



**Comments submitted to the Ministry of
Corporate Affairs, Government of India
on the Draft Competition (Amendment)
Bill, 2020**

By – The Centre for Competition Law and Economics

24th June, 2021

Type	Relevant Section	Sub Section	Amendments	Suggestion
Bill 2020	Section 2 – Definitions	(j)	<p>for clause (j), the following clause shall be substituted, namely: —</p> <p><i>“Member” means a Member of the Commission or the Governing Board appointed under sub-sections (1) or (1A) of section 8, respectively and includes the Chairperson;”</i></p>	<p>“ “Member” means a Member of the Commission or the Governing Board appointed under subsections 1 or 1A of section 8 respectively and includes the Chairperson.” It should be “subsections 1 or 1A of section 9 and section 8 respectively” The rationale being member of the Commission still being appointed as per subsection 1 of section 9 of the parent Act and as per the original definition of "member" as per clause j of section 2.</p>
Bill 2020	Section 8 - Composition of Commission	(1A) Newly Inserted	<p>after sub-section (1), the following sub-section shall be inserted, namely: —</p> <p><i>“(1A) The Commission shall have a Governing Board which shall consist of the following Members:</i></p> <p><i>(a) the Members of the Commission;</i></p> <p><i>(b) Secretary of the Department of Economic Affairs, Ministry of Finance or his nominee, not below the rank of Joint Secretary and the Secretary of the Ministry of Corporate Affairs or his</i></p>	<p>Clause "c" be removed or qualifications for Part Time member be explicitly stated as "experts of repute in field of international trade economics business commerce law finance accountancy management industry public affairs or competition matters including competition law and policy ".</p>

			<p><i>nominee, not below the rank of Joint Secretary, ex-officio;</i></p> <p><i>(c) four other Part-time Members to be appointed by the Central Government.”</i></p>	
Bill 2020	Section 2 – Definitions	(q)	<p><i>in clause (q), for the word “Commission” the words “Governing Board” shall be substituted.</i></p>	<p>Clause q be as it is. Clause q section 2 read with amended sub section 3 of section 17 would allow the Governing Board to determine who is an expert in the field of competition law and policy. Given the criteria to appoint Part Time Member is itself dubious it cannot be entrusted to dwell into the question of who is an expert in the field of antitrust.</p>
Bill 2020	Section 18A - Functions and meetings of the Governing Board (Newly Inserted)	18A	<p>After section 18 of the principal Act, the following section shall be inserted, namely: —</p> <p>“18A. (1) Subject to the provisions of this Act, the general superintendence, direction and management of the affairs of the Commission shall vest in the Governing Board.</p> <p>(2) Without prejudice to the generality of the foregoing provision, the Governing Board shall perform the following functions:</p>	<p>Clause "a" of sub section 2 of section 18A be removed as making of regulations would require expertise in the field of law and economics. Rather the regulation making power be vested in the Commission itself.</p> <p>Sub section 4 of section 18A be amended as ".....of the Governing Board any other Whole Time member.....".</p> <p>Sub section 5 be amended as "..... the Chairperson or in his absence, the whole time Member presiding, shall have a second or casting vote".</p>

			<p>(a) make regulations on matters relating to competition and the administration of the affairs of the Commission as may be required under this Act;</p> <p>(b) enter into, vary, carry out and cancel, memorandums, arrangements and contracts on behalf of the Commission with any statutory authority or department of Government for the purposes of this Act;</p> <p>(c) take measures to promote competition advocacy, create awareness and impart training in competition issues;</p> <p>(d) assist the Central Government in developing a National Competition Policy, its periodic review</p>	<p>Sub section 6 of section 18A be substituted with "The quorum for meetings of the Governing Board shall be two thirds of the Members of the Governing Board".</p>
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		<p>and implementation;</p> <p>(d) perform such other functions as may be prescribed by the Central Government.</p> <p>(3) The Governing Board shall meet at such times and places, and shall observe such rules and procedure in regard to the transaction of business at its meetings as may be provided by regulations:</p> <p>Provided that there shall be at least four meetings of the Governing Board in a year and at least one meeting in each quarter.</p> <p>(4) The Chairperson, if for any reason, is unable to attend a meeting of the Governing Board, any other Member so chosen by the Members present at the meeting, shall preside at the meeting of the Governing Board.</p> <p>(5) All questions which come up before any meeting of the Governing Board shall be decided by a majority of the Members</p>	
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			<p>present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the Member presiding, shall have a second or casting vote.</p> <p>(6) The quorum for meetings of the Governing Board shall be two-thirds of the Members of the Governing Board of which at least two of the Members present should be Part-time Members.”.</p>	
Bill 2020	Section 13A - Delegation (Newly Inserted)	13A	<p>After section 13, the following section shall be inserted to the principal Act, namely: —</p> <p>“13A. Delegation</p> <p>(1) The Commission may, by general or special order in writing delegate to any Member of the Commission or officer of the Commission subject to such conditions, if any, as may be specified in the order, such of the powers and functions of the Commission under this Act, except the powers and functions under sub-section (4) of section 22, as it may deem necessary.</p> <p>(2) The Governing Board may, by general or special</p>	<p>Sub section 2 of section 13A be amended as, "..... in writing delegate to any whole time Member or officer of the Governing Board subject to such conditions....."</p>

