

ANNEXURE IV

DRAFT DIGITAL COMPETITION BILL, 2024

An Act, to identify systemically significant digital enterprises and their associate digital enterprises, and to regulate their practices in the provision of core digital services, keeping in view the principles of contestability, fairness and transparency, with an objective to foster innovation, promote competition, protect the interest of users of such services in India, and for matters connected herewith and incidental thereto.

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement

- (1) This Act may be called the Digital Competition Act, [2024].
- (2) It extends to the whole of India, and save as otherwise provided extends to acts outside India having an effect on obligations and conduct requirements under this Act.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- (4) The Central Government may appoint different dates 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.

2. Definitions

In this Act, unless the context otherwise requires:

- (1) "Act" means the Digital Competition Act, [2024];
- (2) "Associate digital enterprise" means an enterprise designated as such under sub-section (9) of Section 4;

- (3) “Business user” means any natural or legal person supplying or providing goods or services, including through Core Digital Services;
- (4) “Commission” means the Competition Commission of India established under sub-section (1) of Section 7 of the Competition Act;
- (5) “Competition Act” means the Competition Act, 2002 (12 of 2003) as amended from time to time;
- (6) “Core Digital Service” means any service specified in Schedule I of the Act;
- (7) “Director General” shall have the same meaning assigned to it under the Competition Act;
- (8) “End user” means any natural or legal person using Core Digital Services other than as a business user;
- (9) “Enterprise” means a person or department of the Government, including units, divisions, subsidiaries, who or which is, or has been, engaged in any economic 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, but does not include any activity of the Government relating 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;
 - (iii) any place of business of the enterprise.

- (10) "Group" shall have the same meaning as assigned to it under the Competition Act;
- (11) "Person" shall have the same meaning as assigned to it under the Competition Act;
- (12) "Prescribed" means prescribed by rules made under this Act;
- (13) "Regulations" means the regulations made by the Commission under Section 49;
- (14) "Related party" shall have the same meaning as assigned to it in Section 2(76) of the Companies Act, 2013 (18 of 2013);
- (15) "Service" means service of any description which is or may be made available to actual or 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, for a consideration or otherwise;
- (16) "Specified" means specified by regulations made under this Act;
- (17) "Systemically Significant Digital Enterprise" means an enterprise designated as such by the Commission under Section 4 of the Act;
- (18) "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; and
- (19) "Users" includes business users and end users.
- (20) Any term not defined specifically in this Act shall have the same meaning as assigned to it in the Competition Act.

CHAPTER II

DESIGNATION OF A SYSTEMICALLY SIGNIFICANT DIGITAL ENTERPRISE

3. Systemically Significant Digital Enterprises

- (1) An enterprise may be designated as a Systemically Significant Digital Enterprise in accordance with Section 4, in respect of a Core Digital Service if it has a significant presence in the provision of such Core Digital Service in India.
- (2) An enterprise shall be deemed to be a Systemically Significant Digital Enterprise in respect of a Core Digital Service, if:
 - (a) it meets any of the following financial thresholds in each of the immediately preceding three financial years:
 - (i) turnover in India of not less than INR 4000 crore; OR
 - (ii) global turnover of not less than USD 30 billion; OR
 - (iii) gross merchandise value in India of not less than INR 16000 crore; OR
 - (iv) global market capitalisation of not less than USD 75 billion, or its equivalent fair value of not less than USD 75 billion calculated in such manner as may be prescribed;
 - AND
 - (b) it meets any of the following user thresholds in each of the immediately preceding three financial years in India:
 - (i) the core digital service provided by the enterprise has at least one crore end users; OR
 - (ii) the core digital service provided by the enterprise has at least ten thousand business users.

Provided that if the enterprise does not maintain or fails to furnish data mentioned in clause (a) or (b), it shall be deemed to be a Systemically Significant Digital Enterprise if it meets any of the thresholds stipulated in clause (a) or (b).

- (3) The Commission may designate an enterprise as a Systemically Significant Digital Enterprise in respect of a Core Digital Service, even if it does not meet the criteria set out under sub-section (2), if the Commission is of the opinion that such enterprise has significant presence in respect of such a Core Digital Service, based on an assessment of information available with it, and based on any or all of the following factors:
 - (i) volume of commerce of the enterprise;
 - (ii) size and resources of the enterprise;

- (iii) number of business users or end users of the enterprise;
- (iv) economic power of the enterprise;
- (v) integration or inter-linkages of the enterprise with regard to the multiple sides of market;
- (vi) dependence of end users or business users on the enterprise;
- (vii) monopoly position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
- (viii) barriers to entry or expansion including regulatory barriers, financial risk, high cost of entry, marketing costs, technical entry barriers, barriers related to data leveraging, economies of scale and scope, high cost of substitutable goods or services for end users or business users;
- (ix) extent of business user or end user lock in, including switching costs and behavioural bias impacting their ability to switch or multi-home;
- (x) network effects and data driven advantages;
- (xi) scale and scope of the activities of the enterprise;
- (xii) countervailing buying power;
- (xiii) structural business or service characteristics;
- (xiv) social obligations and social costs;
- (xv) market structure and size of the market; and
- (xvi) any other factor which the Commission may consider relevant for the assessment.

- (4) The Central Government shall, every three years from the date of commencement of this Act and in consultation with the Commission, by notification, enhance or reduce, or keep at the same level, the thresholds stipulated in sub-section (2).

Explanation. – For the purposes of this section,

(1) “Turnover in India” includes revenue derived in India from the sale of all goods and provision of all services, whether digital or otherwise, by the enterprise;

(2) “Global turnover” includes revenue derived from the sale of all goods and provision of all services, whether digital or otherwise, by the enterprise;

(3) “Gross merchandise value” means the total value of goods or services, or both, sold by, or through the intermediation of, the enterprise through all the Core Digital Services it provides;

(4) “Global market capitalisation” means market capitalisation of the enterprise calculated at the global level;

(5) The values of “turnover in India”, “global turnover”, “gross merchandise value” and “global market capitalisation” shall be calculated in the manner as may be specified;

(6) “End Users” and “Business Users” for each Core Digital Service shall be identified and calculated in the manner as may be specified;

(7) Where the enterprise is a part of a group, then the values of “turnover in India”, “global turnover”, “gross merchandise value”, “global market capitalisation”, “number of end users” and “number of business users” shall be computed with reference to the entire group.

