

SEMESTER-II

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TOPIC-5: COMPETITION COMMISSION OF INDIA: **DUTIES POWERS AND FUNCTIONS**

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Introduction

- The Competition Commission of India (hereinafter Commission) is the watchdog of Competition Law in India.
- It was established by the Central Government under Section 7 of the Competition Act 2002 with effect from 14th October 2003.
- CCI consists of a Chairperson and 6 Members appointed by the Central Government.
- It is 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 in the markets of India.
- The Commission is also required to give opinion on competition issues on a reference received from a statutory authority established under any law and to undertake competition advocacy, create public awareness and impart training on competition issues.¹

Establishment of Commission (Section 7 of Competition Act 2002):

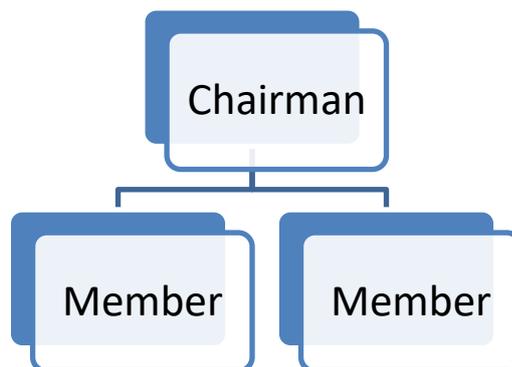
- It provides for the establishment of commission by Central government.

¹ Official website Competition Commission of India, available at: <https://www.cci.gov.in/about-cci>

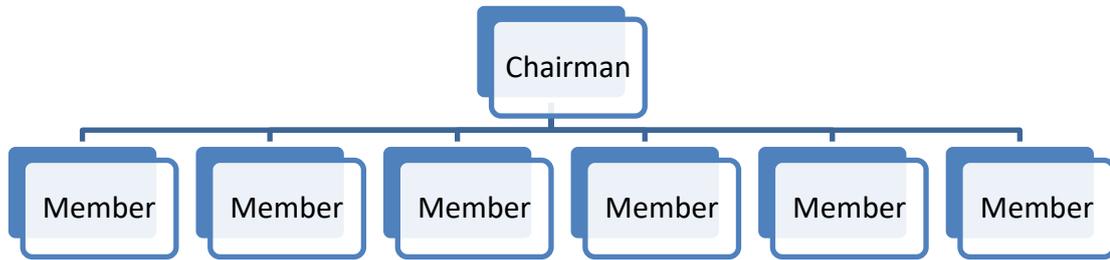
- The Commission shall be:
 - a body corporate by the name aforesaid
 - having perpetual succession and a
 - common seal
 - with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and
 - to contract and
 - shall, by the said name, sue or be sued.
- The head office of the Commission shall be at such place as the Government may decide from time to time. Currently the head office of the Commission is in Delhi. But the Commission may establish offices at other places in India.

Composition of Commission (Section 8)

- The Commission shall consist of a Chairperson and not less than two and not more than six other Members to be appointed by the Central Government.
- Minimum Composition:



- Maximum Composition:



- The Chairperson and every other Member shall be a person of
 - ability, integrity and standing and
 - who has special knowledge of, and such professional experience of not less than **fifteen years** in,
 1. international trade,
 2. economics,
 3. business,
 4. commerce,
 5. law,
 6. finance,
 7. accountancy,
 8. management,
 9. industry,
 10. public affairs or
 11. competition matters, including competition law and policy, which in the opinion of the Central Government, may be useful to the Commission.
- The Chairperson and other Members shall be whole-time Members.

Selection Committee for Chairperson and Members of Commission
(Section 9)

- The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a Selection Committee consisting of –

S. No.	Selection Committee Member	Appointee
1.	the Chief Justice of India or his nominee	Chairperson
2.	the Secretary in the Ministry of Corporate Affairs	Member
3.	the Secretary in the Ministry of Law and Justice	Member
4.	two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy	Member

- The term of the Selection Committee and the manner of selection of panel of names shall be such as may be prescribed.

Administrative powers of Chairperson (Section 13)

- The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission.

- The Chairperson may delegate such of his powers relating to administrative matters of the Commission, as he may think fit, to any other Member or officer of the Commission.