			order in writing delegate to any Member or officer of the Governing Board subject to such conditions, if any, as may be specified in the order, such of the powers and functions of the Governing Board under this Act, except the powers and functions under section 64, as it may deem necessary.”.	
Bill 2020	Section 17 - Appointment of Secretary, experts, professionals and officers and other employees of Commission	All	<p>For section 17 of the principal Act, the following shall be substituted, namely: —</p> <p>“17. Appointment of Secretary, experts, professionals and officers and other employees of Commission and the Governing Board</p> <p>(1) The Commission and the Governing Board may appoint a Secretary and such officers and other employees as they consider necessary for the efficient performance of their functions under this Act.</p> <p>(2) The salaries and allowances payable to and other terms and conditions of service of the Secretary and officers and other employees under sub-section (1), and the number</p>	<p>Sub section 1 of section 17 be amended as ".....The Commission may appoint a Secretary and such officers their.....".</p> <p>Sub section 3 of section 17 be amended as ".....The Commission may engage, in accordance with the procedure specified by regulations.....".</p>

			<p>of such officers and other employees shall be such as may be prescribed.</p> <p>(3) The Commission and the Governing Board may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as they deem necessary to assist the Commission or the Governing Board, as the case may be, in the discharge of their functions under this Act.”</p>	
Bill 2020	Section 64 - Power to make regulations	(1)	in sub-section (1), for the words “The Commission” the words “The Governing Board of the Commission” shall be substituted.	This amendment be omitted.
Bill 2020	Section 64A - Process of issuing regulations (Newly Inserted)	64A	<p><i>After section 64 of the principal Act, the following section shall be inserted, namely: —</i></p> <p>“64A. The Governing Board of the Commission shall ensure transparency while exercising its powers to issue regulations under section 64, by —</p> <p>(a) publishing draft regulations along</p>	The proviso be omitted.

		<p>with such other details as may be specified on its website and inviting public comments for a specified period prior to issuing regulations;</p> <p>(b) publishing a general statement of its response(s) to the public comments, not later than the date of notification of the regulations;</p> <p>(c) periodically reviewing such regulations:</p> <p>Provided that if the Governing Board is of the opinion that certain regulations are required to be issued or existing regulations are required to be amended urgently in public interest or the subject matter of the regulation relates solely to the internal functioning of the Commission, it may make regulations or amend the existing regulations, as the case may be, without following the provisions stated in this section and record the reason for doing so in writing.”.</p>	
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<p>Bill 2020</p>	<p>Section 3 - Anti-competitive agreements</p>	<p>(4)</p>	<p>in sub-section (4), for the words “Any agreement amongst enterprises or persons at different stages”, the following shall be substituted, namely:</p> <p><i>“Any other agreement amongst enterprises or persons including but not restricted to agreements amongst enterprises or persons at different stages”.</i></p> <p>in clause (a) of the Explanation, after the word “goods”, at both places where it occurs, the words “or services” shall be inserted; and after the words “purchase some other”, the word “distinct” shall be inserted.</p> <p>for clause (b) of the Explanation, the following clause shall be substituted, namely: —</p> <p><i>“(b) “exclusive dealing agreement” includes any agreement restricting in any manner the purchaser or the seller, as the case maybe, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be;”.</i></p>	<p>Sub section 4 be kept as it is. The rationale being the wordings have proved enough to capture vertical agreements across industries over ten years of implementation. Read with inserted proviso in sub section 3, the contours are enough to probe all anti-competitive agreements.</p>
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			<p><i>in clause (c) of the Explanation, after the word “goods”, at both places where it occurs, the words “or services” shall be inserted.</i></p> <p><i>in clause (d) of the Explanation, after the word “goods”, at both places where it occurs, the words “or services” shall be inserted.</i></p> <p><i>in clause (e) of the Explanation, for the words “includes any agreement to sell goods on condition”, the words “includes, in case of any agreement to sell goods or provide services, any direct or indirect restriction” shall be substituted.</i></p>	
Bill 2020	Section 3 - Anti-competitive agreements	(5)	sub-section (5) shall be omitted.	Sub section 5 be kept as it is. The CLRC report nowhere mentions omitting this sub section. Therefore the said amendment be unsubstantiated.
Bill 2020	Section 4A - Protection to holders of intellectual property rights, etc. (Newly Inserted)	4A	<p>After section 4 of the principal Act, the following section 4A shall be inserted, —</p> <p><i>“4A. Nothing contained in section 3 or section 4 shall restrict the right of any person to restrain any infringement of, or to impose reasonable conditions, as may be necessary for protecting any of his</i></p>	Section 4A be omitted. The CLRC report relies on foreign literature which may not be necessarily true in Indian context.