4. Self-reporting obligation and designation

(1) An enterprise shall, within a period of ninety days of meeting the thresholds under sub-section (2) of Section 3, notify the Commission in the form as may be specified, that it fulfills the criteria to qualify as a Systemically Significant Digital Enterprise in respect of one or more of its Core Digital Services.

Provided that the enterprise shall also notify the Commission of such other enterprises within the group the enterprise belongs to, which are directly or indirectly involved in provision of the Core Digital Service, as Associate Digital Enterprises.

(2) Upon receipt of the information under sub-section (1), the Commission may pass an order designating the enterprise as a Systemically Significant Digital Enterprise and identifying its Core Digital Services, thereby subjecting the enterprise to the obligations under Chapter III and the rules and regulations framed thereunder.

(3) The Commission may, at any time after the expiry of ninety days from the date of Section 3 coming into force, and in a manner as may be specified, direct an enterprise to furnish such information as it deems necessary to ascertain whether the said enterprise fulfills the criteria set out under sub-section (2) or (3) of Section 3.

- (4) Upon consideration of the information received, if any, under sub-section (3) or any other information in its possession, if the Commission is of the view that the enterprise meets the thresholds set out under sub-section (2) of Section 3, the Commission may, after providing an opportunity of being heard to the enterprise:
 - (a) pass an order designating the enterprise as a Systemically Significant Digital Enterprise in accordance with sub-section (2); and
 - (b) direct the enterprise to show cause as to why a penalty may not be imposed under sub-section (4) of Section 28.

- (5) Upon consideration of the information received under sub-section (3) and any other information in its possession, if the Commission is of the view that the enterprise meets the factors set out under sub-section (3) of Section 3, the Commission shall issue a show cause notice to the enterprise calling upon it to provide reasons as to why it should not be designated as a Systemically Significant Digital Enterprise.

- (6) Upon consideration of the response received pursuant to the show cause notice issued under sub-section (5), the Commission after giving an opportunity of being heard to the enterprise shall pass an order either:
 - (a) designating the enterprise as a Systemically Significant Digital Enterprise, if in the opinion of the Commission, the enterprise has significant presence in respect of a Core Digital Service in accordance with sub-section (3) of Section 3; or
 - (b) closing the proceedings if, in the opinion of the Commission, the enterprise does not have significant presence in respect of a Core Digital Service in accordance with sub-section (3) of Section 3.

- (7) If an enterprise fails to comply with the Commission's direction under sub-section (3), or provides incomplete or incorrect information in response to that direction, the Commission may, after giving an opportunity of being heard to the enterprise and based on the information in its possession, pass an order designating it as a Systemically Significant Digital Enterprise, if it meets any of the thresholds under sub-section (2) of Section (3) or based on any factors stipulated under sub-section (3) of Section 3.

- (8) An enterprise shall be designated as a Systemically Significant Digital Enterprise for a period of three years.
- (9) Where an enterprise has been designated as a Systemically Significant Digital Enterprise or the Commission is considering whether to designate an enterprise as a Systemically Significant Digital Enterprise, and such enterprise is a part of a group, and one or more other enterprises within such group are directly or indirectly involved in the provision of the Core Digital Service in India, the Commission may, after giving an opportunity of being heard to such other enterprises, pass an order designating them as Associate Digital Enterprises, and such designation as Associate Digital Enterprise shall continue for the period of designation of the enterprise as Systemically Significant Digital Enterprise.

5. Anti-circumvention from designation

- (1) An enterprise shall not directly or indirectly segment, divide, subdivide, fragment or split services through contractual, commercial, technical or any other means in order to circumvent the thresholds stipulated under clause (a) or clause (b) of sub-section (2) of Section 3.
- (2) The Commission may, at any time, direct an enterprise to furnish any information that the Commission deems necessary, to determine whether the enterprise has contravened sub-section (1).
- (3) Without prejudice to the penalty which may be imposed under sub-section (2) of Section 28, if the Commission is of the opinion that an enterprise may have contravened sub-section (1), the Commission may pass an order designating the enterprise as a Systemically Significant Digital Enterprise.

6. Revocation or re-designation

- (1) The Systemically Significant Digital Enterprise may, any time during the last six months before the expiry of the period of designation under Section 4 or re-designation under sub-section (5), apply to the Commission in the form as may be specified, that it no longer meets the thresholds to be designated as a Systemically Significant Digital Enterprise, for one or more Core Digital Services, as specified in sub-section (2) of Section 3 or that it no longer needs to be designated as a Systemically Significant Digital Enterprise under sub-section (3) of Section 3.

- (2) At any time after one year of being designated or re-designated, the Systemically Significant Digital Enterprise may request the Commission, in such form as maybe specified, to revoke the enterprise's designation as a Systemically Significant Digital Enterprise in respect of all or any Core Digital Services if there has been a significant change in market dynamics.
- (3) The Commission shall, within ninety days of receipt of the application under sub-section (1) or (2), pass an order:
 - (a) revoking the enterprise's designation as a Systemically Significant Digital Enterprise in respect of all or any Core Digital Services; or
 - (b) dismissing the application.

Provided that such an enterprise shall continue as a Systemically Significant Digital Enterprise till the time of passing of the order under this sub-section;

Provided further that the time taken by such an enterprise to reply to the information sought by the Commission for the purposes of this sub-section shall be excluded from the computation of ninety days as mentioned above.

- (4) The Commission shall provide an opportunity of being heard to the Systemically Significant Digital Enterprise prior to passing an order under sub-section (3).
- (5) On the date of expiry of the designation or re-designation of a Systemically Significant Digital Enterprise it shall be deemed to have been re-designated as a Systemically Significant Digital Enterprise for a further period of three years, if no order has been passed under clause (a) of sub-section (3) revoking its designation as Systemically Significant Digital Enterprise.