Current Members of the commission

- **Chairperson: Shri Ashok Kumar Gupta**, a 1981 Batch IAS officer, joined the Competition Commission of India as Chairperson in November, 2018. He has more than 36 years of wide ranging experience with Government of India and with Government of Tamil Nadu. He has extensive experience in Industry, has headed and turned around State Public Sector Units and served on the Boards of Central and State PSUs such as Hindustan Aeronautics Ltd., Heavy Engineering Corporation, Tamil Nadu Cements and many others. A gold medallist in Mechanical Engineering from Delhi University, he also holds a Post-Graduate degree in Public Administration from Syracuse University (USA) and an M.Phil. degree in Defence and Strategic Studies from Madras University.
- **Member Dr. Sangeeta Verma**, an officer of 1981 batch of the Indian Economic Service (IES) joined as Member, Competition Commission of India on 24th December, 2018. Dr. Verma is an experienced administrator, regulator and policy maker – having served for over 37 years in the Government of India and Govt of Uttar Pradesh before joining the Commission. Her breadth of experience ranges from field postings in Uttar Pradesh to that of Principal Adviser to the Govt. of India in the Department of Consumer Affairs, where she was responsible for the administration of the Essential Commodities Act, the Consumer Protection Act and the Price Stabilisation Fund. Dr.Verma holds a Doctorate (Phd.) degree in Economics (Financial Decentralisation of District Plans) from the Lucknow University, Master in Arts (MA) from

the University of Reading (UK) – Dean’s list and M.A Economics from the Delhi School of Economics.

- **Member Shri Bhagwant Singh Bishnoi**, an officer of the 1983 batch of the Indian Foreign Service joined as Member, Competition Commission of India on 17th July, 2019. He has 35 years of wide ranging experience in Government, both at Headquarters and in India’s diplomatic Missions abroad. Shri Bishnoi’s last assignment was Ambassador to the Kingdom of Thailand. He has also served as Ambassador to Ethiopia and Djibouti, as well as to the UN, UN-ESCAP and the African Union. Shri Bishnoi has a bachelor’s degree in Engineering from BITS, Pilani and an MBA from IIM, Bangalore. Apart from English and Hindi, he is fluent in Spanish.²

Term of office of Chairperson and other Members (Section 10)

- 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 the Chairperson or other Members shall not hold office as such after he has attained the age of **sixty-five years**.
- 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 9.
- 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.
- 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**

² Official website Competition Commission of India, available at: <https://www.cci.gov.in/commission>

most Member shall act as the Chairperson, until the date on which a new Chairperson, appointed in accordance with the provisions of the Act to fill such vacancy, enters upon his office.

- 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 (Section 11)

- 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**.
- 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,—
 1. is, or at any time has been, adjudged as an **insolvent**; or
 2. has engaged at any time, during his term of office, in any **paid employment**; or
 3. has been convicted of an offence which, in the opinion of the Central Government, involves **moral turpitude**; or
 4. has acquired such **financial or other interest** as is likely to affect prejudicially his functions as a Member; or

5. has so **abused his position** as to render his continuance in office prejudicial to the public interest; or
 6. has become **physically or mentally incapable** of acting as a Member.
- No Member shall be removed from his office on the ground of **financial or other interest** and **abuse of position** 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 (Section 12)

- The Chairperson and other Members shall not, for a period of **two years** 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 the Act:
- Provided that they may join any employment under:
 1. Central Government or
 2. State Government or
 3. local authority or
 4. statutory authority or
 5. corporation established by or under any Central, State or Provincial Act or
 6. Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956). [Now defined under **Section 2(45)** of Companies Act 2013]

Salary and allowances and other terms and conditions of service of Chairperson and other Members (Section 14).