		<p><i>rights which have been or may be conferred under:</i></p> <ul style="list-style-type: none"> (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 Semiconductor and Integrated Circuits Layout-Design Act, 2000 (37 of 2000); (g) any other law for the time being in force relating to the protection of other intellectual property rights. <p>(2) Nothing contained in section 3 shall restrict the</p>	
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			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.”.	
Bill 2020	Section 4 - Abuse of dominant position	(2)	<i>In section 4 of the principal Act, in the Explanation to clause (a) of sub-section (2), the words “discriminatory condition or price”, shall be substituted with the words “conditions or prices”.</i>	The said amendment be omitted. The CLRC after deliberate discussion decided not to amend the text. Therefore the amendment be unsubstantiated.
Bill 2020	Section 5 - Combination	(c)	In section 5 after clause (c), the following provisos shall be inserted, namely: — <i>“Provided that the Central Government may in public interest and in consultation with the Commission prescribe any criteria other than those prescribed in clauses (a), (b) and (c), the fulfilment of which shall cause any acquisition of control, shares, voting rights or assets, merger or amalgamation to be deemed to be a combination under this section and a notice for any acquisition of control, shares, voting rights or assets, merger or amalgamation fulfilling such</i>	Both the proviso be omitted. This amendment dilutes the powers of CCI as a regulator, and allows government to act on its discretion. Such practice be discouraged..

			<p><i>criteria shall be given to the Commission under section 6.</i></p> <p>“Provided further that, where either the value of assets or turnover or criteria prescribed under the first proviso in India of the enterprise being acquired, taken control of, merged or amalgamated is not more than such value as may be prescribed by the Central Government in consultation with the Commission from time to time, such acquisition, merger or amalgamation, notwithstanding anything contained in clauses (a), (b), (c) or the first proviso, shall not constitute a combination under section 5 of the Act.”.</p>	
Bill 2020	Section 19 - Inquiry into certain agreements and dominant position of enterprise	(3)	<p>in sub-section (3), in clause (c), the words “by hindering entry into the market” shall be omitted.</p> <p>in sub-section (3), in clause (d), for the words “accrual of benefits” the words “benefits or harm” shall be substituted.</p> <p>in sub-section (3), in clause (e), after the words</p>	<p>Clause g be omitted. The said clause unnecessarily curtails the jurisdiction of the Commission and allow regulations to bypass the original text of the statute.</p>

			<p>“provision of services;” the word “or” shall be omitted.</p> <p>in sub-section (3), in clause (f), after the words “provision of services” the word “;or” shall be inserted.</p> <p>in sub-section (3), after clause (f), the following clause shall be inserted, namely: —</p> <p>“(g) any other factor as may be specified by regulations.”.</p>	
Bill 2020	Section 19 - Inquiry into certain agreements and dominant position of enterprise	(6)	<p>in sub-section (6), after clause (h), the following clauses shall be inserted, namely: —</p> <p>“(i) characteristics of goods or nature of services; (j) costs associated with switching supply/demand to other areas; (k) any other factor as may be specified by regulations.”.</p>	Clause k be omitted. Allows regulations to bypass the original text of the statute.
Bill 2020	Section 19 - Inquiry into certain agreements and dominant position of enterprise	(7)	<p><input type="checkbox"/> in sub-section (7), in clause (a), after the words “end- use of goods”, the words “or the nature of services” shall be inserted.</p> <p><input type="checkbox"/> in sub-section (7), after clause (f), the following</p>	Clause i be omitted. Allows regulations to bypass the original text of the statute.