CHAPTER III

OBLIGATIONS ON SYSTEMICALLY SIGNIFICANT DIGITAL ENTERPRISES AND THEIR ASSOCIATE DIGITAL ENTERPRISES

- 7. Requirement for Systemically Significant Digital Enterprises and their Associate Digital Enterprises to comply with obligations**

- (1) Upon designation as a Systemically Significant Digital Enterprise, the enterprise shall comply with the obligations in this Chapter and the rules and regulations framed thereunder with respect to the Core Digital Services identified in the Commission's order under Section 4.
- (2) The Associate Digital Enterprises shall comply with all the obligations that the Systemically Significant Digital Enterprise is required to comply with, and non-compliance with such obligations shall be subject to the same penalties that may be imposed on the Systemically Significant Digital Enterprise.
- (3) The Commission shall specify, by regulations, separate conduct requirements for each Core Digital Service in relation to the applicable obligations set out in this Chapter.

Provided that the Commission may, within each set of regulations pertaining to a Core Digital Service, subject Systemically Significant Digital Enterprises providing such a Core Digital Service to differential obligations based on the nature of the market, the number of users in India, and such other factors that the Commission may deem fit.

Provided further that the Commission may subject an Associate Digital Enterprise to differential obligations than those applicable on the Systemically Significant Digital Enterprise in such manner as may be specified.

Explanation.— For the purposes of this sub-section, the term “conduct requirements” includes the manner of complying with such requirements and the timelines associated with such compliance.

- (4) A Systemically Significant Digital Enterprise and its Associate Digital Enterprises, if any, that complies with the regulations for its identified Core Digital Service shall be deemed to have complied with the obligations under this Chapter.
- (5) The Commission may, while framing regulations, subject the conduct requirements to one or more of the following factors which may impede the Systemically Significant Digital Enterprise's and its Associate Digital Enterprise's compliance with such conduct requirements:

- (a) economic viability of operations;
- (b) prevention of fraud;
- (c) cybersecurity;
- (d) prevention of unlawful infringement of pre-existing intellectual property rights;
- (e) requirement of any other law in force; and
- (f) such other factors as may be prescribed.

Explanation.— For these purposes of this sub-section, the term “cybersecurity” will have the same meaning as assigned to it under the Information Technology Act, 2000 (21 of 2000).

8. Anti-circumvention from obligations

- (1) A Systemically Significant Digital Enterprise shall not engage in any behaviour that undermines effective compliance with the obligations under this Chapter and the rules and regulations framed hereunder, regardless of whether that behaviour is of a contractual, commercial or technical nature, or of any other nature, or consists in the use of behavioural techniques or interface design.
- (2) The Systemically Significant Digital Enterprise shall not directly or indirectly prevent or restrict business users or end users from raising any issue of non-compliance with the Systemically Significant Digital Enterprise’s obligations under this Act.

9. Reporting and Compliance

- (1) A Systemically Significant Digital Enterprise shall establish transparent and effective complaint handling and compliance mechanisms as may be specified.
- (2) A Systemically Significant Digital Enterprise shall report to the Commission on the measures taken to comply with the obligations in Chapter III and the rules and regulations framed hereunder in such manner and form, and after such period(s) of time as may be specified.

10. Fair and Transparent Dealing

A Systemically Significant Digital Enterprise shall operate in a fair, non-discriminatory, and transparent manner with end users and business users.

11. Self-preferencing

A Systemically Significant Digital Enterprise shall not, directly or indirectly, favour its own products, services, or lines of business, or those of:

- (a) related parties; or
- (b) third-parties with whom the Systemically Significant Digital Enterprise has arrangements for the manufacture and sale of products or provision of services over those offered by third party business users on the Core Digital Service, in any manner.

12. Data usage

- (1) A Systemically Significant Digital Enterprise shall not, directly or indirectly, use or rely on non-public data of business users operating on its Core Digital Service to compete with such business users on the identified Core Digital Service of the Systemically Significant Digital Enterprise.

Explanation. – For the purposes of this sub-section, “non-public data” shall include any aggregated and non-aggregated data generated by business users that can be collected through the commercial activities of business users or their end users, on the identified Core Digital Service of the Systemically Significant Digital Enterprise.

- (2) A Systemically Significant Digital Enterprise shall not, without the consent of the end users or business users:
 - (a) intermix or cross use the personal data of end users or business users collected from different services including its Core Digital Service; or
 - (b) permit usage of such data by any third party.

Explanation. – For the purposes of this sub-section, “consent”:

(1) For end users, shall have the same meaning as assigned to it in the Digital Personal Data Protection Act, 2023 (22 of 2023);

(2) For business users, shall have the same meaning as may be specified.

- (3) A Systemically Significant Digital Enterprise shall allow business users and end users of its Core Digital Service to easily port their data, in a format and manner as may be specified.

13. Restricting third-party applications

The Systemically Significant Digital Enterprise shall:

- (a) not restrict or impede the ability of end users and business users to download, install, operate or use third-party applications or other software on its Core Digital Services; and
- (b) allow end users and business users to choose, set and change default settings.

14. Anti-steering

A Systemically Significant Digital Enterprise shall not restrict business users from, directly or indirectly, communicating with or promoting offers to their end users, or directing their end users to their own or third party services, unless such restrictions are integral to the provision of the Core Digital Service of the Systemically Significant Digital Enterprise.

Explanation. – For the purpose of this section, the Commission may specify, by regulations, the nature of restrictions that may be considered “integral” to the provision of a Core Digital Service.

15. Tying and bundling

A Systemically Significant Digital Enterprise shall not require or incentivise business users or end users of the identified Core Digital Service to use one or more of the Systemically Significant Digital Enterprise’s other products or services, or those of:

- (a) related parties; or
- (b) third parties with whom the Systemically Significant Digital Enterprise has arrangements for the manufacture and sale of products or provision of services

alongside the use of the identified Core Digital Service, unless the use of such products or services is integral to the provision of the Core Digital Service.

Explanation. – For the purpose of this section, the Commission may specify, by regulations, the nature of products or services that may be considered “integral” to the provision of a Core Digital Service.