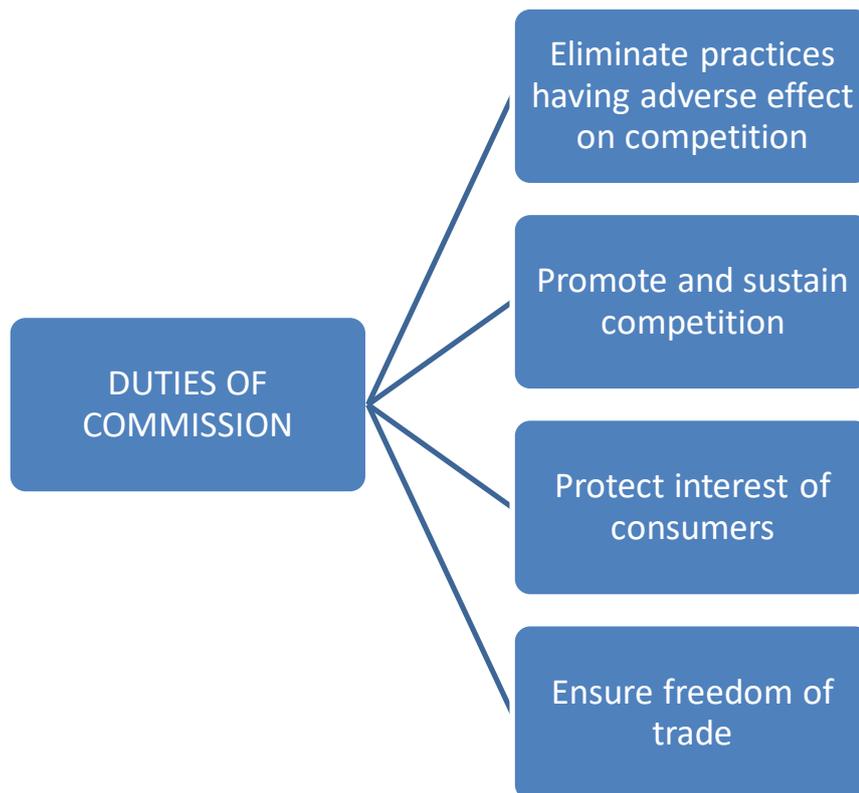
- The salary, and the other terms and conditions of service, of the Chairperson and other Members, including travelling expenses, house rent allowance and conveyance facilities, sumptuary allowance and medical facilities shall be such as may be prescribed.
- The salary, allowances and other terms and 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 (Section 15).

- No act or proceeding of the Commission shall be invalid merely by reason of—
 1. any vacancy in, or any defect in the constitution of, the Commission; or
 2. any defect in the appointment of a person acting as a Chairperson or as a Member; or
 3. any irregularity in the procedure of the Commission not affecting the merits of the case.

DUTIES OF COMPETITION COMMISSION OF INDIA

Under Section 18 the Act provides the major duties of the competition Commission. The commission has the following four major duties:



- The Competition Commission may enter into any memorandum or arrangement with prior approval of the Central Government with any agency of any **foreign country**, for the purpose of discharging its duties or performing its functions under the Act.

The Act says that the commission has to perform these main duties:

- 1. Eliminate practices having adverse effect on competition:** It is the duty of the commission to be a watchdog for prohibiting any practice relating to abuse of competition in markets.
- 2. Promote and sustain competition:** The main purpose of the Commission is to promote the competition in markets in India and try to carry on competitiveness in markets in India.
- 3. Protect the interests of consumers:** The ultimate aim of the competition law and the competition commission is to protect consumers from the

abuse of competition in markets. All the anti-competitive activities are prohibited in order to ultimately help consumers.

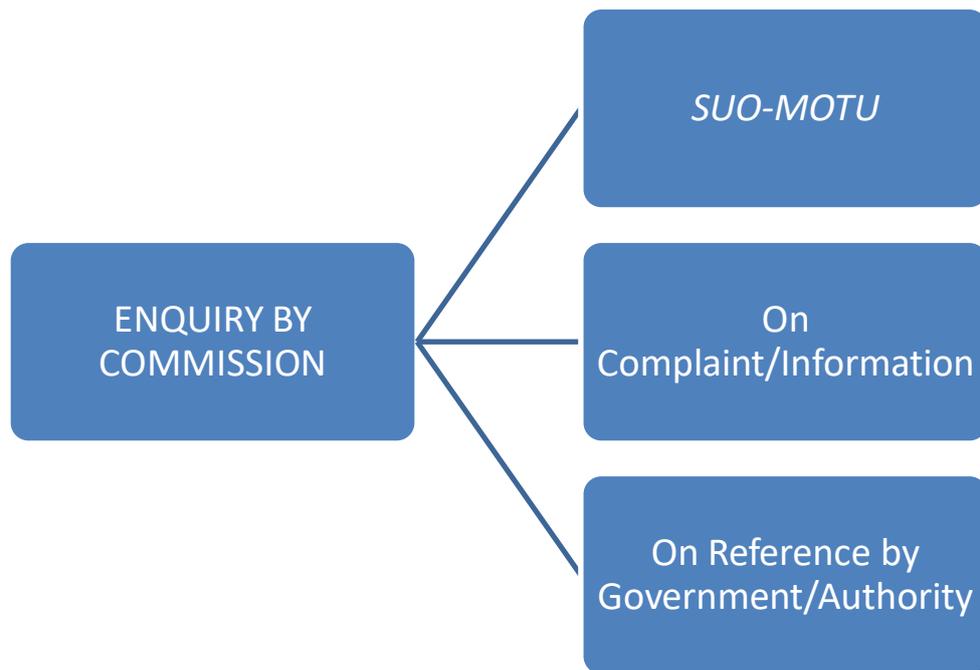
- 4. Ensure freedom of trade carried on by other participants, in markets in India:** In order to protect the competition in markets the commission has a duty not to hinder the freedom of trade in markets in India.