			<p>clauses shall be inserted namely: —</p> <p>“(g) costs associated with switching demand/supply to other goods or services;</p> <p>(h) categories of customers;</p> <p>(i) any other factor as may be specified by regulations.”.</p>	
Bill 2020	Section 20 - Inquiry into combination by commission	(3)	<p>for sub-section (3), the following sub-section shall be substituted, namely: —</p> <p>“(3) Notwithstanding anything contained in section 5, the Central Government may in consultation with the Commission, by notification, enhance or reduce the value of assets or turnover or of any other criteria prescribed under the first proviso of section 5, for the purposes of that section.”.</p> <p>□ in sub-section (7), in clause (a), after the words “end- use of goods”, the words “or the nature of services” shall be inserted.</p> <p>□ in sub-section (7), after clause (f), the following clauses shall be inserted namely: —</p>	<p>Sub section 3 be kept as it is. The said amendment dilutes the regulatory character of the Commission and passing it to the Central government.</p>

			“(g) costs associated with switching demand/supply to other goods or services; (h) categories of customers; (i) any other factor as may be specified by regulations.”.	
Bill 2020	Section 26 - Procedure for inquiry under section 19	(2A) Newly Inserted	<i>after sub-section (2), the following sub-section shall be inserted, namely:</i> — “(2A) The Commission may not inquire into agreements referred to in section 3 or into conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information or reference from Central Government or a State Government or a statutory authority has already been decided by the Commission in previous orders.”.	Timeline be added in sub section 2A as this will allow the Commission to look into the same matter with changed market conditions and circumstances. Reliance be paid on DLF case where the Commission conducted DG investigation twice as the structure of the market changed over a period of time.
Bill 2020	Section 29 - Procedure for investigation of combinations	(3)	<i>in sub-section (3), for the words “fifteen working”, the words “ten calendar” shall be substituted.</i>	The said amendment be omitted. Sufficient time be given to the affected parties to file written objections.