CHAPTER IV

POWER OF THE COMMISSION TO CONDUCT AN INQUIRY

16. Power of the Commission to inquire into non-compliance of obligations by Systemically Significant Digital Enterprises and Associate Digital Enterprises

- (1) The Commission, if:
 - (a) either on its own knowledge; or
 - (b) on receipt of an information in such manner and accompanied by such fee as may be specified from any person; or
 - (c) through a reference made to it by the Central Government or a State Government or a statutory authority

is of the opinion that there exists a *prima facie* case, it shall direct the Director General to conduct an investigation for the purpose of examining whether a Systemically Significant Digital Enterprise or an Associate Digital Enterprise is in breach of the obligations in Chapter III or the regulations framed thereunder.

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.

- (2) Where on receipt of a reference from the Central Government or a State Government or a statutory authority or information received under subsection (1), 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.

- (3) The Commission may not inquire into conduct if the same or substantially the same facts and issues raised in the information or reference from the Central Government or a State Government or a statutory authority, received under this Section has already been decided by the Commission in its previous order.
- (4) 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.
- (5) If, after consideration of the report of the Director General referred to in sub-section (4), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter.
- (6) The Director General shall, on receipt of direction under sub-section (5), investigate the matter and submit a supplementary report on his findings within such period as may be specified by the Commission.
- (7) The Commission may forward a copy of the report referred to in sub-sections (4) and (6) to the parties concerned.
- (8) 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 in sub-sections (4) and (6) to the Central Government or the State Government or the statutory authority, as the case may be.
- (9) If the report of the Director General referred to in sub-sections (4) and (6) 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.
- (10) If, after consideration of the objections and suggestions referred to in sub-section (9), 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.

- (11) If, after consideration of the objections or suggestions referred to in sub-section (9), if any, the Commission is of the opinion that further investigation 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.
- (12) If the report of the Director General referred to in sub-sections (4) and (6) 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.
- (13) Upon completion of the investigation or inquiry under sub-section (11) or sub-section (12), as the case may be, the Commission may pass an order closing the matter or pass an order under Section 17 of this Act 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.
- (14) Before passing an order under sub-section (13), the Commission shall issue a show-cause notice indicating the contraventions alleged to have been committed and such other details as may be specified and give a reasonable opportunity of being heard to the parties concerned.

17. Orders of the Commission after inquiry

- (1) Where after inquiry the Commission finds that a Systemically Significant Digital Enterprise or its Associate Digital Enterprise is in contravention of one or more of the obligations under Chapter III and the rules and regulations framed thereunder, it may pass all or any of the following orders:
 - (a) directing any enterprise to discontinue and not to resume such conduct, as the case may be;
 - (b) imposing such penalty, as it may deem fit under Section 28;

- (c) directing that the conduct of the enterprise shall stand modified to the extent and in the manner as may be specified in the order by the Commission; or
- (d) passing such other order or issue such directions as it may deem fit.

Provided that while passing orders under this Section, if the Commission comes to a finding, that the Systemically Significant Digital Enterprise is a member of a group and that the 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.

- (2) The Systemically Significant Digital Enterprise, its Associate Digital Enterprises, and any other party against whom an order under sub-section (1) has been passed, shall provide the Commission with the description of the measures, in a manner as may be specified, that they have taken to ensure compliance with the order under sub-section (1) within such time period and in such manner as may be specified.

18. Settlement

- (1) Any enterprise, against whom any inquiry has been initiated under sub-section (1) of Section 16 for contravention of this Act, may for settlement of the proceeding initiated for the alleged contraventions, submit an application in writing to the Commission in such form and upon payment of such fee as may be specified.
- (2) An application under sub-section (1) may be submitted at any time, in a manner as may be specified, after the receipt of the report of the Director General under sub-section (7) of Section 16 but prior to the passing of an order under sub-section (1) of Section 17.
- (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 amount by the applicant or on such other terms and manner of implementation of settlement and monitoring as may be specified.
- (4) While considering the proposal for settlement, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.

- (5) 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 concerned do not reach an agreement on the terms of the settlement within such time as may be specified, it shall, by order, reject the settlement application and proceed with its inquiry under Section 16.
- (6) The procedure for conducting the settlement proceedings under this section shall be such as may be specified.
- (7) No appeal shall lie under Section 34 against any order passed by the Commission under this section.

19. Commitment

- (1) Any enterprise, against whom any inquiry has been initiated under sub-section (1) of Section 16 for contravention of Chapter III and the rules and regulations framed thereunder, may submit an application in writing to the Commission, in such form and on payment of such fee as may be specified, offering commitments in respect of the alleged contraventions stated in the Commission's order initiating an inquiry under sub-section (1) of Section 16.
- (2) An offer for commitments under sub-section (1) may be submitted at any time, in a manner as may be specified, after an order initiating an inquiry under sub-section (1) of Section 16 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 (7) of Section 16.
- (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 on such terms and the manner of implementation and monitoring as may be specified.
- (4) While considering the proposal for commitment, the Commission shall provide an opportunity to the party concerned, the Director General, or any other party to submit their objections and suggestions, if any.
- (5) 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 concerned do not reach an agreement on the terms of the commitment, it shall pass an order rejecting the commitment application and proceed with its inquiry under Section 16.

- (6) The procedure for commitments offered under this section shall be such as may be specified.
- (7) No appeal shall lie under Section 34 against any order passed by the Commission under this section.

20. Revocation of orders on settlements and commitments

If an applicant fails to comply with the order passed under Section 18 or Section 19 or it comes to the notice of the Commission that the applicant has not made full and true disclosure or there has been a material change in the facts, the order passed under Section 18 or Section 19, as the case may be, shall stand revoked and withdrawn and such enterprise shall be liable to pay legal costs incurred by the Commission which may extend to rupees one crore and the Commission may restore or initiate the inquiry in respect of which the order under Section 18 or Section 19 was passed.