POWER AND FUNCTIONS OF THE COMPETITION COMMISSION OF INDIA

Chapter IV of the Competition Act 2002 deals with the duties, power and functions of the competition commission of India.

1. Commission's Power of Enquiry Into Certain Agreements and Dominant Position of Enterprise (Section 19): Under Section 19 the Commission is empowered to Inquire into certain agreements and dominant position of enterprise.

- 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
 1. either on its own motion or
 2. 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
 3. reference made to it by the Central Government or a State Government or a statutory authority.



- **the powers and functions of the Commission shall include the powers and functions specified in sub-sections (3) to (7) of Section 19 which are as follows:**
- 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; or (f) promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.
- 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.

- 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”.
- 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.
- 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 specialised producers; (f) classification of industrial products.

2. Commission's Power of Enquiry Into Combination (Section 20):

- 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 subsection 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 **sub-section (2) of section 6**, inquire whether a combination referred to in that notice or reference has caused or is likely to cause an appreciable adverse effect on competition in India.
- 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.
- 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 sustainably increase prices or profit margins; (f) extent of effective competition likely to sustain in a market; (g) extent to which substitutes are available or are likely to be available in the market; (h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as a combination; (i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market; (j) nature and extent of vertical integration in the market; (k) possibility of a failing business; (l) nature and extent of innovation; (m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition; (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

3. Power To Give Opinion On Reference By Authority (Section 21):

- 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.
- Any statutory authority, may, **suo motu**, also make such a reference to the Commission.
- On receipt of a reference, the Commission **shall** give its opinion, within **sixty days** of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefor on the issues referred to in the said opinion.

4. Power of Commission To make Reference to Statutory Authority (Section 21A):

- Where in the course of a proceeding before the Commission an issue is raised by any party that **any decision which, the Commission has taken during such proceeding or proposes to take**, is or would be contrary to any provision of this Act whose implementation is entrusted to a statutory authority, then the Commission may make a reference in respect of such issue to the statutory authority: Provided that the Commission, may, suo motu, make such a reference to the statutory authority.
- On receipt of a reference, the **statutory authority shall give its opinion, within sixty days** of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons there for on the issues referred to in the said opinion.

