**Inquiry into Certain Agreements and Dominant Position of Enterprise**

The Commission is empowered to inquire into any alleged contravention of the provisions contained in section 3(1) or section 4(1)

either on its own motion or on:—

⎫ receipt of any information in such manner and accompanied by such fee as may be determined by regulations, from any person, consumer or their association or trade association; or

⎫ a reference made to it by the Central Government or a State Government or a statutory authority.

**Appreciable Adverse effect:** The Commission shall, while determining whether an agreement has an appreciable adverse effect on competition, have due regard to all or any of the following factors, namely:—

⎫ creation of barriers to new entrants in the market;

⎫ driving existing competitors out of the market

⎫ foreclosure of competition by hindering entry into the market;

⎫ accrual of benefits to consumers;

⎫ improvements in production or distribution of goods or provision of services;

⎫ promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

**Dominant position of enterprise**:

The Commission shall, while inquiring whether an enterprise enjoys a dominant position or not, have due regard to all or any of the following factors, namely:—

⎫ market share of the enterprise;

⎫ size and resources of the enterprise;

⎫ size and importance of the competitors;

⎫ economic power of the enterprise including commercial advantages over competitors;

⎫ vertical integration of the enterprises or sale or service network of such enterprises;

⎫ dependence of consumers on the enterprise;

⎫ 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;

⎫ 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

⎫ countervailing buying power;

⎫ market structure and size of market;

⎫ social obligations and social costs;

⎫ 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;

⎫ any other factor which the Commission may consider relevant for the inquiry.

**Relevant Market**:

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".

**Relevant Geographic Market**: The Commission shall, while determining the "relevant geographic market", have due regard to all or any of the following factors, namely:—

⎫ regulatory trade barriers;

⎫ local specification requirements;

⎫ national procurement policies;

⎫ adequate distribution facilities;

⎫ transport costs;

⎫ language;

⎫ consumer preferences;

⎫ need for secure or regular supplies or rapid after-sales services.

**Relevant Product Market:**

While determining the "relevant product market", the Commission shall have due regard to all or any of the following factors, namely:—

⎫ physical characteristics or end-use of goods;

⎫ price of goods or service;

⎫ consumer preferences;

⎫ exclusion of in-house production;

⎫ existence of specialised producers;

⎫ classification of industrial products.

**Procedure for inquiry under Section 19**

This section lays down the detailed procedure for any inquiry initiated suo motu by the Commission and various complaints and references referred to in section 19 of the Act.

The detailed procedure is as follows:

⎫ On receipt of a reference from the Central Government or a State Government or a statutory authority or on its own knowledge or information received 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. If the subject matter of an information received is, in the opinion of the Commission, substantially the same as or has been covered by any previous information received, then the new information may be clubbed with the previous information.

⎫ Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under section 19, the Commission is of the opinion that there exists no prima facie case, it shall close the matter forthwith and pass such orders as it deems fit and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

⎫ The Director General shall, on receipt of direction submit a report on his findings within such period as may be specified by the Commission.

⎫ The Commission may forward a copy of the report to the parties concerned. In case the investigation is caused to be made based on reference received from the Central Government or the State Government or the statutory authority, the Commission shall forward a copy of the report to the Central Government or the State Government or the statutory authority, as the case may be.

⎫ If the report of the Director General recommends that there is no contravention of the provisions of this Act, the Commission shall invite objections or suggestions from the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be, on such report of the Director General.

⎫ If, after consideration of the objections and suggestions if any, the Commission agrees with the recommendation of the Director General, it shall close the matter forthwith and pass such orders as it deems fit and communicate its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be.

⎫ If, after consideration of the objections or suggestions if any, the Commission is of the opinion that further investigations is called for, it may direct further investigation in the matter by the Director General or cause further inquiry to be made by in the matter or itself proceed with further inquiry in the matter in accordance with the provisions of this Act.

⎫ If the report of the Director General 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**

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:—

⎫ 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;

⎫ 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. In case any agreement referred to in section 3 has been entered into by a cartel, the Commission may impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent. of its turnover for each year of the continuance of such agreement, whichever is higher.

⎫ direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission

⎫ 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

⎫ pass such other order or issue such directions as it may deem fit.

**Inquiry into combination by Commission**

The Commission may,

⎫ upon its own knowledge or

⎫ information relating to acquisition referred to in Section 5(a)

⎫ or acquiring of control referred to in Section 5(b)

⎫ or merger or amalgamation referred to in Section 5(c),

inquire into whether such a combination has caused or is likely to cause an appreciable adverse effect on competition in India.

Upon receipt of such notice, the Commission shall examine such notice and form its prima facie opinion as to whether the combination has, or is likely to have, an appreciable adverse effect on the competition in the relevant market in India.

Further, the Commission shall not initiate any inquiry after the expiry of one year from the date on which such combination has taken effect. The Commission shall, on receipt of a notice under Section 6(2) 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.

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:

⎫ actual and potential level of competition through imports in the market.

⎫ extent of barriers to entry into the market.

⎫ level of combination in the market.

⎫ degree of countervailing power in the market.

⎫ likelihood that the combination would result in the parties to the combination being able to significantly and sustainably increase prices or profit margins.

⎫ extent of effective competition likely to sustain in a market.

⎫ extent to which substitutes are available or are likely to be available in the market.

⎫ market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination.

⎫ likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market.

⎫ nature and extent of vertical integration in the market.

⎫ possibility of a failing business.

⎫ nature and extent of innovation.

⎫ relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition.

⎫ whether the benefits of the combination outweigh the adverse impact of the combination, if any