CHAPTER V

POWERS OF THE COMMISSION AND DIRECTOR GENERAL

21. Power of the Commission to regulate its own procedure and conduct studies

- (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 this Act and of any rules made by the Central Government, the Commission shall have the powers to regulate its own procedure.
- (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:
 - (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.
- (3) The Commission may call upon such experts, from the fields of economics, law, technology, regulation, accountancy, commerce, international trade, or from any other discipline or conduct such studies as it deems necessary to assist the Commission in the discharge of its functions under this Act, including for specifying regulations with regard to obligations under Section 7.
- (4) The Commission may direct any person:
- (a) to produce before the Director General or the Secretary or an officer authorised 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, any relevant information relating to their products or services or areas of expertise, as may be required for the purposes of this Act.

Explanation.— For the purposes of this section, the term “document” includes information in the possession of a Systemically Significant Digital Enterprise and its Associate Digital Enterprise whether stored electronically or otherwise.

- (5) Subject to the provisions of this Act, Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 22 and 35 of the Competition Act, and the regulations framed thereunder, shall apply *mutatis mutandis* to the Commission’s powers and activities under this Act.

22. Reference by Statutory Authority

- (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:

Provided that any statutory authority, may, suo motu, make a reference to the Commission on any issue that involves any provision of this Act or is related to promoting the objectives of this Act, as the case may be.

- (2) On receipt of a reference under sub-section (1), the Commission shall give its opinion, within sixty days of receipt of such reference, to such statutory authority which shall consider the opinion of the Commission and thereafter, give its findings recording reasons therefor on the issues referred to in the said opinion.

23. Reference by Commission

- (1) 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 an 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 a reference to a statutory authority on any issue that involves provisions of an Act whose implementation is entrusted to that statutory authority.

- (2) On receipt of a reference under sub-section (1), the statutory authority shall give its opinion, within sixty days of receipt of such reference, to the Commission which shall consider the opinion of the statutory authority, and thereafter give its findings recording reasons therefor on the issues referred to in the said opinion.

24. Director General to Investigate Contraventions

- (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 thereunder.
- (2) The Director General shall have all the powers as are conferred upon the Commission under subsection (2) of Section 21.

- (3) Without prejudice to sub-section (2), it shall be the duty of all officers, other employees and agents of a party which are under investigation:
- (a) to preserve and to produce all information, books, papers, other documents and records of, or relating to, the party which are in their custody or power to the Director General, or any person authorised by it in this behalf; and
 - (b) to give all assistance in connection with the investigation to the Director General.
- (4) The Director General may require any person other than a party referred 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 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.
- (5) The Director General may keep in his custody any information, books, papers, other documents or records produced under sub-section (3) or sub-section (4) for a period of one hundred and eighty days and thereafter shall return the same to the person by whom or on whose behalf the information, books, papers, other documents or records were produced:

Provided that the information, books, papers, other documents or records may be called for by the Director General if they are needed again for a further period of one hundred and eighty days by an order in writing:

Provided further that the certified copies of the information, books, papers, other documents or records, as may be applicable, produced before the Director General may be provided to the party or person on whose behalf the information, books, papers, other documents or records are produced at their own cost.

- (6) On receipt of any books, or other documents, or any relevant information from the Systemically Significant Digital Enterprise and its Associate Digital Enterprise, the Director General may enter the premises of such a Systemically Significant Digital Enterprise and its Associate Digital Enterprise to verify such information.

- (7) The Director General may examine on oath:
- (a) any of the officers and other employees and agents of the party being investigated; and
 - (b) with the previous approval of the Commission, any other person, in relation to the affairs of the party being investigated and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.
- (8) The examination under sub-section (7) shall be recorded 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.
- (9) Where in the course of investigation, the Director General has reasonable grounds to believe that information, books, papers, other documents or records 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 information, books, papers, other documents or records.
- (10) The Director General may make requisition of the services of any police officer or any officer of the Central Government to assist him for all or any of the purposes specified in sub-section (11) and it shall be the duty of every such officer to comply with such requisition.
- (11) The Chief Metropolitan Magistrate, Delhi may, after considering the application and hearing from the Director General, by order, authorise the Director General:
- (a) to enter, with such assistance, as may be required, the place or places where such information, books, papers, other documents or records are kept;
 - (b) to search that place or places in the manner specified in the order; and
 - (c) to seize information, books, papers, other documents or records as it considers necessary for the purpose of the investigation:

Provided that certified copies of the seized information, books, papers, other documents or records, as the case may be, may be provided to the party or person from whose place or places such documents have been seized at its cost.

- (12) The Director General shall keep in his custody such information, books, papers, other documents or records 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:

Provided that the Director General may, before returning such information, books, papers, other documents or records take copies of, or extracts thereof or place identification marks on them or any part thereof.

- (13) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, (2 of 1974) relating to search or seizure made under that Code.

Explanation. – For the purposes of this section, –

- (a) “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 persons employed as auditors and legal advisers, by such person;
- (b) “officers”, in relation to any company or body corporate, includes any trustee for the debenture holders of such company or body corporate;
- (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.

25. Interim order

Where during an inquiry, the Commission is satisfied that an act in contravention of the provisions of this Act or rules or regulations framed thereunder 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.

26. Acts taking place outside India

The Commission shall, notwithstanding that,

- (a) an enterprise is outside India; or
- (b) any other matter or practice or action arising out of an enterprise's conduct is outside India

have power to cause an inquiry against such enterprise for non-compliance of this Act or rules or regulations framed thereunder, in India, and pass such orders as it may deem fit in accordance with the provisions of this Act.

CHAPTER VI

PENALTIES

27. Contravention of orders of Commission

- (1) The Commission may cause an inquiry to be made into compliance of its orders or directions made in exercise of its powers under the Act.
- (2) If any person, without reasonable cause, fails to comply with the orders or directions of the Commission issued under Section 17, Section 25, Section 26 or Section 28 he shall be liable to a penalty which may extend to rupees one lakh for each day during which such non-compliance occurs, subject to a maximum of rupees ten crore, as the Commission may determine.
- (3) If any person does not comply with the orders or directions issued, or fails to pay the penalty imposed under sub-section (2), he shall, without prejudice to any proceeding under Section 33, be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to rupees twenty-five crore, or with both, as the Chief Metropolitan Magistrate, Delhi may deem fit:

Provided that the Chief Metropolitan Magistrate, Delhi shall not take cognizance of any offence under this Section save on a complaint filed by the Commission or any of its officers authorised by it.