5. Meetings of the Commission (Section 22):

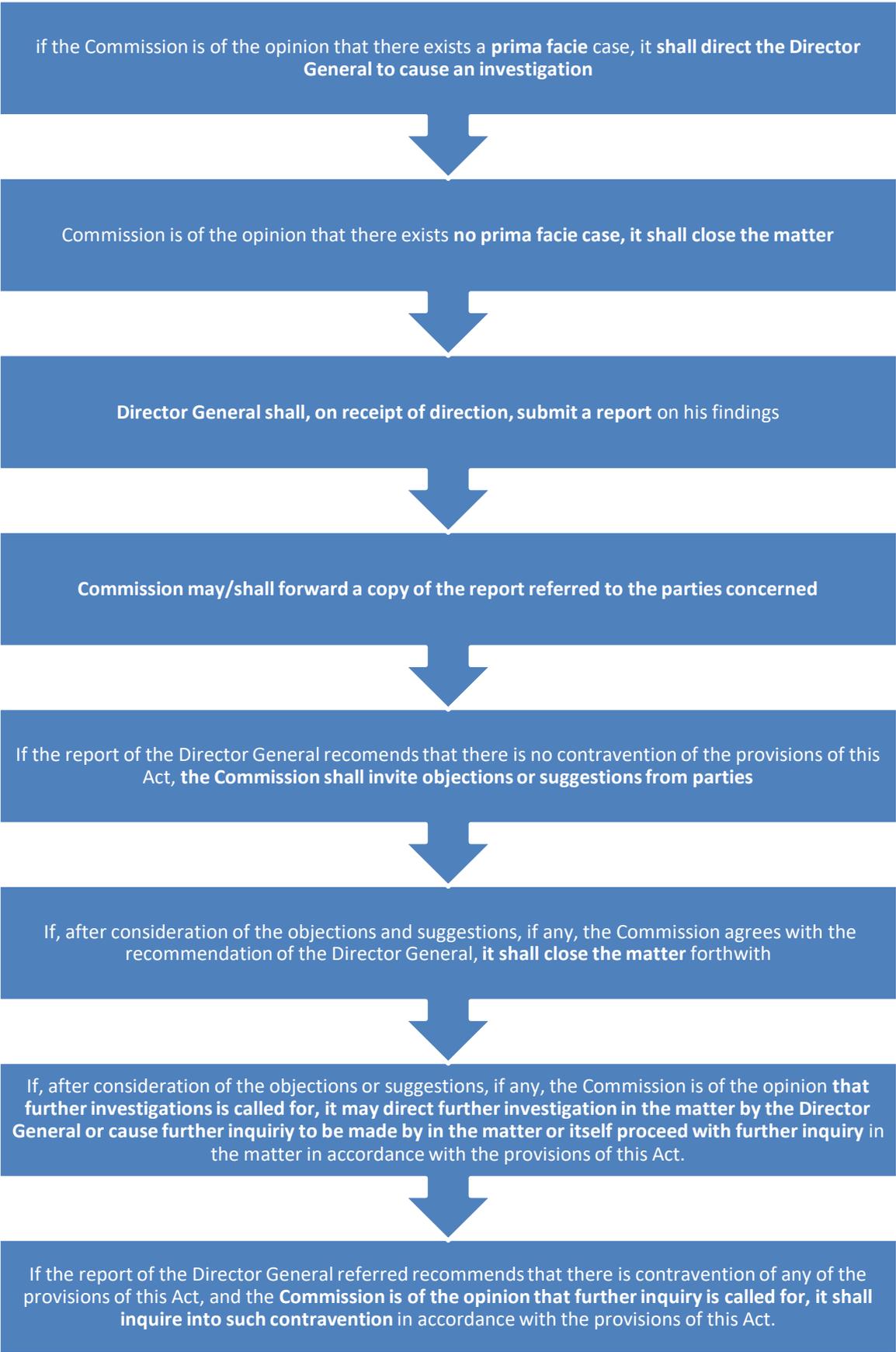
- The Commission shall meet at such times and places, and shall observe such rules and procedure in regard to the transaction of business at its meetings as may be provided by **regulations**.
- The Chairperson, if for any reason, is unable to attend a meeting of the Commission, **the senior-most Member present at the meeting, shall preside** at the meeting.
- All questions which come up before any meeting of the Commission shall be decided by a **majority of the Members present and voting**, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or/casting vote: Provided that the quorum for such meeting shall be **three Members**.

6. Power of Commission to Conduct Enquiry under Section 19
(Section 26):

- 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:
- Provided that 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 referred to the parties concerned:** Provided that 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 referred 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 referred 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.



7. Power of Commission to Issue Orders After Inquiry Into Agreements Or Abuse Of Dominant Position (Section 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:—

- 1.** 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;
- 2.** Impose such penalty, as it may deem fit which shall be not more than **ten percent 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:
- 3.** 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 percent. of its turnover for each year of the continuance of such agreement, whichever is higher.**
- 4.** Direct that the **agreements shall stand modified** to the extent and in the manner as may be specified in the order by the Commission;
- 5.** 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;
- 6.** Pass such **other order or issue such directions** as it may deem fit.