<p>Bill 2020</p>	<p>Section 41 - Director General to investigate contraventions</p>	<p>(3)</p> <p><i>sub-section (3) and the Explanation occurring thereafter shall be omitted.</i></p> <p><i>after sub-section (2), the following sub-sections shall be inserted, namely:</i></p> <p>—</p> <p>“(3) Without prejudice to sub-section (2), it shall be the duty of all officers and other employees and agents of a party which is under investigation –</p> <p>(a) to preserve and to produce to the Director General or any person authorised by it in this behalf, all books, papers, other documents, records and information of, or relating to, the party which are in their custody or power; and</p> <p>(b) otherwise to give to the Director General all assistance in connection with the investigation which they are reasonably able to give.</p> <p>(4) The Director General may require any person other than a party referred</p>	<p>Sub section 5 be amended as "..... under sub-section (3) or sub-section (4) for up to thirty calendar days and thereafter....." The rationale being one eighty days being a very long time, and if the DG requires he/she may keep a copy of the records but return the original.</p> <p>First proviso to sub section be amended as ".....if they are needed again for a further period of thirty calendar days....."</p>
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		<p>to in sub-section (3) to furnish such information, or produce such books, papers, other documents or records before it or any person authorised by it in this behalf if the furnishing of such information or the production of such books, papers, other documents or records is relevant or necessary for the purposes of its investigation.</p> <p>(5) The Director General may keep in his custody any books, papers, other documents, records or information produced under sub-section (3) or sub-section (4) for up to one hundred and eighty calendar days and thereafter shall return the same to the person by whom or on whose behalf the books, papers, other documents, records or information were produced:</p> <p>Provided that the books, papers, other documents, records or information may be called for by the Director General if they are needed</p>	
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		<p>again for a further period of one hundred and eighty calendar days by an order in writing:</p> <p>Provided further that certified copies of the books, papers, other documents, records or information, as may be applicable, produced before the Director General may be provided to the party or person on whose behalf the books, papers, other documents, or records are produced at its cost.</p> <p>(6) A Director General may examine on oath –</p> <p>(a) any of the officers and other employees and agents of the party being investigated; and</p> <p>(b) with the previous approval of the Commission, any other person</p> <p>in relation to the affairs of the party being investigated</p>	
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		<p>and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.</p> <p>(7) Notes of any examination under sub-section (6) shall be taken down in writing and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against it.</p> <p>(8) If any person fails without reasonable cause or refuses –</p> <p>(a) to produce to the Director General or any person authorised by it in this behalf any book, paper, other document, record or information which it is his duty under sub-section (3) or sub-section (4) to produce; or</p> <p>(b) to appear before the Director General personally when required to do so under sub-section (6) or to answer any question which is put to it by the Director General in pursuance of that sub-section; or</p>	
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		<p>(c) to sign the notes of any examination referred to in sub-section (7)</p> <p>he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.</p> <p>(9) In this section –</p> <p>(a) the expression “officers”, in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate;</p> <p>(b) the expression “agent”, in relation to any person, means, any one acting or purporting to act for or on behalf of such person, and includes the bankers and legal advisers of, and persons employed as auditors by, such person; and</p>	
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		<p>(c) any reference to officers and other employees or agents shall be construed as a reference to past as well as present officers and other employees or agents, as the case may be.</p> <p>(10) Where in the course of investigation, the Director General has reasonable grounds to believe that the books, papers, other documents, records or information of, or relating to, any party or person, may be destroyed, mutilated, altered, falsified or secreted, the Director General may make an application to the Chief Metropolitan Magistrate, Delhi for an order for seizure of such, book, paper, other document, record or information.</p> <p>(11) The Director General may requisition the services of any police officer or any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (10) and it shall be the duty of every such</p>	
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		<p>officer to comply with such requisition.</p> <p>(12) After considering the application and hearing the Director General, the Chief Metropolitan Magistrate may by order authorise the Director General-</p> <p>(a) to enter, with such assistance, as may be required, the place or places where such books, papers, other documents, records or information are kept;</p> <p>(b) to search that place or those places in the manner specified in the order; and</p> <p>(c) to seize the books, papers, documents, records or information it considers necessary for the purpose of the investigation:</p> <p>Provided that certified copies of the seized books, papers, other documents, records or information, as may be applicable, may be provided to the party or person from whose place such documents have been seized at its cost.</p> <p>(13) The Director General shall keep in his custody</p>	
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		<p>such books, papers, other documents, records or information seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the party or person from whose custody or power they were seized and inform the Chief Metropolitan Magistrate, of such return:</p> <p style="padding-left: 40px;">Provided that the Director General may, before returning such books, papers, other documents, records or information as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof.</p> <p>(14) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the</p>	
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			provisions of the Code of Criminal Procedure, 1898, (5 of 1898), relating to searches or seizures made under that Code.”.	
Bill 2020	Section 48A - Settlement (Newly Inserted)	48A	<p><i>After section 48 of the principal Act, the following section shall be inserted, namely: —</i></p> <p>“48A. (1) Any person, against whom any inquiry has been initiated under sub-section (1) of section 26 for contravention of sub-section (4) of section 3 or section 4, may submit an application in writing to the Commission, in such form as may be specified by the Commission, proposing for settlement of the proceeding initiated for the alleged contraventions.</p> <p>(2) An application for settlement under sub-section (1) may be submitted at any time after the receipt of the report of the Director General under sub-section (4) of section 26 but prior to such time before the passing of an order under section 27 or section 28 as may be</p>	Sub section 6 be omitted. The rationale being the amendment nowhere mentions taking the informant or complainant in confidence while agreeing to the settlement terms. This may also allow the Commission to act hands in glove with the violating party.