28. Penalties

- (1) In an order finding a contravention under sub-section (1) of Section 17, the Commission may impose on a Systemically Significant Digital Enterprise

or its Associate Digital Enterprise, penalties not exceeding ten per cent of its global turnover, in the preceding financial year where it finds that the Systemically Significant Digital Enterprise or its Associate Digital Enterprise, fails to comply with any of the obligations laid down in Chapter III and the rules and regulations framed thereunder.

- (2) In an order finding a contravention under sub-section (3) of Section 5, the Commission may impose on a Systemically Significant Digital Enterprise or its Associate Digital Enterprise, penalties not exceeding ten per cent of its global turnover, in the preceding financial year where it finds that the Systemically Significant Digital Enterprise or its Associate Digital Enterprise, fails to comply with the obligation under sub-section (1) of Section 5.
- (3) The Commission may pass an order, imposing on an enterprise a penalty where applicable which shall not exceed one per cent of the global turnover of such an enterprise where they fail to notify the Commission that they meet the criteria specified in sub-section (2) of Section 3 and the notifications issued thereunder.
- (4) The Commission may pass an order, imposing on an enterprise a penalty, which shall not exceed one per cent of the global turnover of the enterprise, where it:
 - (a) provides incorrect, incomplete or misleading information or no information under sub-section (1) or sub-section (3) of Section 4;
 - (b) fails to provide information, or supplies incorrect, incomplete or misleading information that is required pursuant to a show cause notice under Section 4 or Section 16;
 - (c) provides or supplies incorrect, incomplete or misleading information under sub-section (1) of Section 6;
 - (d) fails to provide information, or provides or supplies incorrect, incomplete or misleading information under sub-section (2) of Section 9;
 - (e) provides incorrect, incomplete or misleading information, or fails to or refuses to provide complete information or cooperate pursuant to the powers of the Commission under Section 21 or the Director General under Section 24.

- (5) The Commission shall, prior to passing an order imposing a penalty under this section, provide the enterprise a reasonable opportunity of being heard.

Explanation. – For the purposes of this section:

(1) "Global turnover" shall include revenue of the enterprise derived from the sale of all goods and provision of all services, whether digital or otherwise, and when an enterprise is part of a group, shall include the revenue derived from the sale of all goods and provision of all services, whether digital or otherwise, of such group.

(2) The value of "global turnover" shall be calculated in the manner as may be specified.

29. Contravention by Companies

- (1) Where a contravention of any of the provisions of this Act or of any rule, regulation, order made or direction issued thereunder is established against the Systemically Significant Digital Enterprise or its Associate Digital Enterprise, every person who, at the time the contravention was committed, was in charge of, and was responsible to the Systemically Significant Digital Enterprise or its Associate Digital Enterprise for the conduct of its business, shall be deemed to be in contravention of this Act and unless otherwise provided in this Act, the Commission may impose such penalty on such persons, as it may deem fit which shall not be more than ten per cent of the average of the income for the last three preceding financial years.
- (2) Nothing contained in sub-section (1) shall render any such person liable to any penalty 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.
- (3) 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 Systemically Significant Digital Enterprise or its Associate Digital Enterprise 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 officers of the company, such director, manager, secretary or other officers shall also be deemed to be in contravention of the provisions of this Act and unless otherwise provided in this Act, the Commission may impose such penalty on such persons, as it may deem fit which shall not be more than ten per cent. of the average of the income for the last three preceding financial years.

Explanation. – For the purposes of this section, –

(a) “company” means a body corporate and includes a firm or other association of individuals;

(b) “director”, in relation to a firm, means a partner in the firm;

(c) “income”, in relation to a person, shall be determined in such manner as may be specified.

30. Limitation Period for initiation of inquiry

- (1) The Commission shall not entertain any information or reference under Section 16 unless it is filed within three years from the date on which the cause of action has arisen.
- (2) An information or reference may be entertained after the period specified in sub-section (1) if the Commission is satisfied that there had been sufficient cause for not filing the information or reference within such period after recording its reasons for condoning such delay.

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

All sums realised by way of penalties, settlement, and recovery of legal costs by the Commission under this Act shall be credited to the Consolidated Fund of India.

32. Rectification of orders

- (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.

33. Execution of orders of Commission imposing monetary penalty

- (1) If an enterprise or a person fails to pay any monetary penalty imposed on him under this Act, the Commission shall proceed to recover such penalty, in such manner as may be specified.
- (2) 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.
- (3) Where a reference has been made by the Commission under sub-section (2) 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.

Explanation 1. - Any reference to sub-section (2) or sub-section (6) of section 220 of the Income Tax Act, 1961 (43 of 1961), in the said provisions of that Act or the rules made thereunder shall be construed as references to Section 28 of this Act.

Explanation 2. - The Tax Recovery Commissioner and the Tax Recovery Officer referred to in the Income Tax Act, 1961 (43 of 1961) shall be deemed to be the Tax Recovery Commissioner and the Tax Recovery Officer for the purposes of recovery of sums imposed by way of penalty under this Act and reference made by the Commission under sub-section (2) would amount to drawing of a

certificate by the Tax Recovery Officer as far as demand relating to penalty under this Act.

Explanation 3. - Any reference to appeal in Chapter XVIII and the Second Schedule to the Income Tax Act, 1961 (43 of 1961), shall be construed as a reference to appeal before the National Company Law Appellate Tribunal under Section 34 of this Act.