7. While passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it **may pass orders, under this section, against such members of the group.**

8. Power of Commission to Divide the enterprise enjoying dominant position (Section 28):

- The Commission may by order in writing, **direct division of an enterprise enjoying dominant position** to ensure that such enterprise does not abuse its dominant position.
- The order 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; (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.
- 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.

9. Power of Commission to conduct investigation of combinations

(Section 29):

- Where the Commission is of the prima facie 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.
- After receipt of the response of the parties the Commission may call for **a report from the Director General** and such report shall be submitted by the Director General within such time as the Commission may direct.
- 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, or the receipt of the report from Director General, whichever is later **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.
- 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.

- The Commission may, within **fifteen working days** from the expiry of the period specified in above-point, call for such **additional or other information** as it may deem fit from the parties to the said combination.
- The additional or other information called for by the Commission shall be furnished by the parties **within fifteen days**.
- After receipt of all information and within a period of **forty-five working days** from the expiry of the period specified in above-point, the Commission shall proceed to deal with the case in accordance with the provisions contained in section 31.

10. Power of Commission to issue Orders on certain combinations

(Section31):

- 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, shall carry out such modification within the period specified by the Commission.
- If the parties to the combination, who have accepted the modification, **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.
- If the parties to the combination do not accept the modification proposed by the Commission, such parties may, within **thirty working days of the modification proposed** by the Commission, **submit amendment** to the modification proposed by the Commission.
- If the Commission **agrees with the amendment** submitted by the parties, it shall, by order, **approve** the combination.
- If the Commission does not accept the amendment, 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.
- If the parties fail to accept the modification proposed by the Commission within thirty working days or within a further period of thirty working days, **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.

- Where the Commission has directed that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition, 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.

- If the Commission does not, on the expiry of a period of two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6, pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or subsection (7), the **combination shall be deemed to have been approved by the Commission**.
- Explanation.—For the purposes of determining the period of 55[two hundred and ten] 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.
- 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.

- 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.
- 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.

11. Extra-Territorial Power of Commission (Section32):

- 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 in accordance with the provisions contained in sections 19, 20, 26, 29 and 30 of the Act 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 and **pass such orders as it may deem fit** in accordance with the provisions of the Act.

12. Power of Commission to Issue Interim Orders (Section33):

- Where during an inquiry, the Commission is satisfied 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, **temporarily restrain** any party from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where it deems it necessary.

13. Appearance before Commission (Section 35):

- A person or an enterprise 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.

14. Power of Commission to regulate its own procedure (Section 36(1):

- In the discharge of its functions, the Commission shall be guided by the principles of **natural justice** and, subject to the other provisions of the Act and of any rules made by the Central Government, the Commission shall have the powers to **regulate its own procedure**.

15. Power of civil Court (Section 36(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 affidavit; (d) issuing commissions for the examination of witnesses or documents; (e) requisitioning, subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of

1872), any public record or document or copy of such record or document from any office.

16. Power to call experts: (Section 36(3)):

- 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 by it.

17. Power to call for documents/Information: (Section 36(4)):

- The Commission may direct any person: (a) to produce before the Director General or the Secretary or an officer authorized by it, such books, 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 Secretary or any other officer authorized 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.

18. Power to Rectify orders (Section 38).

- 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.
- Subject to the other provisions of the 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.

19. Execution of orders of Commission imposing monetary penalty (Section 39).

- If a person fails to pay any monetary penalty imposed on him under the Act, the Commission shall proceed to recover such penalty, in such manner as may be specified by the regulations.
- In a case where the Commission is of the opinion that it would be expedient to recover the penalty imposed under this Act in accordance with the provisions of the Income-tax Act, 1961 (43 of 1961), it may **make a reference** to this effect to the concerned income-tax authority under that Act for recovery of the penalty as tax due under the said Act.
- Where a reference has been made by the Commission for recovery of penalty, the person upon whom the penalty has been imposed shall be deemed to be the **assessee** in default under the Income Tax Act, 1961 (43 of 1961) and the provisions contained in sections 221 to 227, 228A, 229, 231 and 232 of the said Act and the Second Schedule to that Act and any rules made there under shall, in so far as may be, apply as if the said provisions were the provisions of this Act and referred to sums by way of penalty imposed under this Act instead of to income tax and sums imposed by way of penalty, fine, and interest under the Income-tax Act, 1961 (43 of 1961) and to the Commission instead of the Assessing Officer.