized by way of penalties to Consolidated Fund of India

47. All sums realized by way of penalties under this Act shall be credited to the Consolidated Fund of India.

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 there under 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 guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable lo any punishment 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.

(2) 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 officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that contravention and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

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

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

Chapter VII

COMPETITION ADVOCACY

Competition advocacy

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

(2) The opinion given by the Commission under sub-section (1) shall not be binding upon the Central Government in formulating such policy.

(3) The Commission shall take suitable measures, as may be prescribed, for the promotion of competition advocacy, creating awareness and imparting training about competition issues.

Chapter VIII

FINANCE, ACCOUNTS AND AUDIT

Grants by Central Government

50. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as the Government may think fit for being utilized for the purposes of this Act.

Constitution of Fund

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

(a) all Government grants received by the Commission;
(b) the monies received as costs from parties to proceedings before the Commission;
(c) the fees received under this Act;
(d) the interest accrued on the amounts referred to in clauses (a) to (c).

(2) The Fund shall be applied for meeting—

(a) the salaries and allowances payable to the Chairperson and other Members and the administrative expenses including the salaries, allowances and pension payable to the Director General, Additional, Joint, Deputy or Assistant Directors General, the Registrar and officers and other employees of the Commission;
(b) the other expenses of the Commission in connection with the discharge of its functions and for the purposes of this Act.

(3) The Fund shall be administered by a committee of such Members of the Commission as may be determined by the Chairperson.

(4) The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.

Accounts and Audit

52. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

Explanation.—For the removal of doubts, it is hereby declared that the orders of the Commission, being matters appealable to the Supreme Court, shall not be subject to audit under this section.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights, privileges and authority in connection with such audit as the Comptroller and Auditor-General of India generally has, in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

Furnishing of returns, etc., to Central Government

53. (1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing measures for the promotion of competition advocacy, creating awareness and imparting training about competition issues, as the Central Government may, from time to time, require.

(2) The Commission shall prepare once in every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year and copies of the report shall be forwarded to the Central Government.

(3) A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

Chapter IX

MISCELLANEOUS

Power to exempt

54. The Central Government may, by notification, exempt from the application of this Act, or any provision thereof, and for such period as it may specify in such notification—

(a) any class of enterprises if such exemption is necessary in the interest of security of the State or public interest;

(b) any practice or agreement arising out of and in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries;

(c) any enterprise which performs a sovereign function on behalf of the Central Government or a State Government:

Provided that in case an enterprise is engaged in any activity including the activity relatable to the sovereign functions of the Government, the Central Government may grant exemption only in respect of activity relatable to the sovereign functions.

Power of Central Government to issue directions

55. (1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy, other than those relating to technical and administrative matters, as the Central Government may give in writing to it from time to time:

Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Power of Central Government to supersede Commission

56. (1) If at any time the Central Government is of the opinion—

(a) that on account of circumstances beyond the control of the Commission, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Commission has persistently made default in complying with any direction given by the Central Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Commission or the administration of the Commission has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification and for reasons to be specified therein, supersede the Commission for such period, not exceeding six months, as may be specified in the notification:

Provided that before issuing any such notification, the Central Government shall give a reasonable opportunity to the Commission to make representations against the proposed suppression and shall consider representations, if any, of the Commission.

(2) Upon the publication of a notification under sub-section (1) superseding the Commission,—

(a) the Chairperson and other Members shall as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by the Central Government or such authority as the Central Government may specify on its behalf;

(c) all properties owned or controlled by the Commission shall, until the Commission is reconstituted under sub-section (3), vest in the Central Government.

(3) On or before the expiration of the period of suppression specified in the notification issued under subsection (1), the Central Government shall reconstitute the Commission by a fresh appointment of its Chairperson and other Members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Restriction on disclosure of information

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

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

58. The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Registrar and officers and other employees of the Commission shall be deemed, while acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

Protection of action taken in good faith

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

Act to have overriding effect

60. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Exclusion of jurisdiction of civil courts

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

Application of other laws not barred

62. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Power to make rules

63. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

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

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

(b) the form and manner in which and the authority before whom the oath of office and of secrecy shall be made and subscribed to under sub-section (3) of section 10;

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

(d) the salary and the other terms and conditions of service including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities to be provided to the Chairperson and other Members under sub-section (1) of section 14;

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

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

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

(h) for securing any case or matter which requires to be decided by a Bench composed of more than two Members under sub-section (4) of section 23;
(i) any other matter in respect of which the Commission shall have power under clause (g) of subsection (2) of section 36;
(j) the promotion of competition advocacy, creating awareness and imparting training about competition issues under sub-section (3) of section 49;
(k) the form in which the annual statement of accounts shall be prepared under sub-section (1) of section 52;
(l) the time within which and the form and manner in which the Commission may furnish returns, statements and such particulars as the Central Government may require under sub-section (1) of section 53;
(m) the form in which and the time within which the annual report shall be prepared under sub-section (2) of section 53;
(n) the manner in which the monies transferred to the Central Government shall be dealt with by that Government under the fourth proviso to sub-section (2) of section 66;
(o) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

(3) Every notification issued under sub-section (3) of section 20 and section 54 and every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session, or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule, or both Houses agree that the notification should not be issued or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule, as the case may be.