CHAPTER VII

APPEALS AND POWERS OF APPELLATE TRIBUNAL

34. Appeal to Appellate Tribunal

- (1) The National Company Law Appellate Tribunal constituted under section 410 of the Companies Act, 2013 (18 of 2013) shall be the Appellate Tribunal for the purpose of this Act and the said Appellate Tribunal shall have jurisdiction to hear and dispose of appeals against directions issued or decision made or order passed by the Commission under the following:
 - (a) Clause (a) of sub-section (4) of Section 4;
 - (b) Clause (a) of sub-section (6) of Section 4;
 - (c) Sub-sections (7) or (9) of Section 4;
 - (d) Sub-section (3) of Section 5;
 - (e) Sub-sections (3) of Section 6;
 - (f) Sub-sections (2), (10) and (13) of Section 16;
 - (g) Sub-section (1) of Section 17;
 - (h) Section 25;
 - (i) Section 26;
 - (j) Section 27;
 - (k) Section 28;
 - (l) Section 29;
 - (m) Section 32;
 - (n) Section 33.
- (2) The Central Government, or the State Government or a local authority, or an enterprise or any person, aggrieved by any direction, decision or order referred to in sub-section (1) may prefer an appeal to the Appellate Tribunal.
- (3) Every appeal under sub-section (2) shall be filed within a period of sixty days from the date on which a copy of the direction or decision or order

made by the Commission is received by the Central Government, or the State Government or a local authority, or an enterprise or any person referred to in that sub-section and it shall be in such form and be accompanied by such fee as may be prescribed.

- (4) The Appellate Tribunal may entertain an appeal after the expiry of the said period of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.
- (5) No appeal by a person, who is required to pay any amount in terms of an order of the Commission, shall be entertained by the Appellate Tribunal unless the appellant has deposited twenty-five per cent of that amount in the manner as directed by the Appellate Tribunal.
- (6) On receipt of an appeal under sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the direction, decision or order appealed against.
- (7) The Appellate Tribunal shall send a copy of every order made by it to the Commission and the parties to the appeal.
- (8) The appeal filed before the Appellate Tribunal under sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within six months from the date of receipt of the appeal.

35. Awarding Compensation

Any person aggrieved by non-compliance of obligations imposed under this Act, by a Systemically Significant Digital Enterprise or its Associate Digital Enterprise as determined by the Commission, may approach the Appellate Tribunal or the Supreme Court for compensation in accordance with Section 53N of the Competition Act.

36. Procedures and powers of Appellate Tribunal

Sections 53N, 53O, 53P, 53Q(1), 53S, and 53U of the Competition Act shall apply *mutatis mutandis* to the power and procedures of the Appellate Tribunal under this Act.

37. Appeal to Supreme Court

- (1) The Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to them.
- (2) The Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed after the expiry of the said period of sixty days.

CHAPTER VIII

MISCELLANEOUS

38. Power of the Central Government to exempt enterprises

The Central Government may, by notification, exempt an enterprise from the application of one or more provisions of this Act, the rules or regulations framed thereunder, or any provision thereof, and for such period as it may specify in such notification:

- (a) in the interest of security of the State or public interest;
- (b) in accordance with any obligation assumed by India under any treaty, agreement or convention with any other country or countries.
- (c) if it performs a sovereign function on behalf of the Central Government or a State Government, only in respect of activities relatable to the discharge of the sovereign functions.

39. Power of Central Government to issue directions

- (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 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.

40. Power of Central Government to supersede Commission

- (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 supersession 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 in this 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 supersession 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 subsection (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.

41. Restriction on disclosure of information

No information relating to any enterprise or person, being information which has been obtained by or on behalf of the Commission or the Appellate Tribunal for the purposes of this Act, shall, without the previous permission in writing of the concerned enterprise or person, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.

42. Chairperson, Members, Director General, Secretary, officers and other employees, etc., to be public servants

The Chairperson and other Members and the Director General, Additional, Joint, Deputy or Assistant Directors General and Secretary and officers and other employees of the Commission and the Chairperson, Members, officers and other employees of the Appellate Tribunal 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).

43. Protection of action taken in good faith

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 the Secretary or officers or other

employees of the Commission or the Chairperson, Members, officers and other employees of the Appellate Tribunal for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

44. Act to have overriding effect

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

45. Application of other laws not barred

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.

46. Exclusion of jurisdiction of civil courts

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Commission or the Appellate Tribunal 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.

47. Power to seek recommendations

The Central Government may request the Commission to examine and make recommendations including on whether one or more services should be added or removed from the list of Core Digital Services.

48. Power to make rules

(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 of calculating equivalent fair value under clause (iv) of subsection (2) of Section 3;

- (b) other factors to which conduct requirements may be subjected to under clause (f) of sub-section (5) of Section 7;
 - (c) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (3) of Section 34 and the fees payable in respect of such appeal;
 - (d) the form of publication of guidelines under sub-section (5) of Section 50; and
 - (e) 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 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.

49. Power to make regulations and process of issuing regulations

- (1) The Commission may, by notification, make regulations consistent with this Act and the rules or notifications made thereunder 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 manner of calculating turnover in India, global turnover, gross merchandise value and global market capitalisation under explanation (5) to sub-section 2 to Section 3;
 - (b) the manner of calculating number of end users and business users under explanation (6) to sub-section 2 to Section 3;

- (c) the form and manner for an enterprise notifying the Commission that it fulfils the criteria to qualify as a Systemically Significant Digital Enterprise under sub-section (1) of Section 4;
- (d) the form and manner for an enterprise furnishing information to the Commission that it fulfils the criteria to qualify as a Systemically Significant Digital Enterprise under sub-section (3) of Section 4;
- (e) the form and manner of application by an enterprise that it no longer fulfils the criteria to qualify as a Systemically Significant Digital Enterprise under sub-section (1) of section 6;
- (f) the form and manner of application by an enterprise for revocation of designation under sub-section (2) of section 6;
- (g) the separate conduct requirements for each Core Digital Service under sub-section (3) of Section 7;
- (h) the differential obligations for Associate Digital Enterprises under the proviso to sub-section (3) of Section 7;
- (i) the manner of establishing complaint handling and compliance mechanisms under sub-section (1) of Section 9;
- (j) the form and manner of reporting of measures undertaken by an enterprise under sub-section (2) of Section 9;
- (k) the meaning of the term consent for business users under explanation 2 of under sub-section (2) of Section 12;
- (l) the manner of allowing users to port data under sub-section (3) of Section 12;
- (m) the nature of restrictions considered integral for compliance with anti-steering obligations under Section 14;
- (n) the nature of restrictions considered integral for compliance with tying and bundling obligations under Section 15;
- (o) the manner and fee for receipt of information under clause (b) of sub-section (1) of Section 16;
- (p) the time period within which the report of the Director General may be submitted under sub-section (4) and sub-section (6) of Section 16;
- (q) other details to be indicated in the show cause notice under sub-section (14) of Section 16;
- (r) the manner and form of providing description of measures undertaken by an enterprise and the time period under sub-section (2) of Section 17;
- (s) the form of application and fee under sub-section (1), the time under sub-section (2), the terms and manner of implementations and monitoring under sub-section (3) and the procedure for conducting settlement proceedings under subsection (6) of Section 18;