		<p>specified in regulations made under this Act.</p> <p>(3) The Commission may, after taking into consideration the nature, gravity and impact of the contraventions, agree to the proposal for settlement, on payment of such sum by the applicant and/or on such other terms as may be determined by the Commission in accordance with the regulations made under this Act and specify the manner in which the settlement terms will be implemented and monitored in accordance with the regulations made under this Act.</p> <p>(4) If the Commission is of the opinion that the settlement offered under sub-section (1) is not appropriate in the circumstances or if the Commission and the party or parties concerned do not reach an agreement on the terms of the settlement within the time specified by regulations, it shall pass an order rejecting the settlement application and</p>	
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			<p>proceed with its inquiry under section 26 of the Act.</p> <p>(5) The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.</p> <p>(6) No appeal shall lie under section 53B against any order passed by the Commission under this section.</p> <p>(7) All settlement amounts, excluding the legal costs, realised under this Act shall be credited to the Consolidated Fund of India.”.</p>	
Bill 2020	Section 48B - Commitment (Newly Inserted)	48B	<p><i>After section 48A of the principal Act, as so inserted, the following section shall be inserted, namely: —</i></p> <p>“48B. (1) Any person, against whom any inquiry has been initiated under sub-section (1) of section 26 for contravention of sub-section (4) of section 3 or section 4, may submit an application in writing to the Commission, in such form</p>	<p>Sub section 6 be omitted. The rationale being the amendment nowhere mentions Informant or complainant being taken into confidence before Commission coming to agreeable terms.</p>

		<p>as may be specified by the Commission, offering commitments in respect of the alleged contraventions stated in the Commission’s order under sub-section (1) of section 26.</p> <p>(2) An offer for commitments under sub-section (1) may be submitted at any time after an order under sub-section (1) of section 26 has been passed by the Commission but within such time prior to the receipt by the party of the report of the Director General under sub-section (4) of section 26 as may be specified in regulations made under this Act.</p> <p>(3) The Commission may, after taking into consideration the nature, gravity and impact of the alleged contraventions and effectiveness of the proposed commitments, accept the commitments offered and specify the manner in which the commitments will be implemented and monitored along with any other terms as may be determined by the</p>	
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		<p>Commission in accordance with the regulations made under this Act.</p> <p>(4) If the Commission is of the opinion that the commitment offered under sub-section (1) is not appropriate in the circumstances or if the Commission and the party or parties concerned do not reach an agreement on the terms of the commitment within the time specified by regulations, it shall pass an order rejecting the commitment application and proceed with its inquiry under section 26 of the Act.</p> <p>(5) The commitments offered under this section shall be governed in accordance with the procedure specified in the regulations made under this Act.</p> <p>(6) No appeal shall lie under section 53B against any order passed by the Commission under this section.”.</p>	
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<p>Bill 2020</p>	<p>Section 63 - Power to make rules</p>	<p>(2)</p>	<p><i>in sub-section (2), after the words “rules may”, the word “inter alia” shall be inserted.</i></p> <p><i>in sub-section (2), clause (a) of shall be numbered as clause (ae).</i></p> <p><i>before clause (ae) of sub-section (2), as so numbered, the following clauses shall be inserted, namely: —</i></p> <p>“(a) the criteria under the first proviso of section 5, fulfilment of which shall cause any acquisition of control, shares, voting rights or assets, merger or amalgamation to be deemed to be a combination under section 5;</p> <p>(aa) the minimum value under the second proviso of section 5 of assets or turnover or criteria prescribed under the first proviso of section 5 in India of the enterprise being acquired, taken control of, merged or amalgamated under section 5;</p> <p>(ab) the percentage of voting rights under clause</p>	<p>Clause (ga) be omitted. Governing Board roles and responsibilities should be defined in the Act itself.</p>
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		<p>(i) of Explanation (b) of section 5;</p> <p>(ac) the criteria for eligibility to file a notice under sub-section (4) of section 6;</p> <p>(ad) the criteria under sub-section (7) of section 6, fulfilment of which shall exempt certain categories of combinations from the requirement to comply with sub-sections (2), (2A) and (4) of section 6;”.</p> <p><i>after clause (g) of sub-section (2), the following clause shall be inserted, namely: —</i></p> <p>“(ga) any additional functions that may be performed by the Governing Board under sub-section (2) of section 18A;</p> <p>(gb) the manner of determining turnover under the second proviso to clause (b) of section 27;</p> <p>(gc) the manner of determining income under the second proviso to clause (b) of section 27;</p>	
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			<p>(gd) the manner of determining income under Explanation (c) to section 48;”.</p> <p><i>in clause (ma) of sub-section (2), after the words “Appellate Tribunal”, the words “, the amount that shall be deposited and the manner of depositing the amount before filing appeal” shall be inserted.</i></p> <p><i>after clause (mf) of sub-section (2), the following clause shall be inserted, namely: —</i></p> <p>“(mg) the manner in which guidance issued under section 64B may be published;”.</p>	
Bill 2020	Section 64 - Power to make regulations	(2)	<p><i>for clause (c) of sub-section (2), the following clause shall be substituted, namely: —</i></p> <p>“(c) the form of notice as may be specified and the fee which may be determined under sub-section (4) of section 6;”.</p> <p><i>after clause (c) of sub-section (2), as so substituted, the following</i></p>	Clause (ea), (eb) and (ec) be omitted. Allows regulations to bypass the original text of the statute.