Power to make regulations

64. (1) The Commission may, by notification, make regulations consistent with tills Act and the rules made there under to carry out the purposes of this Act.

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

(a) the cost of production to be determined under clause (b) of the Explanation to section 4;
(b) the form of notice as may be specified and the fee which may be determined under sub-section (2) of section 6;
(c) the form in which details of the acquisition shall be filed under subsection (5) of Section 6;
(d) the fee which may be determined under clause (a) of sub-section (1) of section 19;
(e) Any other matter in respect of which provision is to be, or may be, made by regulations.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made. before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation, or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

Power to remove difficulties

65. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Repeal and saving

66. (1) The Monopolies and Restrictive Trade Practices Act, 1969 is hereby repealed and the Monopolies and Restrictive Trade Practices Commission established under sub-section (1) of section 5 of the said Act (hereinafter referred to as the repealed Act) (54 of 1969) shall stand dissolved.

(2) On the dissolution of the Monopolies and Restrictive Trade Practices Commission, the person appointed as the Chairman of the Monopolies and Restrictive Trade Practices Commission and every other person appointed as Member and Director General of Investigation and Registration, Additional, Joint, Deputy, or Assistant Directors General of Investigation and Registration and any officer and other employee of that Commission and holding office as such immediately before such dissolution shall vacate their respective offices and such Chairman and other Members shall be entitled to claim compensation not exceeding three months' pay and allowances for the premature termination of term of their office or of any contract of service:

Provided that the Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee who has been, immediately before the dissolution of the Monopolies and Restrictive Trade Practices Commission appointed on deputation basis to the Monopolies and Restrictive Trade Practices Commission, shall, on such dissolution, stand reverted to his parent cadre, Ministry or Department, as the case may be:

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

Provided also that notwithstanding anything contained in the Industrial Disputes Act, 1947(14 of 1947), or in any other law for the time being in force, the transfer of the services of any Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee, employed in the Monopolies and Restrictive Trade Practices Commission, to the Central Government shall not entitle such Director General of Investigation and Registration, Additional, Joint, Deputy or Assistant Directors General of Investigation and Registration or any officer or other employee any compensation under this Act or

any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority:

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

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

(4) Subject to the provisions of sub-section (3), all cases pertaining to unfair trade practices other than those referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act shall, on such commencement, stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 (68 of 1986) and the National Commission shall dispose of such cases as if they were cases filed under that Act:

Provided that the National Commission may, if it considers appropriate, transfer any case transferred to it under this sub-section, to the concerned State Commission established under section 9 of the Consumer Protection Act, 1986 (68 of 1986) and that State Commission shall dispose of such case as if it was filed under that Act.

(5) All cases pertaining to unfair trade practices referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) and pending before the Monopolies and Restrictive Trade Practices Commission on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India shall dispose of such cases as if they were cases filed under that Act,

(6) All investigations or proceedings, other than those relating to unfair trade practices, pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India, and the Competition Commission of India may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

(7) All investigations or proceedings, relating to unfair trade practices, other than those referred to in clause (x) of sub-section (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969(54 of 1969) and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the National Commission constituted under the Consumer Protection Act, 1986 (68 of 1986) and the National Commission may conduct or order for conduct of such investigation or proceedings in the manner as it deems fit.

(8) All investigations or proceedings relating to unfair trade practices referred to in clause (x) of subsection (1) of section 36A of the Monopolies and Restrictive Trade Practices Act, 1969(54 of 1969), and pending before the Director General of Investigation and Registration on or before the commencement of this Act shall, on such commencement, stand transferred to the Competition Commission of India and the Competition Commission of India may conduct or order for conduct of such investigation in the manner as it deems fit.

(9) Save as otherwise provided under sub-sections (3) to (8), all cases or proceedings pending before the Monopolies and Restrictive Trade Practices Commission shall abate.

(10) The mention of the particular matters referred to in sub-sections (3) to (8) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal.

K. N. CHATURVEDI
Additional Secretary to the Govt. of India.