- (t) the form of application and fee under sub-section (1), the time under sub-section (2), the terms and manner of implementations and monitoring under sub-section (3) and the procedure for commitments offered under sub-section (6) of Section 19;
 - (u) the manner of calculating global turnover under explanation 2 to Section 28;
 - (v) the manner of determining income under explanation (c) of Section 29;
 - (w) the manner in which penalty shall be recovered under sub-section (1) of Section 33;
 - (x) the other details to be published along with draft regulations and the period for inviting public comments under clause (a) of sub-section (5) of this Section; and
 - (y) any other matter in respect of which provision is to be, or may be, made by regulations.
- (3) While framing regulations under Chapter III, the Commission may specify conduct requirements with due regard to factors such as the nature of the Core Digital Service(s), including online intermediation services, the end users or business users, the nature of the industry or service, and any other factor that the Commission may deem fit.
- (4) In exercise of its powers to make regulations under sub-section (1), the Commission may consult any statutory authority, government body or other entity as the Commission may deem fit.
- (5) The Commission shall ensure transparency while making regulations under this Act, by:
- (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;
 - (b) publishing a general statement of its response to the public comments, not later than the date of notification of the regulations; and
 - (c) periodically reviewing such regulations.

Provided that if the Commission is of the opinion that certain regulations are required to be made 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 recording the reason, for doing so.

- (6) 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.

50. Power to issue guidelines

- (1) The Commission may publish guidelines on the provisions of this Act or the rules and regulations made thereunder either on a request made by a person or on its own motion.
- (2) Guidelines issued under sub-section (1) shall not be construed as determination of any question of fact or law by the Commission, its Members or officers and shall not be binding on the Commission, its Members or officers.
- (3) Without prejudice to anything contained in sub-section (1), the Commission shall publish guidelines as to the appropriate amount of any penalty for any contravention of provision of this Act.
- (4) While imposing a penalty under Section 28 or under Section 29 for any contravention of provision of this Act, the Commission shall consider the guidelines under sub-section (3) and provide reasons in case of any divergence from such guidelines.
- (5) The guidelines under sub-sections (1) and (3) shall be published in such form as may be prescribed.

51. Power of the Central Government to notify and amend Schedules

- (1) The Central Government in consultation with the Commission, may by amendment, notify new services, or alter or delete services mentioned in Schedule I to this Act.
- (2) Any amendment notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification unless the notification otherwise directs.
- (3) Every alteration made by the Central Government under sub-section (1) 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 alteration, or both Houses agree that the alteration should not be made, the alteration 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 in pursuance of that alteration.

52. Finance, Accounts and Audit

Provisions of Chapter VIII of the Competition Act shall have application for the purpose of implementation of this Act.

53. Power to remove difficulties

- (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.
- (2) No such order shall be made under this Section after the expiry of a period of five years from the commencement of this Act.
- (3) Every order made under this Section shall be laid, as soon as may after it is made before each House of Parliament.

SCHEDULE I

1. A “Core Digital Service” includes any of the following:
 - (a) online search engines;
 - (b) online social networking services;
 - (c) video-sharing platform services;
 - (d) interpersonal communications services;
 - (e) operating systems;
 - (f) web browsers;
 - (g) cloud services;
 - (h) advertising services; and
 - (i) online intermediation services.

For the purposes of paragraph 1, the following terms shall mean:

- (a) “Online search engine” includes a digital service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found;
- (b) “Online social networking services” includes a digital service that enables one or more users to connect, communicate or interact with other users, create, upload, disseminate electronic information and discover other users and electronic information across multiple devices and, in particular, via messages, posts, videos, and recommendations;
- (c) “Video-sharing platform services” includes a digital service, whose provider performs a significant role in determining the online curated content being made available, and makes available to users a computer resource that enables such users to access online curated content over the internet or computer networks, and such other entity called by whatever name, which is functionally similar to publishers of online curated content but does not include any individual or user who is not transmitting online curated content in the course of systematic business, professional or commercial activity;
- (d) “Interpersonal communications service” includes an interpersonal communications digital service which does not connect with publicly assigned numbering resources, namely, a number or numbers in national or international numbering plans, or which does not enable communication with

a number or numbers in national or international numbering plans, including providing end-to-end to voice call or messaging between individual users or between group of users and individual end users;

- (e) “Operating system” includes a system software that controls the basic functions of the hardware or software and enables software applications to run on the computer resource;
- (f) “Advertising service” means a digital service in relation to anything published (in any form) for the purpose of promoting a product or service to the public or a section of the public, and includes a catalogue, a circular or a price list published in any format and in any accessible medium and includes any advertising networks, advertising exchanges and any other advertising intermediation services;
- (g) “Web browser” includes a software application that enables end users to access and interact with information hosted on computer resources that may be connected to networks such as the Internet, including standalone web browsers as well as web browsers integrated to or embedded in software or similar applications;
- (h) “Cloud service” includes a digital service that enables access to a scalable and elastic pool of computer resources; and
- (i) “Online intermediation service” includes any other digital service, not expressly covered under clauses (a) to (h) of Schedule I, which on behalf of an end user or a business user, receives, stores or transmits electronic record or provides any service with respect to that record and includes web-hosting service providers, payment sites, auction sites, online application stores, online marketplaces and aggregators providing services such as mobility aggregation, food ordering, food delivery services and match-making.