		<p><i>clause shall be inserted, namely: —</i></p> <p>“(ca) the time and manner to file a notice under section 6A and the manner in which the shares or convertible securities are to be maintained under section 6A;”.</p> <p><i>after clause (d) of subsection (2), as so substituted, the following clause shall be inserted, namely: —</i></p> <p>“(da) the time, place and rules of procedure in regard to the transaction of business at the meetings of the Governing Board of the Commission under subsection (3) of section 18A;”.</p> <p><i>after clause (e) of subsection (2), the following clauses shall be inserted, namely: —</i></p> <p>“(ca) the additional factors under clause (g) of subsection (3) of section 19;</p> <p>(eb) the additional factors under clause (k) of subsection (6) of section 19;</p>	
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		<p>(ec) the additional factors under clause (i) of sub-section (7) of section 19;”.</p> <p><i>for clause (f) of sub-section (2), the following clause shall be substituted, namely: —</i></p> <p>“(f) the time, place and rules of procedure in regard to the transaction of business at the meetings of the Commission under sub-section (1) of section 22;”.</p> <p><i>after clause (f) of sub-section (2), as so substituted, the following clauses shall be inserted, namely: —</i></p> <p>“(fa) the other details to be included in the show-cause notice under sub-section (9) of section 26;</p> <p>(fb) the manner in which modifications may be proposed by parties to the combination to the Commission under sub-section (2) of section 29A;”.</p> <p><i>after clause (g) of sub-section (2) the following clauses shall be inserted, namely: —</i></p>	
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		<p>“(ga) the manner of computing the lesser penalty under sub-sections (1) and (3) and the manner in which and time up to which an application for withdrawal of a lesser penalty application can be made under sub-section (2) of section 46;</p> <p>(gb) the form in which an application for settlement may be submitted under sub-section (1), the time up to which an application for settlement may be submitted under sub-section (2), the terms of the settlement and manner in which the settlement terms shall be implemented and monitored under sub-section (3) and the procedure for conducting settlement proceedings under sub-section (5) of section 48A;</p> <p>(gc) the form in which an application for offering commitments may be submitted under sub-section (1), the time up to which an application for offering commitments may be submitted under sub-section (2), the manner in</p>	
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			<p>which commitment shall be implemented and monitored under sub-section (3) and the procedure for conducting commitment proceedings under sub-section (5) of section 48B;</p> <p>(gd) the other details to be published along with draft regulations and the period for inviting public comments under clause (a) of section 64A;”.</p>	
Bill 2020	Section 64A - Process of issuing regulations (Newly Inserted)	64A	<p><i>After section 64 of the principal Act, the following section shall be inserted, namely: —</i></p> <p>“64A. The Governing Board of the Commission shall ensure transparency while exercising its powers to issue regulations under section 64, by —</p> <p>(a) publishing draft regulations along with such other details as may be specified on its website and inviting public comments for a specified period prior to issuing regulations;</p> <p>(b) publishing a general statement of its response(s) to the public comments,</p>	Proviso be omitted. Gives unnecessary power to the Governing Board.

			<p>not later than the date of notification of the regulations;</p> <p>(c) periodically reviewing such regulations:</p> <p>Provided that if the Governing Board is of the opinion that certain regulations are required to be issued or existing regulations are required to be amended urgently in public interest or the subject matter of the regulation relates solely to the internal functioning of the Commission, it may make regulations or amend the existing regulations, as the case may be, without following the provisions stated in this section and record the reason for doing so in writing.”.</p>	
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